

ORDINANCE NO. 2023-002

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE  
CITY OF CARTHAGE, MISSISSIPPI:

ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN  
OF THE CITY OF CARTHAGE, MISSISSIPPI  
REGULATING THE SALE, DISTRIBUTION, AND POSSESSION OF ALCOHOLIC  
BEVERAGES WITHIN THE CITY LIMITS OF CARTHAGE, MISSISSIPPI

WHEREAS, pursuant to Section 21-17-5 M.C.A., the Mayor and Board of Aldermen of the City of Carthage, Mississippi have authority to adopt any orders, resolutions, or ordinances with respect to the municipal affairs of the City of Carthage, Mississippi, which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and

WHEREAS, pursuant to Section 21-13-1 M.C.A., the governing authorities of municipalities shall have the power to pass all ordinances and enforce same; and

WHEREAS, the qualified electors of the City of Carthage, Mississippi participated in a Special Election on November 8, 2022 that was ordered by the Aldermen of the City of Carthage, Mississippi pursuant to Sections 67-1-14 and 23-15-859 M.C.A. on the issue of whether or not the sale, distribution, and possession of Alcoholic Beverages shall be legal in the City of Carthage, Mississippi; and

WHEREAS, a majority of the qualified electors of the City of Carthage, Mississippi voted FOR the legal sale of Alcoholic Beverages in the manner provided for in Section 67-1-14 M.C.A.; and

WHEREAS, the election has been properly certified; and

WHEREAS, the Mayor and Board of Aldermen of the City of Carthage, Mississippi, find that it is necessary and appropriate to adopt an Ordinance pursuant to Section 67-1-14 M.C.A., which provides that if in the election a majority of the qualified electors voting in the special election shall vote "For the legal sale of alcoholic liquors," then the Mayor and Board of Alderman "shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality"; and

WHEREAS, the Mayor and Board of Aldermen find that it will promote the public health, morals, and safety of our citizens to provide reasonable rules and regulations governing the sale, distribution, and possession of Alcoholic Beverages as provided within this ordinance; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF CARTHAGE MAYOR AND BOARD OF ALDERMEN AS FOLLOWS:

SECTION 1. State Law Control: Except as otherwise set forth within this chapter, the laws of the

State of Mississippi as they now exist or hereafter amended or adopted and, where applicable, the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall apply. Any provision of this chapter that contradicts any such state authority is superseded and preempted by the state authority, all of which state authority is adopted herein by reference.

SECTION 2. Definitions: Except as otherwise defined herein, this chapter shall be deemed to apply the definitions to terms that are provided by state law as state law now exists or is hereafter amended or adopted, including, where applicable, the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) in connection with the subjects of alcoholic beverages, including but not limited to, those definitions appearing in Mississippi Code Annotated Section 67-1-5 as currently defined or as hereafter amended and revised. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. Generally.

1. Alcohol. Alcohol means the product of distillation of a fermented liquid of any origin, and includes synthetic ethyl alcohol, but does not include denatured or wood alcohol.
2. Alcoholic Beverages: Alcoholic beverage means any alcoholic liquid, including wines, of more than five (5) percent of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include light wine and beer, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol, manufactured or distilled solely for fuel purposes or beer of any alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state.
3. Wine. Wine means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits and/or berries, and made in accordance with revenue law of the United States.
4. Hotel. Hotel means an establishment which in consideration of payment food and lodging is habitually furnished to travelers and wherein is located at least 20 adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. *See also Mississippi Code Annotated Section 67-1-5 (l).*
5. Restaurant. Restaurant means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day. No place shall qualify as a restaurant under this chapter unless sixty (60) percent or

more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale beverages or unless the value of food given to and consumed by customers is equal to sixty (60) percent or more of total revenue. *See also Mississippi Code Annotated Section 67-1-5(m)(i)-(ii).*

6. Public Building. Public building means buildings where public assembly occurs on a regular basis. This term does not include accessory structures or buildings, such as water towers, public toilets, telecommunications towers or public utility accessory structures.
7. Public Park. Public park means any park owned, operated and/or maintained by the City of Carthage.
8. Permittee. Permittee shall refer to any individual or entity who is a holder of a State of Mississippi permit to sell alcoholic beverages.
9. Commercial Establishment. A commercial establishment shall include any business or organization, public or private, which charges or accepts revenue for goods, membership or admittance, whether for profit or non-profit.
10. Consumption. Consumption shall include the ingestion of any alcoholic beverage as well as possession of any alcoholic beverage in an open or un-open container.

SECTION 3. INCORPORATION OF STATE LAWS. Incorporation of State of Mississippi Laws including sale to minors and possession by minors: All State of Mississippi statutes, rules and regulations, including the Rules and Regulations of the Mississippi Department of Revenue in their present form or as hereinafter amended, modified, repealed or created are incorporated herein by reference as the governing law of the City of Carthage. State law reference: *See Mississippi Code Annotated, 1972, Title 67 generally and Section 97-31-1 et seq.*

SECTION 4. PRIVILEGE LICENSE REQUIRED. No alcoholic beverages shall be sold within the municipal boundaries of the City of Carthage; Mississippi unless the seller has first obtained a retail ABC permit from the Mississippi State Tax Commission. Further, no retailer shall possess for purpose of sale, sell or offer to sell any alcoholic beverage not purchased from a distributor or wholesaler in this state who has a permit to sell such alcoholic beverage. Any violation of this article shall be considered a misdemeanor offense and upon conviction of the violation of such section the offender shall be subject to a fine up to but not to exceed \$1,000 or imprisoned for no more than 90 days or both such fine and imprisonment.

SECTION 5. SALE. POSSESSION OF ALCOHOLIC BEVERAGES. It is unlawful to sell, offer for sale, or otherwise dispense alcoholic beverages or to possess alcoholic beverages in the City of Carthage in violation of any state law or any rule or regulation of the Mississippi Department of Revenue, including the sale of alcoholic beverages to minors, possession of alcoholic beverages by

minors and sale of alcoholic beverages within prohibited distances from churches, schools, kindergartens, city parks, hospitals, nursing homes, daycares and funeral homes. *State law reference: Sale to Minor Prohibited, Penalties, Mississippi Code Annotated, 1972 Section 67-1-81; Permits, distance regulations, Section 67-1-51; and Permitted Premises Where Alcoholic Beverages Are Sold, Mississippi Administrative Code, Section 35.11.2.03.*

SECTION 6. RESTRICTIONS ON THE SALE OF ALCOHOLIC BEVERAGES:

A. Incapacitated Persons. It shall be unlawful for anyone to sell, give or furnish alcoholic beverages in any manner, at any time or place to any person who is known to be insane or mentally incapacitated, or to any person who is visibly intoxicated, or to knowingly sell, furnish or give the same to any person for delivery unto such person. Violation of this article will subject offender to a fine up to but not to exceed \$1,000 or imprisoned for no more than 90 days or both such fine and imprisonment.

B. Sales to Minors Prohibited.

1. Except as otherwise permitted by state law as it currently exists or is hereafter amended or added, including, but not limited to, the exceptions/exemptions contained in Mississippi Code Annotated Section 67-1-81 or otherwise permitted in this chapter, any permittee or other person or entity who shall sell, furnish, dispose of, give or cause to be sold, furnished disposed of or given any alcoholic beverage including but not limited to Alcoholic Beverages to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (1).
2. Except as otherwise permitted by state law as it currently exists or is hereafter amended or added, including, but not limited to, the exceptions/exemptions contained in Mississippi Code Annotated Section 67-3-54 or otherwise permitted in this chapter, any person under the age of twenty-one (21) years who purchase, receives or has in his or her possession in any public place, any alcoholic beverage, including but not limited to Alcoholic Beverages, shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (2). Any person under such age who knowingly makes a false statement to the effect that he or she is twenty-one (21) years old or older to any person engaged in the sale of alcoholic beverages or beer or light wine for the purpose of obtaining the same shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (2).

- C. On-premises kitchen facilities required. No alcoholic beverage 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 food sales generate sixty (60) percent of gross revenue, or unless the value of food given

to and consumed by customers is equal to sixty (60) percent or more of total revenue. Further, no place shall qualify as a restaurant unless the same meets the requirements set forth by Title 35 Department of Revenue Part II Chapter 3 Section 201 (1)-(4) and Section 202 and 203 of Alcohol Beverage Control Regulations. The service of foods not prepared on the premises shall not be deemed in compliance with the requirements of this section. Restaurants must contain seating for a minimum of twenty (20) guests with suitable facilities for consumption of food for its patrons and the kitchen facilities must remain open for business so long as alcoholic beverages are being sold.

- D. Special Venues Hosting An Event Without A Kitchen. Except as permitted by State Law, venues that do not have a full service kitchen as detailed under the previous article may apply for a one-time permit received from the City Clerk's office (one-time being defined as only being good for the date specific event to be hosted by said venue) with the Board of Aldermen's approval. This permit must be applied for at least forty-five (45) days prior to the date of the event. A separate application must be made for each time a one-time permit is sought for any such venue. The granting of a one-time permit shall not in any way insure or guarantee that permits sought for similar events in the future at such venue will be granted. The fee for such permit shall be One Thousand and 00/100ths Dollars (\$1,000.00) per application.
- E. Drive-Thru Sales Prohibited. It shall be unlawful to sell alcoholic beverages through a drive-thru window sales facility or similar facility within the municipal boundaries of the City of Carthage, Mississippi.
- F. Advertising. Except as permitted by State Law, there shall be no advertising for Alcoholic Beverages outside of the interior of the building where it is sold and/or consumed. There shall be no advertising or storage of Alcoholic Beverages within the interior of the store which allows it to be visible from the street or highway side of store or establishment. This shall exclude a sign demonstrating the business name as may be allowed by code in the City of Carthage.
- G. Sunday Sales. It shall be unlawful to sell Alcoholic Beverages on Sunday in the City of Carthage, Mississippi. Sunday shall be from 12:00 a.m. til 11:59 p.m..
- H. Transportation for Compensation Prohibited. It shall be unlawful in the City of Carthage for any person to transport or deliver any alcoholic beverage to another person for compensation of any kind except for permitted by state law, rules or regulations. *State law reference: Mississippi Code Annotated 1972, Section 67-1-1, et seq. and Section 27-71-15, et seq.*
- I. Possession of Alcoholic Beverages By Operators of Public Conveyance Prohibited. It shall be unlawful in the City of Carthage for any person operating any public conveyance to have any alcoholic beverage in their possession in such conveyance. "Public Conveyance" shall be defined as a taxi service, a limousine service, a bus

service, or any other motorized means of conveyance operating as a means of transporting people for hire, except as permitted by State Law.

- J. Employment of Persons Under the Age of 21. It shall be unlawful in the City of Carthage to employ in connection with the sale of alcoholic beverages a person under the age of twenty-one (21) for any employment from which they are prohibited by the Rules and Regulations of the Department of Revenue, in their present form and as hereinafter amended. *State Law Reference: Employment of Persons Under 21 Prohibited, Mississippi Administrative Code, Section 35.11.2.08.*
- K. Hours of Sale on Days Excepting Sunday. As set by State of Mississippi law, rules and/or regulations, alcoholic beverages may be sold as follows:
- (i) For holders of state package retailer's permit, between the hours of 10:00 a.m. and 10:00 p.m., except that no sales may be made on Sundays, Election Days or on Christmas Day; and
  - (ii) For on-premises Permittee, including hotels, restaurants, clubs or caterers with a state permit between the hours of 12:00 p.m. and 10:00 p.m., Monday - Thursday; 12:00 p.m. - 11:00 p.m., on Friday and Saturday, no sales may be made on Sundays. It is further provided that on New Year's Eve night on-premises Permittee, including clubs with a state Permit, may remain open until 1:00 a.m., January 1<sup>st</sup> in the event that New Year's Eve falls on a Sunday, on-premises Permittee, including clubs with a state permit, may remain open from 4:00 p.m. until 1:00 a.m.
  - (iii) These prohibited hours and days, all of which conform with present state law, shall be subject to any amendment of state law, rules or regulations, and shall conform with any amendments thereto without amendment to this ordinance. They are further subject to specific amendment by order of the Department of Revenue in response to a petition by the City requested approval of alternate hours and/or Sunday sales, which order shall survive any subsequent amendment to state law, rules or regulations not specifically intended to supersede prior orders by the Department of Revenue approving hours and days during which alcoholic beverages may be sold.
  - (iv) Any other limits, prohibitions or exceptions granted by state laws, rules and/or regulations, in their present form and as hereinafter amended are hereby adopted by reference.

*State law reference: Hours and Days During Which Alcoholic Beverages May Be Sold by Hotels, Restaurants, Clubs, Package Stores and Caterers, Mississippi Administrative Code, Section 35.11.2.04.*

- L. Sales For Off-Premises Consumption. It is unlawful for any Alcoholic Beverages to be sold for off-premises consumption in quantities less than said products are pre-packaged for sale by the manufacturer.
- M. Territory Where Sale Is Prohibited. All businesses after the adoption of this ordinance shall not sell Alcoholic Beverages, either for on-premises or off-premises consumption, will be determined by the Mayor and Board of Aldermen as to whether or not such business shall be permitted to conduct the sale or allowance of Alcoholic Beverages at such location, and no permit shall be granted to any person where a church sanctuary, school main entrance, main entrance of any City of Carthage park, funeral home, hospital, assisted living facility, nursing home, daycare or kindergarten is located or where it might prove harmful to the general welfare, health, and morals of the community. Under no circumstances shall such business be located closer than 500 feet from any church, school kindergarten, etc., with the 500 feet measured from the front door of said business along the center line of the street to the front door of any such church, sanctuary, school main entrance, main entrance of any City of Carthage park, hospital, assisted living facility, nursing home, daycare, funeral home or kindergarten. In applying this Ordinance, a college is not considered a school. Such business may be located only in those areas zoned commercial according to the zoning map and ordinances of the City of Carthage, Mississippi.
- N. Zones Where Alcoholic Beverages May Be Sold. The "on-premises consumption" sale of Alcoholic Beverages shall be lawful and permitted in C-1, C-3 zones of the City of Carthage.

All site plans must be submitted to the City of Carthage Development Board for approval. The City of Carthage Development Board must then submit all approved site plans to the City of Carthage Board of Aldermen and Mayor for consideration and final approval.

The "off-premises" sale of Alcoholic Beverages shall be lawful and permitted only upon site plan approved locations in C-3 zone in the City of Carthage.

All site plans must be submitted to the City of Carthage Planning Committee for approval. The City of Carthage Planning Committee must then submit all approved site plans to the City of Carthage Board of Aldermen and Mayor for consideration and final approval.

No sale of Alcoholic Beverages shall take place in any residentially zoned area or district within the municipal limits of the City of Carthage, Mississippi.

1. Site plan permitting in C-3 zoning district shall be based upon the following: (a) site being located on a major highway corridor: Highway 16, Highway 35, Highway 25; (b) site being within three hundred (300) feet of highway; (c) proposed buffering if zoning

district abuts residential zoning district(s);

- O. Bagging of Alcoholic Beverages Sold for Off-premises Consumption. The sales clerk of each premises selling packaged Alcoholic Beverages must first place the same in a non-see-through, opaque bag or sack before delivering same to purchaser.
- P. Requirements for Insurance. Permittees selling alcoholic beverages within the municipal boundaries of the city shall procure and maintain at all times general liability insurance and other necessary insurance which shall specifically insure against alcohol related events with minimum limits of One Million and 00/100ths Dollars (\$1,000,000.00).
- Q. Right of Inspection. The Mayor and Board of Aldermen shall have the power and authority to demand the inspection of all invoices, sales tax reports and other business papers or records which would reflect the true amount of sales being made by a Restaurant. The Mayor and Board of Aldermen shall have the right to demand such records at least quarterly, or more often if the Mayor and Board of Aldermen shall have any reason to believe that the restaurant is not meeting the 60% Food Rule. The failure to furnish said records to the Mayor and Board of Aldermen or to any designated employee of the City of Carthage shall be a violation of the ordinance and shall be punishable as herein provided. Further, the Mayor and Board of Aldermen may immediately revoke the permit of any restaurant refusing to furnish said records to the Mayor and Board of Aldermen or any designated employee of the City. Additionally, if a restaurant refuses to cooperate with an audit or if the results of an audit result in the restaurant failing to meet the 60% Food Rule, the restaurant shall be responsible for all expenses incurred by the City associated with the audit.

SECTION 7. RESTRICTIONS ON CONSUMPTION OF ALCOHOLIC BEVERAGES.

- A. Open Containers Prohibited on Public Property. It shall be unlawful for any person to possess an open container of alcoholic beverage (liquor or wine) on public property, including buildings, parking lots, sidewalks, streets and parks within the municipal boundaries of the City of Carthage, Mississippi. Open containers do not include empty containers.
- B. Open Container - Vehicles. It shall be unlawful for any person to possess an open container of alcoholic beverage either as an operator or passenger of a motor vehicle. Open containers shall include containers that have been opened and reclosed. Open containers do not include empty containers.
- C. Under Age Possession - Private Property. It shall be unlawful for any person not of legal age (21) to possess a container of alcoholic beverage on private property.
- D. Consumption of Package Alcoholic Beverage. There shall be no on-premises



consumption of packaged alcoholic beverage on the premises where the same is sold.

- E. On-Premises Consumption. It shall be unlawful for any premises licensed for on-premises consumption to allow a patron to leave such premises with either a full or partial container of alcoholic beverage.
- F. Consumption in Public Buildings, Parks, etc. It shall be unlawful to possess or consume alcoholic beverages or beer or light wine in municipal buildings. It shall be unlawful for any person to have in his/her possession, or to consume alcoholic beverages or beer or light wine in city hall, municipal buildings, municipal school buildings, stadiums, any public playgrounds, public parks, fire stations, police stations, public libraries, parking lots, or on any public grounds, buildings, parks and places owned, maintained and operated directly by the City of Carthage.

SECTION 8. PROHIBITED ACTS UPON LICENSED PREMISES. The following described acts shall be deemed unlawful for any permittee for on-premises or off-premises sale or consumption of Alcoholic Beverages:

- A. Indecent Exposure. A person who willfully and lewdly exposes his/her person, or private parts thereof, in or upon any duly licensed premises, or procures another to so expose him or herself, is guilty of a misdemeanor and shall upon conviction be fined not more than but up to \$1,000.00 or incarcerated for up to 90 days or both.
1. A person shall be deemed indecent, or will be considered "lewdly exposed" if:
    - (a) engages in sexual intercourse upon such premises;
    - (b) engages in deviant sexual conduct upon such premises;
    - (c) appears in a state of nudity upon such premises;
    - (d) fondles the genitals of oneself or another person upon such premise; or
    - (e) simulation of any of a through d listed above.
  2. "Nudity" shall mean the showing of the male or female genitals, area, or buttocks with less than a fully opaque covering, or any part of the human female breast, directly or laterally below a point immediately above the top of the areola, or the showing of the covered male genitals in a discernibly turgid state.
  3. No permittee, employee or agent thereof shall allow or permit any person to willfully and lewdly expose his or her person, or private parts, thereof in or upon any licensed premises, or procure another to

expose him or herself upon said premises. Allowance of such could result in revocation of Permittee permit and/or license and could result in misdemeanor charges lodged against permittee, employee or agent thereof.

- B. Noise. No person(s), including but not limited to permittee, shall cause or permit loud, boisterous, or disorderly conduct of any kind in or upon a licensed premises.
- C. Gambling. No person shall gamble illegally or operate an illegal game or games of chance as defined by Mississippi Code Annotated Section 97-33-1 et seq. in or upon a licensed premises. Further, no permittee; employee or agent thereof shall permit, allow or suffer illegal gambling or the operation of illegal games of chance as defined by Mississippi Code Annotated Section 97-33-1 et seq. in or upon a licensed premises.

SECTION 9. DISCONTINUING OPERATIONS DURING AN EMERGENCY. In the event of any disturbance, uprising or riot or any other emergency of life, property or public safety, the mayor and board of aldermen, or chief of police may promptly order any and all places in the city where alcoholic beverages are consumed, sold or otherwise dispensed, to discontinue such for the period of such emergency.

SECTION 10. COMPLIANCE WITH STATE LAW REQUIREMENTS. No permit of license required by this article shall issue to any person unless satisfactory evidence is furnished to the tax collector that such person has complied with the requirements of state law, and if the permit required by state law is at any time revoked, said revocation shall operate as a cancellation and forfeiture of the rights of the person holding a permit or license from the municipality.

SECTION 11. PENALTY FOR VIOLATION OF ORDINANCE: MISDEMEANOR: STATE PENAL LAWS. Any violation of this ORDINANCE shall constitute a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, as authorized by Section 21-3-1 M.C.A., unless otherwise specified herein.

Misdemeanor violations of the penal laws of this State, including but not limited to those referenced in this ordinance, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both, as authorized by Section 21-13-19 M.C.A.

SECTION 12. FAILURE TO ENFORCE CHAPTER. Failure to enforce any article or provision of this ordinance shall not constitute a waiver nor imply that the action is legal.

SECTION 13. TITLE. The sections and articles of this ordinance may be referred to collectively as

the "Carthage Alcohol Ordinance".

This Ordinance shall take effect within thirty (30) days of passage and be enforced as required by law.

This Ordinance having been first reduced to writing, was read, considered and adopted, first section by section and then as a whole.

Thereupon, motion duly made by Alderman Josh Stokes, seconded by Alderman Robin Burgess, to adopt the foregoing Ordinance, and questions being put to roll call vote, the result was as follows:

Alderman, Britt Barnes.....	<u>    Nay    </u>
Alderman, Marcus Williams.....	<u>    Nay    </u>
Alderman, Robin Burgess.....	<u>    Yea    </u>
Alderman, Josh Stokes.....	<u>    Yea    </u>

That under the Charter of the City of Carthage, after a tie vote, the Mayor of the City of Carthage may cast the deciding vote.

Mayor, Laurie Henderson.....     Yea    

Thereupon, the Mayor declared said Ordinance approved, passed and adopted by unanimous vote on this the 6th day of March, 2023.

Laurie Henderson  
Laurie Henderson, Mayor



Penny Spears  
Penny Spears, City Clerk