

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

**ORDINANCE REGULATING PLACES OF PUBLIC
ASSEMBLAGE,
INCLUDING ROADHOUSES AND LIKE
ESTABLISHMENTS AND
PROVIDING FOR PENALTIES FOR VIOLATIONS**

WHEREAS, Article Six, § 170 of the Mississippi Constitution and § 19-3-41 of the Mississippi Code grants full jurisdiction over roads and all matters of county police to boards of supervisors; and,

WHEREAS, Chapter 5, Title 19 of the Mississippi Code authorizes counties to protect the general health, safety and welfare of its citizens where the legislature has not made provision; and,

WHEREAS, § 19-3-40 of the Mississippi Code, the "home rule" statute, grants counties the power to adopt ordinances respecting county affairs for which no specific provision has been made by the legislature and which is not inconsistent with the Mississippi Constitution; and,

WHEREAS, Oktibbeha County is in the process of creating a long-term comprehensive development plan for the benefit of its citizens and the adoption of an ordinance regulating public assemblage will enhance such plan; and,

WHEREAS, the Oktibbeha County Board of Supervisors has received significant accounts of places of public assemblage including roadhouses, nightclubs, dance halls and the like, within and without of

the County, which contribute to littering, public intoxication, controlled substance violations, noise, disorderly conduct, assaults, overcrowding and traffic congestion limiting emergency responders in the performance of their duties; additionally, some of these assemblages have permeated conspiracies of silence allowing violators to escape the administration of justice; and which are managed without adequate attention to these problems; and,

WHEREAS, on numerous occasions, the impact of these business operations has been more significant when the establishment is hosted an entertainment promoter for a special event or performance, or the like, or when the establishment fails to alert law enforcement of criminal conduct occurring during operations; and,

WHEREAS, some of these operations are located in buildings which are not in compliance with current building and/or fire code requirements, causing a safety hazard for the occupants, customers and patrons of said buildings.

THEREFORE, IT IS HEREBY ORDAINED by the Oktibbeha County, Mississippi

Board of Supervisors:

Article I. APPLICABILITY, INTENT AND INTERPRETATION

This ordinance shall apply to all places of public assemblage as defined in Article I, including all existing establishments as well as any that make application subsequent to the adoption of this ordinance. This ordinance shall not apply to functions hosted or sponsored by a governmental entity or its agents acting on behalf of said entity or any charitable organization that has exempt status as established by the Internal Revenue Service.

The intent of this ordinance is to promote public safety and welfare by regulating premises security, alcohol policies, loitering, littering, noise, overcrowding, parking and other nuisances that effect public safety and welfare.

If any portion of this ordinance is claimed to be ambiguous, the appropriate regulating authority, as identified in Article III, shall render interpretations of this ordinance based on the intent. Any party in disagreement with the interpretation of the regulating authority may file a written appeal to the Regulations Committee as described in Article V. Upon receipt of a written appeal, the regulations committee shall schedule a meeting with the appellant withing thirty (30) calendar days to hear testimony from both sides and to render a decision as outlined in

Article III. The interpretation of the regulating authority shall stand during any appeal process.

Article II. DEFINITIONS

This Ordinance shall apply to all places of public assemblage, including, but not limited to, roadhouses, nightclubs, dance halls, lounges, taverns, cabarets, bars, pool halls, community centers, recreation centers, convention centers, and restaurants, whether allowing alcoholic beverages or not, and regardless of whether entertainment is provided or allowed during any portion of its regular operation and which provides entertainment activities through any of the following: amplified music, whether live or programmed, dancing, table games, and/or

video games. The definition also includes restaurant/bar establishments that provide

entertainment as described above during any portion of its operation.

Any other establishment

that only occasionally hosts the above described activities shall be subject to the provisions of

this ordinance while engaging in such activities. This definition is applicable to the owner of the real estate, any lessee, operator, host, entertainment promoter, and any borrower of the premises conducting events on the property.

Bring Your Own Bottle/BYOB: Any establishment that allows hard liquor to be brought inside for consumption shall not allow it be poured into any container of more than 8 ounces in size.

Consume or Consumption: Ingestion of alcoholic beverages or the possession of any alcoholic beverages in its original container or bottle, can or other container which has been opened. Consumers are restricted to the inside of the place of public assemblage while consuming or consumption of alcoholic beverages.

Entertainment Promoter: Any individual, partnership, corporation, or other entity or agent promoting any venue, performing artists, advertising services, or similar activities by contracting with a person, partnership or corporation not owned and operated by the promoter.

For Profit Event: Any event other than a non-profit event.

Non-Profit Event: Any event designed and intended to produce profits for the benefit of and/or subsequent disbursement by organizations which are tax exempt under federal tax laws and Internal Service Regulations

Overcrowding: As provided in Section 202 of the 2006 Edition of the International Fire

Code: "A condition that exists when either there are more people in a building, structure, or portion thereof than have been authorized or posed by the fire code official, or when the fire code official determines that a threat exists to the safety of the occupants due to persons sitting and/or standing in locations that may obstruct or impede the use of aisles, passages, corridors, stairway, exits, or other components of means of egress."

Public Safety Concerns: One (1) or more acts of violence

resulting in physical injury or observed illegal drug activity, or the unlawful possession of beer occurring inside of the establishment or outside in the premises parking area owned, leased or operated by the establishment.

Regulating Authority: The official, officer or entity charged with regulating the provisions of this ordinance, including but not limited to, the Sheriff or his designee, the Fire Coordinator or his designee, or State Fire Marshall or the County Emergency Manager.

Regulations Committee: The committee designated by the Oktibbeha County Board of Supervisors to administer certain sections of this ordinance as provided in **Article V**.

Safe Operation: A period of at least ninety (90) days during which Oktibbeha County E911 office has recorded no calls for service reporting criminal activity or public safety concerns other than those reported by the establishment.

Article III. PERMIT REQUIRED

A. Prior to opening any establishment for business, as defined in Article II, the owner, lessee, operator, host, promoter, or borrower of the premises, as the case may be, whether on a regular basis or one (1) time event, shall obtain a permit, and is in effect as a condition precedent to opening for customers or patrons into the place of public assemblage.

(1) A building, part of a building, or outdoor location may be occupied and used as a place of public assemblage by a person, entity or organization other than the owner or full-time lessee, only when the operator, promoter, or any borrower has been issued a permit which is in effect under the provisions of this Article.

(2) Compliance with physical requirements of the facilities shall be the responsibility of the owner. Compliance with operating requirements shall be the responsibility of the owner unless a valid permit has been obtained by a lessee, operator, promoter, host or borrower, and in which case the owner shall be jointly responsible for compliance.

B. **Permit Application and Issuance:** Permit applications may be obtained from the Oktibbeha County Sheriff, or his designee. Upon the submission of a completed application and an annual permit fee of fifty dollars (\$50.00), the application shall be forwarded to the Sheriff's Department. The Sheriff or his designee shall review these materials, any incidents occurring at the place of public assemblage within the preceding twelve (12) months, past compliance with Article IV of this ordinance and its historical record, if any, and submit his recommendations to the Regulations Committee.

The Regulations Committee shall issue permits recommended by the Sheriff's Department, subject to the facility meeting all occupancy requirements of the State's or County's adopted building and life safety codes.

C. **Permit Validity:** The permit shall be valid for a period of one

(1) year unless suspended or revoked for failure to comply with the provisions of Article IV. If the permit is revoked, the permit holder forfeits the annual permit fee for that year.

D. Renewal:

- (1) A permit renewal application may be granted after a review of the past years performance; the consideration by the Sheriff or his designee should include, but not be limited to, 'safe operation', past permit revocations and suspensions, violations of other applicable law and any prior permittees affiliated or associated with the applicant, evidence of illegal drug activity on or about the permitted premises, and evidence of fighting, disorderly conduct and other dangerous activities on or about the permitted premises.
- (2) Violations of this ordinance on the premises during events conducted by persons, entities or organizations other than the owner, whether permitted under this ordinance or not, may be grounds for non-renewal of the permit.
- (3) Should the Regulations Committee find that the applicant has not submitted a complete application or appropriate fee, or if the Sheriff or his designee finds the applicant has not complied with this Article, the Regulations Committee shall decline to issue the permit. The annual permit fee shall be returned to the applicant along with a letter stating the reasons for the denial.

E. Suspension or Revocation: The Regulations Committee may temporarily suspend a permit for a violation of one (1) or more of the provisions of this Ordinance.

- (1) If a permit is suspended or revoked, no entertainment activities including amplified music, whether live or programmed, dancing, table games or video games may be conducted on the premises. If any entertainment activities occur during a period of suspension or revocation, the privilege license and certificate of occupancy shall be revoked. Such suspension or revocation does not otherwise affect the sale or purchase of the realty or personality during suspension or revocation.
- (2) The Regulations Committee may permanently revoke a permit for two (2) or more violations of the provisions of this Ordinance in a twelve (12) month period, or for more than three (3) violations of the provisions of this Ordinance. Such permanent revocations shall also result in revocation of privilege license and certificate of occupancy.
- (3) Such suspension or revocation shall be held in abeyance for a period of three (3) business days to permit the owner, lessee, manager, host, agent, etc., to appeal the suspension or revocation.
- (4) Notification of suspension or revocation shall be by certified mail, hand delivery, or by leaving notification at the door of the permittee's location.

(5) A permit shall not be suspended or revoked for a violation of Article IV which is not a public safety concern unless the violation is found to have continued or recurred after the permittee has received notice of the violation and an opportunity to remedy or prevent the violation's recurrence.

F. EMERGENCY TEMPORARY SUSPENSION BY SHERIFF.

The on-duty field Supervisor for the Sheriff's Department may temporarily suspend the establishment's permit if the field commander determines that an immediate suspension is necessary to restore order, for failure to comply with Article IV security requirements or events that endangers the life, health and safety of customer/patrons or neighbors of the establishment, or any call of service at the location as follows:

(1) The facility shall be vacated and closed effective immediately upon verbal notification to the owner, lessee, manager, host, manager, agent, representative and shall be effective for up to twenty-four (24) hours as needed to restore order or to ensure compliance with security requirements.

(2) The establishment may reopen thereafter, provided that the situation giving rise to the emergency temporary suspension of the permit has been adequately addressed as determined by the Sheriff or his designee. The field supervisor shall submit a document outlining the basis for his decision to suspend the permit(s) to the Sheriff or his designee. The Sheriff or his designee shall, within five (5) business days, submit a finding to the Regulations Committee either recommending continuation of the permit, temporary suspension for a designated period, or revocation. The Regulations Committee shall notify the permittee as provided herein.

(3) Within three (3) business days of receiving notice of denial, suspension or revocation of the permit, the permittee or applicant may appeal the action by filing a written notice of appeal with the Regulation Committee at the Office of the County Administrator.

(4) The Regulation Committee will conduct a hearing as promptly as possible and within five (5) business days of receiving the written notice of appeal, to determine whether to:

(a) Reinstate or issue the permit,

(b) Temporarily suspend the permit, or

(c) Permanently revoke the permit

(5) The permittee or applicant for a permit shall be entitled to appear, testify, and present evidence at the hearing. However, formal rules of evidence shall not apply and reasonable and reasonable limitations may be placed upon total hearing time. Upon request, the hearing shall be recorded. A temporary suspension may not extend beyond the date on which the permit expires. Any such suspension or revocation does not otherwise affect the owner's sale of the premises or personalty. The Regulations Committee shall prepare written findings and

conclusions concerning the appeal decision within five (5) business days of the hearing.

G. Appeal Procedure Concerning Imposition of Supplemental Security Requirement (Article IV. Item H)

(1) Within ten (10) business days of receiving notice that the business has become subject to the security requirement, the permittee may appeal the action by filing a written notice of appeal with the Regulations Committee. The Regulations Committee will conduct a hearing as promptly as possible (and within five (5) business days of receiving the written notice of appeal) to determine whether to:

(a) Continue imposition of the security requirement,

(b) continue imposition of the security requirement but shorten the requirement's durations, or

(c) Remove the security requirement.

(2) The permittee or permit applicant shall be entitled to appear, testify, and present evidence at the hearing. However, formal rules of evidence shall not apply and reasonable limitations may be placed upon total hearing time. Upon request, the hearing shall be recorded. The Regulations Committee shall prepare written findings and conclusions concerning the appeal decision within five (5) business days of the hearing.

Article IV. OPERATING REQUIREMENT

A. Applicability. All policies set forth herein must be adhered to the posted or actual occupancy allowed of the establishment is one-hundred (100) or more or if there has been more than one (1) call for *service* to the establishment within any thirty (30) day period. The Supplemental Security requirement "H"? shall not apply to establishments with a safe operation record or an establishment of less than one-hundred (100) occupancy, except when such establishment has had more than one (1) call for service within a thirty (30) day period.

B.{xx} Entertainment Promoter Use: The owner or lessee of the establishment shall not allow any entertainment promoter to use, sub-lease or rent the premises, (including any outdoor and/or parking areas) without verifying that the promoter has a valid entertainment promoter permit and has complied with the security staffing requirements.

C. Hours of Operation. Operating hours for establishments shall be from noon until 1:00 a.m. At 1:30 a.m. all customers shall be out of the building and off the premises. The owner, management and band will be allowed inside the building after 1:30 a.m. for clean-up and equipment removal and security.

D. Age Restrictions. Anyone entering the establishment must be

at least eighteen years of age or accompanied by a parent or legal guardian. All persons aged twenty one (21) and older shall be wearing a non-removable, easily identifiable armband. The permittee shall be responsible for verifying the age of all occupants.

E. Weapons and Other Dangerous Items. The permittee shall post a sign on the entrance door declaring that no weapons are allowed inside and shall also be responsible to ensure that no guns, knives, brass knuckles, or other paraphernalia that may be used as weapons are brought into the building except by security guard duly licensed and authorized to carry said weapons.

(1) Hand wand metal detectors shall be utilized on all persons entering the establishment.

(2) Pyrotechnics are prohibited and the permittee is responsible to ensure that no fire hazardous materials are used inside the premises.

F. Overcrowding. Establishments shall be operated in compliance with provisions of the latest edition of the International Fire Code, or as required by the Mississippi legislature and/or adopted by the Oktibbeha County Board of Supervisors. The capacity of the structure set by the Mississippi State Fire Marshall or the County Fire Coordinator shall be maintained.

(Sections 101 (Safety to Life from Fire in Building and Structures), 7.3 (Capacity of Means of Egress), 7. of the National Fire Protection Association latest edition of the International {Building} {Fire} Code or as required by the Mississippi Legislature and/or adopted by the Oktibbeha County Board of Supervisors.

(1) Overcrowded or admittance of any person beyond the approved the approved capacity of a building or portion thereof shall not be allowed; each person admitted beyond the safety capacity shall be considered a separate offense.

(2) The fire code or law enforcement official, upon finding any overcrowding, *obstructions of* any passageways, aisles, or other means of egress, or upon finding any condition which constitutes a life safety hazard shall be authorized to cause the event to be immediately ceased until such condition or obstruction is corrected

(3) Permittees shall be responsible for maintaining all required exits and exit pathways.

(4) Exit pathways shall not be blocked. Exit doors shall be equipped with appropriate exit hardware as required by the building code and shall not be locked from the interior and shall include chevron-type indicators indicating exits from the interior.

(5) Owners, or any permittee, shall be responsible for recording

the number of persons admitted in the facility and such numbers shall be produced upon request by fire inspectors or law enforcement officials. Failure to provide a written or other documented tabulation of customers/patrons admitted shall constitute a misdemeanor.

G. Nuisance Activity. The establishment/permittee, etc., shall

prevent all nuisances including the following activities:

(1) Prohibiting loitering outside the establishment and/or nearby properties, by patrons of the establishment.

(2) Ensuring that patrons do not create a nuisance to nearby property owners and/or residential areas by littering, loitering, vandalizing, making loud noise or other disturbing activities. Nearby property residents aggrieved by the activities of an establishment or its patrons may file a written complaint, fulling describing the nature of the nuisance, with the Sheriff's Office.

(3) The Sheriff's department shall issue citations to the alleged violators citing this article as the violation and require all involved to appear in Oktibbeha County Justice Court for a hearing on the alleged violation(s). If found guilty the Court is authorized to fine and/or imprison, or, as allowed by law for misdemeanor offenses and shall be subject to suspension or revocation of the permit as provided in *Article III, Section E of this ordinance*

(4) Any continued violations of littering, loitering, vandalizing, loud noise, fighting, assaults, blocking roadways, and any other nuisance will be grounds for suspension or revocation of the permit.

H. Security.

(1) Unless otherwise excused, all establishments and their operators, as contained in this ordinance shall provide a minimum of one (1) bonded security guard per 100 people for each event, plus a minimum of one (1) bonded security guard in each parking lot. At least one (1) of those bonded guards shall remain on site for at least one (1) hour after the establishment closes to ensure that no loitering, littering or other unlawful activity occurs. The bonded security guards must present their State issued security guard permits to the Oktibbeha County Sheriff or his designee prior to providing security services at the establishment.

(2) Bonded security guards shall utilize a hand wand metal detector on all persons entering the premises.

(3). Permittees shall install security cameras to record the events in each of the several areas of the interior premises as well as the parking lot and are subject to inspection at any time by the Oktibbeha County Sheriff's Office.

(4) Restaurant establishments may apply for an exemption under

the following conditions:

(a) submission of a seating plan for approval by the Regulations Committee

(b) If approved, the seating plan must be posted in the establishment along with the occupant capacity certificated and the tables and chairs must be in place according to the plan during all hours of restaurant operation.

(c) The establishment may be exempt from the security guard requirement if approved by the Regulations Committee.

Article V. REGULATIONS COMMITTEE

A. There is hereby established a Regulations Committee composed of the following members:

(1) Sheriff or his designee

(2) Fire Coordinator or his designee

(3) An Oktibbeha County citizen appointed by the Board of Supervisors

(4) County Administrator or her designee

(5) County Attorney

B. The committee shall meet on an "as needed" basis. A three-fifths (3/5ths) majority present at a meeting shall constitute a quorum. The committee shall elect a president, vice president and secretary. The president shall preside at meetings. In the absence of the president, the vice president shall preside. In the absence of the president and vice president, the secretary shall preside. The presiding officer shall conduct meeting in accordance with common law rules of parliamentary procedure. The committee shall have the following duties and authority:

(1) To render interpretations of this ordinance when an interpretation of a regulating authority is challenged as outlined in Article I.

(2) Authority to suspend or revoke the license, by the procedure described in the paragraph below, of any establishment found guilty of any two (2) of the same or separate violations during a twelve (12) month period of any County, State or Federal regulation, including but not limited to, the regulations contained in this ordinance or any three (3) violations total. This authority shall not affect the authority of any other officer or entity to exercise a legal right to close the operation.

(3) To make rules for conducting the business of the committee.

(4) Members of the committee shall report violations to the

secretary. The secretary shall keep an accounting of reported violations and report to the other members of the committee when a business accumulates three violations. For the purpose of this article, a guilty verdict rendered by an local, state or federal court shall constitute a violation.

(5) Any member of the committee may ask for a meeting of the committee to determine what, if any, action should be taken relative to a business that has been found guilty of any three (3) violations.

(6) The committee shall give written notice of a meeting to the subject business owner, lessee, operator, host, etc. at least ten (10) calendar days in advance of the meeting by registered mail sent to the address of the operation contained in the application. The owner, etc. shall have the right to appear and give testimony at said meeting.

(7) Action by the committee shall be decided by majority vote of the members present at such meeting. The committee shall give written notice of the decision to the owner, etc by registered mail to the address contained in the application.

(8) The owner, etc. may appeal the decision of the committed by filing a written appeal with the Board of Supervisors within ten (10) calendar days following the postmark date on the notice from the committee.

(9) Any decision by the Regulations Committee may be appealed pursuant to the provisions of § 11-51-75 of the Mississippi Code.

(10) Members of the committee shall not be held personally liable, either individually or as a group, for any action taken by the committee while acting in good faith on behalf of the County.

Article VI. Violations and Penalties

A. A violation of any provision of this ordinance shall be a misdemeanor. Unless otherwise provided for in this ordinance, each violation shall subject the defendant to a mandatory minimum fine of not less than five hundred dollars (\$500.00) and/or not more than ninety (90) days in jail or both

B. Each day that a violation exists shall constitute a separate offense and subject to separate penalties for every day that the violation continues.

C. If any court determines that any violation is a felony such finding shall supercede the penalties provided in this ordinance.

Article VII. ORDINANCE PROVISIONS

A. The omission of any specific requirement or provision for this ordinance shall not be interpreted as permitting any variation from the general meaning and intent of the ordinance as

commonly inferred or interpreted and should occasion arise as to such intent or meaning, the interpretation of the governing authorities shall hold.

B. Should any section or provision of this ordinance be declared unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

C. Whenever any requirements of this ordinance are in conflict with the provisions of any other legally adopted rules or regulations the most restrictive law or requirement shall govern.

Article VIII. EFFECTIVE DATE

This ordinance will become effective thirty (30) days from the date of its passage by the Board of Supervisors of Oktibbeha County, Mississippi.

roadhouse5(1)(a)