

CITY OF COTTER, ARKANSAS

ORDINANCE NO. 2022-06

AN ORDINANCE AMENDING CITY OF COTTER MUNICIPAL CODE 4.28 BY REPLACING ORDINANCE 79-7 IN ITS ENTIRETY AND ALL SUBSEQUENT AMENDMENTS TO REGULATE ALCOHOLIC BEVERAGES TO COMPLY WITH THE STATE OF ARKANSAS TITLE 3.

BE IT ORDAINED by the City Council of Cotter, Arkansas, that the following Code is adopted to replace Ordinance 79-7 of the Cotter City Code to control the licensing, regulating, and taxing alcoholic beverages in the City of Cotter pursuant to Arkansas's Alcohol Beverage Control Board.

4.28.01 Applicability:

(A) It is hereby declared that the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, serving, or dispensing, either at wholesale or retail, any controlled beverage, within the City of Cotter, is a privilege, and for the exercise of such privilege there are hereby imposed the regulations, requirements, restrictions, fees, and taxes as set forth in this chapter. General provisions shall apply to all licensees in addition to any specific provisions under individual headings for each type of permit.

(B) Said application shall contain a sworn statement of the name of the business sought to be licensed, the names and addresses of all of the persons owning or holding any interest in said business, and the proposed location of said business, the owner or owners of the building or premises in which said store is to be located, and said applicant's state license shall accompany such application, then the City Recorder of the city in which the proposed business is to be licensed shall issue such license upon the payment of the license fee provided hereinafter.

4.28.02 Location:

It shall be unlawful for any person to sell or engage in the wholesale or retail liquor business at any location other than that zoned MU, C-1, C-2 or industrial.

4.28.03 Certificate of occupancy:

No person shall be granted a license at either wholesale or retail within the city in which said license is sought upon, in or in connection with any premises wherein, there does not exist a certificate of occupancy. At the time of application every person desiring a permit pursuant to this ordinance shall file with the Recorder of the city in which said license is sought a certificate of occupancy for the premises for which the permit is sought.

4.28.04 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 0.5% by weight.

City means the City of Cotter, Arkansas.

Controlled beverages mean 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.

Light Wine means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight. Section 1.10(A)

Malt Liquor means liquor brewed from the fermented juices of grain. Section 1.10(B) “Hard Cider” means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than twenty-one percent (21%) of alcohol by weight.

Malt liquor means liquor brewed from the fermented juices of grain.

Microbrewery-Restaurant Permit authorizes the operation of microbrewery-restaurants as provided in ACA § 3-5-1204. (Amended 9-16-15)

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 Cotter 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.

Bed and Breakfast providing overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is no restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment.

Private club means a nonprofit corporation organized and existing under the laws 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 food is 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.

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.

Vinous means the fermented juices of fruits containing more than 5% and not more than 21% alcohol by weight.

Wholesaler and distributor mean 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.

4.28.05 Alcohol 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 an alcohol license issued by the city, or with an expired license.

In addition, to City of Cotter Alcohol License, a City of Cotter Occupational Business Licensed shall be required per Ordinance 2011-4.

4.28.06 Application for Alcohol 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.

(C) 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. Failure to renew annual license by July 1st shall be subject to a 20% penalty in addition to original cost. Any person, firm or corporation that fails to procure a city license by 1st day of September of the licensing year, will be fined not less than fifty dollars (\$50.00) and each and everyday of such violation shall be considered a separate offense.

(D) 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.

(E) 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.

(F) 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.

(G) All fees, taxes, and penalties received by the city pursuant to this chapter shall be deposited to the credit of general fund revenues.

(H) Licenses shall not be transferable or assignable except as provided by A.C.A. '3-4-103A. 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.

4.28.07 Prohibited Activities/Warning Notice:

(A) Any person to whom a controlled beverage permit has been issued shall comply with all laws and regulations of the State of Arkansas, the Alcoholic Beverage Control Division of the State of Arkansas, and the City of Cotter regarding the control and regulation of controlled beverages, including but not limited to the following:

(1) Purchase by or for minors, sale to minors, or handling by minors prohibited.

(a) It shall be unlawful for any person under the age of 21 years to have in his or her possession, to purchase or attempt to purchase, or otherwise obtain any controlled beverages.

(b) It shall be unlawful for any person to, knowingly or unknowingly, purchase on behalf of, furnish to give away to, or otherwise dispose of to any person under the age of 21 years any controlled beverages or to the use of wine in any religious ceremony or rite in any established church or religion.

(c) It shall be unlawful for any person engaged in the business of manufacturing, distributing, or selling, at wholesale or retail, any controlled beverages to sell, offer for sale, or give away, under any conditions, any such controlled beverages to any person under the age of 21 years. The burden of determining the age of any person shall be upon the seller.

(d) It shall be unlawful for any wholesaler, retailer, or transporter of controlled beverages to allow any employee or other person under the age of 21 years of age to have anything whatsoever to do with the sale, transporting or handling of controlled beverages.

(2) A warning notice regarding the sale to, possession or purchase by, or furnishing to minors of controlled beverages shall be posted in a conspicuous place in public view in each place of business where controlled beverages are sold, served, or dispensed, including all drive up windows. The warning notices shall be of the size, have the content, and be posted in the manner as prescribed by the Arkansas Alcoholic Beverage Control Division.

(3) If any person engaged in the sale of controlled beverages in the city shall conduct his place of business in a manner as to constitute a nuisance, the City Council may revoke the license of such person granted under the terms of this Ordinance.

(4) Any person violating any provision of this ordinance shall be subject to the general penalties as set out in the State Code and/or the City of Cotter Code, as well as the suspension or revocation of license.

4.28.08 Penalties/Suspension/Revocation:

(1) Furnishing To or Consumption by Minors:

(A) Any person convicted of knowingly or unknowingly selling, serving, giving, procuring, or otherwise furnishing any controlled beverage to any person under 21 years of age shall be deemed guilty of a misdemeanor and shall be fined no more than \$1,000.00.

(B) Any person under the age of 21 years who has in his or her possession, purchases or attempts to purchase, or otherwise obtain any controlled beverage shall, upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of no more than \$1,000.00.

(2) Operating Without a Current City License:

(A) Beer and light wine. Any person who sells, serves, barters, exchanges, or gives away beer or light wine without having a valid city license as provided by this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than \$1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(B) On-premises consumption, including private clubs. Any person who sells, serves, barters, exchanges, or gives away controlled beverages, for on-premises consumption without having a valid city license as provided by this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined no more than \$1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(C) General. Any person, except as provided in (A) and (B) above, who sells, serves, barters, exchanges, or gives away controlled beverages, without having a valid city license as provided in this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined no more than \$1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(3) General Penalty: Except as set forth above, any person violating any provision of this code shall be subject to the general penalties as set out in of the Code of Cotter. The City of Cotter may suspend, for a period not to exceed six months, or revoke the license of any licensee violating this chapter after due notice to the licensee and an opportunity for the licensee to be heard. When any license is revoked, no new license shall be issued to the same person within one year of such revocation. Any person aggrieved by the City of Cotter may appeal to the Baxter County Circuit Court by filing a Petition within 30 days of any final ruling of the City of Cotter.

4.28.09 TYPES OF PERMITS-FEES-SPECIFIC PROVISIONS-HOURS OF OPERATION:

Section 1. Wholesale:

(A) Wholesale liquor permit. Authorizes the purchase from licensed manufacturers or importers of spirituous and vinous beverages or malt liquor containing more than five percent alcohol by weight, and the sale of such beverages to persons holding a valid liquor off-premises permit or a hotel, motel, or restaurant on-premises consumption permit. There is hereby levied an annual license fee of \$150.00 for each and every establishment engaged in storing, transporting and/or selling at wholesale any spirituous or vinous liquors within the city.

(B) Wholesale beer and wine license. Authorizes the purchase of beer, wine or malt liquor from a licensed manufacturer or importer and the sale of such beverages to retailers holding a valid license to sell beer, wine, or malt liquor for consumption on or off the premises.

(1) License fee. There is hereby levied an annual license fee of \$150.00 each or \$300.00 for both beer and wine for each and every wholesale dealer, broker or distributor of beer and wine.

(2) All wholesale dealers and distributors selling beer and wine to retail dealers within the city shall provide to the city's accounting division on, or before, June 30th of each year a report of said distributor's total sales of beer and wine for the previous calendar year to each retailer within the city. No wholesale beer and wine license will be renewed until such report has been received by the city.

Section 2 Retail:

(A) Retail Package Business liquor off-premises 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. There is hereby levied an annual license fee of \$425.00 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.

(B) Retail Package Business Beer and Wine off-premises license. Authorizes the purchase of beer, wine, or malt from licensed wholesalers for consumption off the premises described in the license. For the privilege of selling beer and wine, at retail, for off-premises consumption, there is hereby levied an annual license fee of \$175.00.

(C) Retail Beer and Wine on-premises license. Authorizes the purchase of beer, wine, or malt liquor from a wholesaler holding a valid license and the sale of such controlled beverages for consumption on the premises described in the license. There is hereby levied an annual license fee of \$175.00.

(D) Bed and Breakfast authorizes a corporation, partnership, individual or limited liability corporation, whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is no restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment. \$375.00

(E) Private club license. Authorizes the purchase of any controlled beverages from persons holding an off-premises retail liquor or beer license who have been designated by the director of the State Alcoholic Beverage Control Board as a private club distributor and authorizes the dispensing of such beverages for consumption on the premises of the private club to members and guests only of the private club. Private clubs holding a retail beer on premises license may purchase beer, wine, malt liquor mixed drinks. A Private club license shall only be issued to restaurants as defined above. For the privilege of operating a private club within the city, there is hereby levied an annual license fee of \$750.00.

(F) On-premises consumption--Hotel, motel, or restaurant license. Authorizes the purchase of any controlled beverages from persons holding a valid wholesale license and the sale of such mixed drink beverages for consumption on the premises of the restaurant described in the license or in-room hospitality units of the hotel or motel described in the license. (Persons holding an on-premises consumption hotel, motel, or restaurant license are not required to have a retail beer or wine license).

For the privilege of selling controlled beverages for on-premises consumption by hotels, motels, or restaurants, there are hereby levied annual license fees in the following applicable amounts:

- (a) Hotel or motel having fewer than 100 rooms, \$375.00.
- (b) Hotel or motel having 100 or more rooms, \$750.00.
- (c) Restaurants having a seating capacity of less than 100 persons, \$375.00.
- (d) Restaurants having a seating capacity of 100 or more persons, \$750.00.

(e) Any new permit issued for on-premises consumption hotel, motel, or restaurant operations between January 1st and June 30th shall be at one-half the rates shown above.

(G) Off-premises caterer license. Authorizes the purchase of alcoholic beverages from a retailer to transport to a private function which is being catered by the license holder and to serve alcoholic beverages to attendees of the private function in conjunction with catered food. A license fee of \$250.00 is levied annually beginning on July 1st.

(H) Restaurant Beer and Wine License. Authorizes a restaurant which has a valid state Restaurant Beer and Wine License to obtain a City of Cotter Restaurant Beer and Wine License for the retail sale and consumption of beer and wine. There is hereby levied an annual license fee of \$175.00 beginning July 1st of each year as annual fees for retail beer and wine on-premises.

(I) "Festival" Permit. Authorizes the retail sale of beer or wine at special events, rallies, etc. held in city parks or on city streets sponsored by a not-for-profit entity that holds a state permit upon approval by the City Council.

(1) Permit Fee. There is hereby levied a permit fee of \$125 per event for beer and wine sales per vendor.

(2) Dates and Hours. Applications must be made for specific date (s). Sales shall only be permitted between the hours of 11:00 a.m. to 10:00 p.m. No Sunday sales are permitted.

(3) The Event Permittee must provide and pay for security. A security action plan to monitor the event shall be submitted with the city application for review by the Chief of Police. Sales shall be confined to a secured area designated by the City Council. Permittee must be responsible for clean-up and repairs. Permittee is subject to all requirements imposed by the City of Cotter.

Section 3 Manufacturing:

(A) Craft Beer or Wine manufacturing license. Authorizes the manufacture of beer containing not in excess of five percent alcohol by weight, and the sale of such beer to persons holding a valid license to wholesale or import such beer. For the manufacture and sale of beer, the annual license fee shall be \$175.00 for each and every manufacturing plant.

4.28.10 LICENSE FEES GENERALLY:

Acknowledging that the license fees as set by the Arkansas Alcoholic Control Board may be changed from time to time, the license fees to be paid to the City of Cotter, as contained in this Ordinance, may change from time to time, and for all classifications. Municipal License Fee shall not exceed equal to one-half (1/2) of the license fee collected by the Board for the State of Arkansas.

4.28.11 SALE OF MIXED DRINKS BY RESTAURANT:

Restaurants located within the City limits of Cotter, Arkansas, with the approval of the Department of Finance & Administration, Alcohol Beverage Control Division, may sell mixed drinks.

4.28.12 HOURS OF OPERATION:

Unless otherwise stated herein, or unless otherwise dictated by Arkansas law, it shall be unlawful for any person to sell, offer for sale or give away at wholesale or retail, beer, wine, malt liquor or any alcoholic beverages as defined in Section 4.28.04 of this Ordinance before the hour of 7:00 a.m. or after the hour of 12:00 midnight and on Sundays.

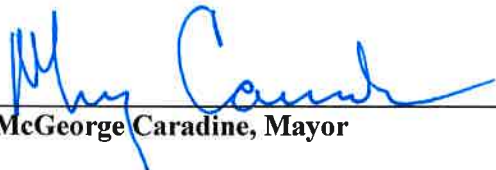
4.28.13 SEVERABILITY:

Provisions of this ordinance are hereby declared to be severable and if any section, phrase, or provision shall be declared or held invalid per the Arkansas Beverage Control Board shall not affect the remainder of the sections, phrases, or provisions.

4.28.14 EMERGENCY CLAUSE

Emergency Clause. That the city council of the City of Cotter, Arkansas further determines that it is necessary to enact this ordinance without delay to allow establishments to sell alcoholic beverages by the drink as provided by Ark. Code Ann. § 3-9-2039(d)(1) and apply for a permit that will make them more competitive with businesses in adjoining cities; therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after the ordinance has been published as required by law.

THIS ORDINANCE PASSED AND ADOPTED THIS 26th DAY OF May, 2022.

APPROVED: 
McGeorge Caradine, Mayor

ATTEST: 
Andrea Kray, Recorder/Treasurer