

ORDINANCE NO: 17- 089

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama as follows:

Section 1. Chapter 3, Article II of the Code of Ordinances of the City of Huntsville, Alabama is hereby amended by adding the following section:

Sec. 3-29. Butler Green Arts and Entertainment District.

(a) *Definitions.* The following words, terms, phrases, when used in this section, shall have the meanings ascribed to them in this subsection (a), except where the context clearly indicates a different meaning.

Approved container means a purple colored, non-glass container not exceeding a volume of 16 fluid ounces, which is provided to a customer by the seller who is a district permittee, bearing the name or logo of the permittee.

Arts and entertainment district event means a chapter 23 special event that meets each of the following criteria:

(1) The event is open to the general public and may or may not include an admission fee for entrance into the event.

(2) The purpose of the event is to promote local arts, culture, or entertainment, through a venue that is consistent with the purpose of the arts and entertainment district.

Brewery means a brewery located within the district that holds a manufacturers license from the ABC board and city, which is authorized by law to sell beer at retail for off-premises consumption.

Chapter 23 special event means a special event governed by chapter 23, article VI of this Code.

Customer means an individual who is not a minor, as that term is defined by the state alcoholic beverage control laws, that possesses an alcoholic beverage provided by a district permittee for consumption in the district area during the hours of the operation of the district.

District means the Butler Green Arts and Entertainment District established hereinafter in subsection (c) of this section, as such district may be from time to time amended.

District area or *area* means public places within the district, except for an excluded public place.

District permittee or *permittee* means the holder of a permit issued by the city pursuant to subsection (h) of this section.

Excluded public place means a public place within the district that is not included within the district area as follows:

- (1) A public building, facility, garage, or parking lot that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- (2) Property privately owned or controlled that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- (3) An area being used for a chapter 23 special event that is posted with signage at each entrance or in conspicuous places occupied by the event that no open containers of alcoholic beverages are allowed on the premises;
- (4) An area being used for a chapter 23 special event that is licensed to sell alcoholic beverages; or
- (5) The premises of a city licensee.

On-premise retailer means an on-premise alcoholic beverage retailer located within the district that holds a license from the state and city authorizing the retail sale of alcoholic beverages for on-premise consumption.

(b) *Purpose.*

(1) *Purpose of section.* The purpose of this section is as follows:

a. With regard to on-premise retailers, to establish a district authorized by section 28-3A-17.1, Code of Ala. 1975, within which certain conduct that is otherwise prohibited by this article is permitted, specifically, regulations against possessing an open container and drinking in a public place under subsection 3-22(b), regulations against removal of open containers under subsections 3-24(a) through (c), regulations against allowing an open container or consumption of alcoholic beverages on the parking area of a city licensee under subsection 3-24(d), and regulations against brown bagging on the premises of an other city business licensee under subsection 3-25(a);

b. With regard to breweries, to establish a district within which certain conduct that is otherwise prohibited by this article is permitted, specifically, regulations against possessing an open container and drinking in a public place under subsection 3-22(b), regulations against allowing an open container or consumption of alcoholic beverages on the parking area of a city licensee under subsection 3-24(d), and regulations

against brown bagging on the premises of an other city business licensee under subsection 3-25(a); and

c. To establish regulations governing the district.

(2) *Purpose of arts and entertainment district.* In addition to the foregoing, the purpose of establishing an arts and entertainment district is to enhance the public enjoyment of the district and to promote local arts, culture, and entertainment, while, at the same time, protecting existing uses and preserving the unique character of each district.

(c) *Butler Green Arts and Entertainment District established.*

(1) Subject to subsections (2) and (3) of this subsection (c), there is hereby established the following named and generally described district, the Butler Green Arts and Entertainment District, which is also shown on the appended map incorporated herein by reference, which district shall constitute an entertainment district pursuant to section 28-3A-17.1, Code of Ala. 1975:

A tract of land located in the Northwest Quarter of Section 2, Township 4 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as commencing at a point in the center of Clinton Ave W; said point is further described as the intersection of the Hicks Pl NW and the Clinton Ave W road centerlines; thence Southwestwardly along the centerline of Clinton Ave W a distance of 587 feet; thence Northwestwardly and parallel to Hicks Pl NW a distance of 20 feet to the North margin of Clinton Ave W and also the Point of Beginning.

Thence from the Point of Beginning, continue Northwestwardly and parallel to Hicks Pl NW a distance of 221 feet to a point on the South margin of Hicks Ave NW; thence Southwestwardly and parallel to Clinton Ave W a distance of 502 feet to a point on the West margin of Lowry St NW; thence Northwestwardly along the West margin of Lowry St NW a distance of 205 feet to a point at the beginning of a curve to the left; thence Northwestwardly around the curve to the left having a chord distance of 34 feet to a point on the South margin of Hall Ave NW; thence Southwestwardly along the South margin of Hall Ave NW a distance of 1,270 feet to a point at the beginning of a curve to the left; thence Southwestwardly around the curve to the left having a chord distance of 20 feet to a point on the East margin of Triana Blv NW; thence South along the East margin of Triana Blv NW 317 feet to a point at the beginning of a curve to the left; thence Southeasterly around the curve to the left having a chord distance of 50 feet to a point on the North margin of Governors Dr SW; thence East along the North margin of Governors Dr SW a distance of 322 feet to a point on the North margin of Clinton Ave W; thence Northeasterly along the North margin of Clinton Ave

W a distance of 1,678 feet to the Point of Beginning. Said tract of land contains 17 Acres more or less.

(2) Notwithstanding anything in this section to the contrary, at any time and from time to time, the district established in this section may be enlarged, reduced, modified, or eliminated, in whole or part, and the regulations set forth in this section are subject to amendment at any time and from time to time. No vested rights shall be acquired by or be conferred upon any person as a result of the establishment of the district or permitting under this section.

(3) In the event the entertainment district established by this section falls below the number of alcoholic beverage licensees required for the establishment of the district according to section 28-3A-17.1, Code of Ala. 1975, then the city may amend this section to either eliminate the entertainment district or modify the district so as to remain in compliance with section 28-3A-17.1, unless applicable state alcoholic beverage control laws allow for continuance of a once-established district regardless of the number of alcoholic beverage licensees remaining.

(d) *Opening of the district.*

(1) *Regular hours of district.* The regular hours for the district shall be between the hours of 5:00 p.m. to 11:00 p.m. on Thursday and between the hours of 12:00 p.m. to 11:00 p.m. on Friday, Saturday, and Sunday.

(2) *Chapter 23 special event opening of district.*

a. An event organizer of a chapter 23 special event that is an arts and entertainment district event, including an organized event on private property that requires city event services in accordance with section 23-202(d) of this Code, may request, with the organizer's application for a chapter 23 special event permit and on forms provided by the city, that the district be opened during the chapter 23 special event.

b. The request shall be processed with the application for a chapter 23 special event permit and the event organizer, as that term is defined in chapter 23, article VI of this Code, shall be responsible for all costs incurred by the city as a result of the opening of the district during the chapter 23 special event, including safety, traffic and crowd control; clean-up costs; and the use of city equipment. City services necessitated by the conduct of the chapter 23 special event independent of the opening of the district shall be governed by chapter 23, article VI of this Code.

c. The event administrator, as that term is defined in chapter 23, article VI of this Code, shall have the authority to determine whether the proposed event meets the definition of an arts and entertainments district event, based on

recommendations that he may elect to obtain from the city's planning division, and to approve, approve with conditions, or disapprove the opening of the district during the special event based on the grounds for denying a special event permit or other public health, safety, or general welfare concerns. No appeal or other right of review shall be available to an event organizer who has had its request to open the district denied.

(3) *City-sponsored opening of the district.* At any time and from time to time the city, through the mayor or his designee, may elect to sponsor the opening of the district.

(e) *Exemptions in the district for on-premise retailers and their customers.* In the case of on-premise retailers who are district permittees and their customers, each of the following shall apply:

(1) The regulations of subsection 3-22(b) of this article, concerning the possession of an open container or drinking an alcoholic beverage in a public place, shall not apply in the case of the possession or consumption of alcoholic beverages in an approved container within the confines of the district area during the hours of operation of the district. Otherwise, the regulations of subsection 3-22(b) shall apply.

(2) The regulations of subsections 3-24(a) through (c) of this article, concerning removal of an open container from an authorized licensed premise, shall not apply in the case of the removal of an approved container of alcoholic beverages from the premises of an on-premise retailer who is a district permittee during the hours of operation of the district. Otherwise the regulations of subsections 3-24(a) through (c) shall apply.

(3) The regulations of subsection 3-24(d) of this article, concerning allowing an open container or consumption of alcoholic beverages on the parking area of a city licensee, shall not apply in the case of the possession or consumption of alcoholic beverages in an approved container within the confines of the district area during the hours of operation of the district by a customer wearing an approved wristband. Otherwise, the regulations of subsection 3-24(d) shall apply.

(4) The regulations of subsection 3-25(a) of this article, concerning brown bagging on the premises of an other city business licensee, shall not apply in the district area during the hours of operation of the district in the case of alcoholic beverages in an approved container. Otherwise the regulations of section 3-25(a) shall apply. Nothing in this subsection (4) shall be construed to allow brown bagging on city licensed premises, which includes patios or sidewalk café areas of the city licensee.

(f) *Exemptions in the district for breweries and their customers.* In the case of breweries who are district permittees and their customers, each of the following shall apply:

(1) The regulations of subsection 3-22(b) of this article, concerning the possession of an open container or drinking an alcoholic beverage in a public place, shall not apply in the case of the possession or consumption of beer in an approved container within the confines of the district area during the hours of operation of the district. Otherwise, the regulations of subsection 3-22(b) shall apply.

(2) The regulations of subsection 3-24(d) of this article, concerning allowing an open container or consumption of alcoholic beverages on the parking area of a city licensee, shall not apply in the case of the possession or consumption of beer in an approved container within the confines of the district area during the hours of operation of the district. Otherwise, the regulations of subsection 3-24(d) shall apply.

(3) The regulations of subsection 3-25(a) of this article, concerning brown bagging on the premises of an other city business licensee, shall not apply in the district area during the hours of operation of the district in the case of beer in an approved container. Otherwise the regulations of section 3-25(a) shall apply. Nothing in this subsection (2) shall be construed to allow brown bagging on city licensed premises, which includes patios or sidewalk café areas of the city licensee.

(g) *Required conduct in the district.*

(1) Nothing in this section shall be construed to relieve a brewery, its servants, agents, or employees from complying with the hours of sale set forth in section 3-133(b) of this article or those set forth in the state alcoholic beverage control laws.

(2) For beer that will be removed from the licensed premises for off-premise consumption, a brewery, its servants, agents, and employees, shall furnish the beer to its customers in authorized unopened containers, which shall remain sealed while on the brewery's licensed premises.

(3) No person shall remove an open container of alcoholic beverages from the district.

(4) All alcoholic beverages possessed or consumed within the district shall be obtained from district permittees.

(5) It shall be unlawful for any person to re-use or to knowingly allow the re-use of an approved container for an alcoholic beverage and nothing in this section shall be construed to authorize the same.

(h) *Permitting.*

- (1) *Qualifications.* In order to qualify for a permit under this subsection, an applicant shall meet each of the following conditions:
 - a. The applicant shall be a city licensee that is an on-premise retailer or a brewery; and
 - b. No adverse criminal, quasi-criminal, or administrative action shall be pending or shall have been taken in the immediately preceding 12-month period against the city licensee or its owner related to its license or the operation of the city licensed premises.
- (2) *Application process; permit duration.* A city licensee that meets the qualification of subsection (1) above may apply with the city-clerk's office to become a district permittee by filling out a form provided by the city. The city clerk treasurer may deny a permit if the applicant does not meet the qualifications stated in subsection (1) above. The applicant may appeal the denial of the application for a permit to the liquor license review committee by filing a written notice of appeal with the city clerk-treasurer within 15 days after the denial. A permit shall be valid for a license year, at the end of which a renewal application must be made.
- (3) *Action against permit.* A permit may be revoked, suspended, or not renewed by the city clerk-treasurer if the permittee or applicant for renewal no longer meets the qualifications stated in subsection (1) above. The permittee or applicant for renewal may appeal the adverse decision of the city clerk-treasurer to the liquor license review committee by filing a written notice of appeal with the city clerk-treasurer within 15 days after the adverse action.
- (4) *Number of permits.* The chief of police shall have the authority at any time and from time to time to limit the number of district permits issued in a given license year should he, in his discretion, determine that it is in the interest of public, health, safety, or general welfare to do so. In such event, permits shall be issued on a first come, first serve basis based on the time a completed application is submitted to the office of the city clerk-treasurer. If there is a question as to first in time, the city clerk-treasurer is authorized to conduct a random drawing to decide the issue.
- (i) *Security.*
- (1) *Temporary closure of district.* At any time and from time to time, the chief of police shall have the authority to temporarily close the district, which includes the authority to require persons to disperse from the area, should he, in his sole

discretion, determine it is appropriate to do so in order to protect the public health, safety, or general welfare. The district shall remain closed until the chief of police allows the district to be re-opened. The city shall not be responsible for any costs incurred by any person as a result of the closing and the city shall still be entitled to a reimbursement for city services provided in connection with the opening of the district for a Chapter 23 special event.

(j) Nothing in this section shall be construed to authorize any person to violate the state's open container law found at section 32-5A-330, Code of Ala. 1975.

(k) Nothing in this section shall be construed to authorize any person to violate the state and city's laws against under-age drinking.

(l) Nothing in the section shall be construed to authorize a brewery to operate contrary to the state alcoholic beverage control laws governing manufacturers, including section 28-3A-6 Code of Ala. 1975.

Section 2. The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

Section 3. This Ordinance shall become effective upon its adoption and approval.

ADOPTED this the 23rd day of February, 2017.

/s/ Jennie Robinson
President of the City Council of
the City of Huntsville, Alabama.

APPROVED this the 23rd day of February, 2017.

/s/ Tommy Battle
Mayor of the City of Huntsville,
Alabama