

(Motion was made by MIKE NEWMAN, seconded by KIRK JONES, and passed by a vote of 5 to 0, that the following ordinance be passed.

ORDINANCE NO. 2010-4

AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, GRANTING A SPECIAL USE PERMIT TO PHIL PHILIPELLO AND SHANE AND KAREN ROBERT FOR USE OF THE COTTON GIN ESTABLISHMENT LOCATED AT 14305 LIBERTY STREET, MONTGOMERY, TEXAS 77356, AS A DANCE HALL AND FOODSERVICE ESTABLISHMENT; ESTABLISHING CERTAIN TERMS, CONDITIONS AND LIMITATIONS; PROVIDING FOR SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, the City of Montgomery has received a request from Phil Philipello, and Shane & Karen Robert, for a special use permit pursuant to Section 98-33 of the Code of Ordinances of the City of Montgomery, Texas, authorizing the use of a portion of the hereinbelow referenced real property as a dance hall and food service establishment; and

WHEREAS, the matter was referred to the City of Montgomery Planning and Zoning Commission for consideration and recommendation, and the Planning and Zoning Commission, after due notice, did consider and make a report on the request for the special use permit, as provided by Section 98-33 (a) of the Code of Ordinances; and

WHEREAS, the City Secretary caused to be issued and published the notice of public hearing required by the City of Montgomery Zoning Ordinance and laws of the State of Texas applicable thereto; and

WHEREAS, the City Council, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the proposed special use permit, on the 8th day of March, 2010; and

WHEREAS, the City Council, after determining that all legal requirements of notice and hearing have been met, is of the opinion and finds that the requested special use of the Property is authorized by Section 98-33 of the Code of Ordinances; and

WHEREAS, the City Council further finds that the granting of a special use permit to Phil Philipello, and Shane & Karen Robert, will not have an adverse effect on the City's comprehensive zoning plan or on the character and development of the neighborhood in which the Property is situated, so long as the City imposes appropriate conditions and safeguards;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, THAT:

SECTION 1. Grant of Permit. A special use permit is hereby granted to Phil Philipello, (real property owner) and Shane & Karen Robert (establishment/business owner and real property tenant) to use the structure located at 14305 Liberty Street, Montgomery, Texas 77356, known as Knuckleheads Tavern, as a dance hall and food service establishment. The special use permit is granted upon and subject to the terms, provisions and limitations specified in Section 2.

SECTION 2. Terms, Provisions and Limitations. The special use permit herein granted is expressly subject to the following terms, provisions and limitations, each of which is here by deemed to be a condition precedent to the grant and continued effectiveness of the permit:

(a) Knuckleheads Tavern located at 14035 Liberty shall maintain the following hours of operation:

Monday	-	11:00 a.m. - 11:00 p.m.
Tuesday	-	11:00 a.m. - 11:00 p.m.
Wednesday	-	11:00 a.m. - 11:00 p.m.
Thursday	-	11:00 a.m.- 11:00 p.m.
Friday	-	11:00 a.m. - 12:00 p.m.
Saturday	-	11:00 a.m. - 12:00 p.m.
Sunday	-	12:00 p..m. - 8:00 p.m.

(b) All windows and doors of Knuckleheads Tavern shall be entirely closed after 6:00 p.m. on each business day in order to reduce noise levels on the Property. No amplified speakers shall be permitted on the Property unless used within an enclosed structure, with the exception of 3 approved outdoor events.

(c) Upon fifteen (15) days prior written notification to the City, describing the function in detail, the Roberts shall be allowed to hold a maximum of three (3) outdoor functions per year on the Property. The outdoor events shall be held on Fridays, Saturdays or Sundays only, and shall be conducted between the hours of 10:00 a.m. and 8:00 p.m.

(d) On-site security shall be provided by the Philipello and Roberts for any outdoor function held pursuant to this Permit. It shall be required that Philipello and Roberts employ or retain one certified peace officer for every fifty (50) patrons, guests, customers, or invitees in attendance at such outdoor functions.

(e) Sufficient trash or garbage receptacles shall be placed throughout the Property. All garbage or trash shall be removed from the Property on a daily basis and immediately following ever outdoor function.

- (f) Additional lighting shall be installed during outdoor functions, if necessary, for the safety and security of all patrons. No outdoor lighting shall be directed on adjacent properties and no nuisance or other annoyance shall be created by the utilization of such lighting.
- (g) Parking shall be provided in accordance with City Ordinances, and in no event shall parking interfere with traffic on FM 149.
- (h) The City shall have the authority to inspect the Property from time to time to confirm Philipello and Roberts are in compliance with the terms and conditions of this special use permit.
- (i) This special use permit does not waive, amend, abrogate or affect any law, rule or regulation, including any ordinance of the City of Montgomery. Philipello and Roberts shall comply with all ordinances of the City of Montgomery.
- (j) In the event of a violation by Philipello and Roberts of the terms and provisions of this special use permit and the continuation of such violation after ten (10) days written notice from the City to Philipello and Roberts, at the option of City Council, this permit shall be revoked and shall be of no further force or effect. Such revocation will be effective immediately upon action by City Council.
- (k) This special use permit is granted for an initial term of six (6) months from the effective date of this Ordinance. Subject to the provisions of subparagraph (l), at the end of such six (6) month period, this special use permit will automatically renew for an additional six (6) month period, without the necessity of further action by City Council.
- (l) Prior to the expiration of the initial six (6) month term of this permit, a review of Philipello and Roberts' compliance with the terms of this permit shall be conducted by the City. If it is determined, in the judgment of the City Council, that the Philipello and Roberts have been regularly or routinely out of compliance with the provisions hereof, the City Council may revoke this permit effective at the end of the initial six (6) month term. In the event of a revocation by City Council pursuant to the provisions of this subparagraph, this permit shall be of no further force or effect.
- (m) In the event this permit is automatically renewed for six (6) additional months in accordance with the subparagraph (k) above, prior to the expiration of the renewal six (6) month term of this permit, a second review of Philipello and Roberts' compliance

with terms of this permit shall be conducted by the City. If it is determined, in the judgment and sole discretion of the City Council, that the Philipello and Roberts have been regularly or routinely out of compliance with the provisions hereof, the City Council may revoke this permit effective at the end of the renewal six (6) month term.

(n) At the end of the initial six month period of this permit, if this permit has not been revoked by City Council in accordance with subparagraphs (k) and (l) above, this special use permit will become permanent so long as the Philipello own and Roberts manage the property, subject to City Council's right to terminate the permit in accordance with subparagraph (j) herein.

(o) This permit shall be reviewed by City Council upon the sale or transfer of the Property to any third party.


SECTION 3. Any person, firm or corporation violating a provision of this ordinance, upon conviction, is guilty of an offense punishable as provided in the Montgomery Code of Ordinances, as amended, by a fine not to exceed two thousand dollars (\$2,000.00); and each day or portion thereof during which the violation is committed, continued or permitted shall be a separate offense.

SECTION 4. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

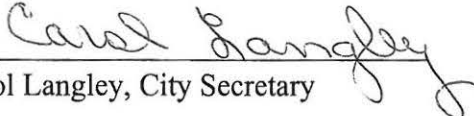
SECTION 5. This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED this 16th day of March, 2010.

CITY OF MONTGOMERY, TEXAS


By: 
Travis Mabry, Mayor

ATTEST:

By: 
Carol Langley, City Secretary



APPROVED AS TO FORM:

By: 

Bryan P. Fowler, City Attorney