

ORDINANCE NO. 2013-21

**AN ORDINANCE TO AMEND CHAPTER 4 OF THE
MT. JULIET MUNICIPAL CODE
BY ESTABLISHING RETAIL LIQUOR REGULATIONS**

WHEREAS, the sale of liquor at retail was approved by the voters of the City of Mt. Juliet at the November 6, 2012 referendum election; and

WHEREAS, the Code of Ordinances of the City of Mt. Juliet does not permit or regulate retail liquor sales; and

WHEREAS, the Board of Commissioners of the City of Mt. Juliet desires to be in compliance with state statutes regarding such retail liquor sales;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Mt. Juliet, Tennessee, that:

SECTION 1. The Mt. Juliet Code of Ordinances is amended by adding to Chapter 4 Alcoholic Beverages a new Article IV Retail Liquor Stores

**Chapter 4
Article IV**

RETAIL LIQUOR STORES

Article IV RETAIL LIQUOR STORES

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4-81. Definitions. 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. Words importing the masculine gender include the feminine and the neuter, and the singular includes the plural.

Alcoholic Beverage means alcohol, spirits, liquor, wine, high alcohol content beer, and every liquid containing alcohol, spirits, wine, and high alcohol content beer and capable of being consumed by a human being, except for beer as defined in TCA § 57-5-101(b) and patent medicine.

Board of Commissioners means the Board of Commissioners for the City of Mt. Juliet.

Days means calendar days except where otherwise indicated. Where a deadline falls on a weekend or holiday the deadline will be the next business day.

Indirectly means any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise

Retailer means a person, partnership, corporation or any other entity licensed to sell alcoholic beverages at a retail liquor store pursuant to TCA § 57-3-101 et. seq.

Retail liquor store means a store licensed to sell alcoholic beverages pursuant to TCA § 57-3-101 et. seq.

School means an institution, including kindergarten, where regular classes are conducted under the supervision of a teacher or instructor, including schools where specialized subjects are taught to students of all ages, but excluding colleges, universities, vocational or technical schools, or other institutions of higher education.

TABC means the Tennessee Alcoholic Beverage Commission.

TCA means Tennessee Code Annotated.

Wholesaler means any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of TCA § 57-3-101 et. seq.

4-82. Alcoholic beverages subject to regulation. It shall be unlawful to sell, store, transport, distribute, purchase or possess alcoholic beverages within the limits of the City of Mt. Juliet except as provided by *Tennessee Code Annotated*, Title 57, Chapter 3.

State Law Reference- TCA § 57-3-101(a).

4-83. Application for Certificate of Compliance. A Certificate of Compliance signed by the Board of Commissioners is required before any person can submit an

application to the TABC pursuant to TCA § 57-3-208. The Certificate of Compliance must be renewed every other year, as required by TCA § 57-3-213. Before a Certificate of Compliance is signed by the Board of Commissioners, an application shall be filed with the City Recorder on a form to be provided by the city. This application for the Certificate of Compliance may be amended at the discretion of the City of Mt. Juliet Alcoholic Beverage Board. The information in the application shall be verified by oath of the applicant. If the applicant is a partnership or a corporation, the application shall be verified by oath of each partner, or by the corporation's authorized officer.

4-84. Application procedure.

- a) After the adoption of this Ordinance by the Board of Commissioners, and in any case where a license becomes available in the future (i.e., revocation or cancellation, but not suspension) citizens shall have ten (10) days to submit an application for a certificate of compliance. Every application for the Certificate of Compliance shall be dated and time stamped upon receipt by the City of Mt. Juliet. The application shall be submitted to the City Recorder. As soon as the City Recorder receives an application, the City Recorder shall make copies of the application and shall forward such copies to the City Attorney and the Planning Director.
- b) The Board of Commissioners, upon recommendation of The City of Mt. Juliet Alcoholic Beverage Board, will issue, by resolution, the available number of Certificates of Compliance to the applicants that best meet the following criteria:
 - (1) The applicant or applicants have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application; and further, that in the Board of Commissioners' opinion the applicant will not violate any of the provisions of TCA § 57-3-101 et. seq.;
 - (2) The applicant or applicants have secured a location for the business that complies with all restrictions of any local law, ordinance, or resolution duly adopted by the City of Mt. Juliet, as to the location of the business;
 - (3) The applicant or applicants have complied with any local law, ordinance or resolution duly adopted by the City of Mt. Juliet regulating the number of retail licenses to be issued within the City of Mt. Juliet.

State law reference TCA § 57-3-208(b).

4-85. Preliminary Screening. The City Attorney will review the applications to determine compliance with 4-83 and the Planning Director or his/her designees will review the applications to ensure compliance with all Mt. Juliet zoning regulations and the restrictions on location of retail liquor stores as prescribed herein. The City Attorney and the Planning Director will submit their findings to the City of Mt. Juliet Alcoholic Beverage Board within ten (10) days of receiving such applications. The City Attorney will conduct a criminal background check of all persons submitting applications or applicant addendums.

4-86. Action on application.

- a) All applicants shall be required to appear before the City of Mt. Juliet Alcoholic Beverage Board. The City of Mt. Juliet Alcoholic Beverage Board will review such applications pursuant to 4-83 and 4-84 and make recommendations to the Board of Commissioners on the issuance of a Certificate of Compliance. The City of Mt. Juliet Alcoholic Beverage Board will review such applications at its next scheduled meeting and shall report its recommendation and findings to the Board of Commissioners within five (5) days of said meeting. The Board of Commissioners shall issue a Certificate of Compliance for those applicants that best fit the requirements listed in 4-84. The number of Certificates of Compliance issued shall not exceed the maximum number of licenses available pursuant to 4-97. Once the BOC has issued the maximum number of licenses available pursuant to 4-97 the Board Shall deny all other applications on the ground that the maximum number of licenses have been issued by the City, pending TABC review.
- b) A letter will be sent to each applicant informing it whether it will be issued a Certificate of Compliance. All other applications will be held until the TABC grants the maximum amount of licenses allowed by the City of Mt. Juliet. Once the TABC grants the maximum amount of licenses allowed by this Chapter all pending applications will be deemed void and will be destroyed.

4-87. Failure to act. If the Board of Commissioners does not render a decision on the application for a Certificate of Compliance within sixty (60) days of the City Recorder receiving the written application, this failure will be deemed a granting of the Certificate.

State law reference TCA § 57-3-208(e).

4-88. Judicial Review. An applicant may seek review of the denial of a Certificate of Compliance by instituting an action in the chancery court having jurisdiction over the City of Mt. Juliet within sixty (60) days of the denial.

State law reference TCA § 57-3-208(d).

4-89. Application Fee. Each applicant shall submit a non-refundable fee of \$500 with its application. Said fee shall be in addition to any costs incurred in conducting a criminal background check pursuant to 4-85. The costs incurred in conducting a criminal background check must be paid by the applicant to the City Recorder before the applicant appears before the Mt. Juliet Alcoholic Beverage Board.

4-90. Bi-Annual Renewal. Each approved applicant that is licensed by the TABC must seek a new Certificate of Compliance every two (2) years from the date the Certificate of Compliance is first issued. The person holding the retail liquor license must submit a new application as required by 4-83 of this Article. A non-refundable \$500 fee must be submitted with each renewal request.

State law reference TCA § 57-3-213(d).

4-91. Public Notice. Each new applicant for a retail liquor license shall place a notice in a newspaper of general circulation in the area proposed to be served concerning the applicant's intent to seek a license from the TABC. The notice shall contain such information as prescribed below and shall appear for at least three (3)

consecutive issues immediately preceding the date that the applicant appears before the Board of Commissioners for a Certificate of Compliance. The title of the notice shall be in all capital letters and at least 10 point size. The text of the notice shall be at least eight point size type, and the size of the entire notice shall not be less than two columns by two inches of newspaper space. Such newspaper notice shall be published prior to the issuance of the Certificate of Compliance.

RETAIL LIQUOR LICENSE NOTICE

Take notice that (applicant name), (applicant's home address), has applied to the City of Mt. Juliet for a "Certificate of Compliance", and will apply or has applied to the Tennessee Alcoholic Beverage Commission (ABC) in Nashville, Tennessee for a Retail Liquor License for (name of liquor store), (address of store), Mt. Juliet, Tennessee (zip code).

All persons wishing to be heard on the "Certificate of Compliance" may personally or through counsel appear or submit their views in writing to: The Mt. Juliet Board of Commissioners on (date of Commission meeting) at (time of Commission meeting) in the (place of Commission meeting).

The ABC will consider the application at a date to be set by the ABC in Nashville, Tennessee. Interested person(s) may personally or through counsel submit their views in writing by the hearing date to be scheduled by the ABC. Anyone with questions concerning this application or the laws relating to it may call or write the Alcoholic Beverage Commission which is located at 226 Capitol Boulevard Building, Suite 300, Nashville, TN 37243, or call 615-741-1602.

State Law Reference Tenn. Rules and Regs 0100-03-.09

4-92. Inspection fee. The City of Mt. Juliet hereby imposes an inspection fee in the maximum amount allowed by *Tennessee Code Annotated*, § 57-3-501, currently five percent (5%), on all licensed retailers of alcoholic beverages located within the City of Mt. Juliet. The City of Mt. Juliet shall inform the wholesaler that this inspection fee has been imposed by ordinance upon retailers located in the City of Mt. Juliet. The wholesaler shall collect the inspection fee at the time of sale or at the time the retailer makes payment for the delivery of alcoholic beverages. Each wholesaler making sales to retailers located within the City of Mt. Juliet shall furnish the City a monthly report that shall contain: 1) a list of all alcoholic beverages sold to retailers located within the City; 2) the wholesale price of the beverage sold to the retailer; and 3) the amount of tax due. The monthly report must be filed by the twentieth (20) day of the month following the month of the sale. The inspection fee collected by the wholesaler shall be paid to the municipality at the time the monthly report is made. Wholesalers are entitled to keep five percent (5%) of the inspection fee, which shall also be indicated on the monthly report. The City has the authority to audit such wholesalers in order to determine the accuracy of such reports.

State law reference TCA §§ 57-3-501, 502, 503.

4-93. Residency requirement. The applicant (majority owner) for a certificate of compliance shall have been a bona fide resident of the City of Mt. Juliet for the previous two (2) years or a citizen of Wilson County for the previous five (5) years. If the applicant is a partnership or a corporation each of the partners or stockholders must meet these residency requirements.

State law reference TCA § 57-3-208(c).

4-94. Where retail liquor stores may be located.

- a) It shall be unlawful for any person to operate or maintain any retail liquor store for the sale, storage or distribution of alcoholic beverages in the City of Mt. Juliet, unless said retail liquor store is permitted by the Mt. Juliet Land Development Code.
- b) Retail liquor stores shall not be located within 1,000 feet of a school, church, house of worship, library or municipal park.
- c) Retail liquor stores cannot be located any closer than (3) three miles from each other. Distance will be measured along the shortest drivable route from the center of the main entrance of one location to the center of the main entrance of the other location.

State law reference TCA 57-3-208(c).

4-95. Retail liquor stores square footage and location requirements, entrances, store name.

- a) No retail liquor store shall be located in a space of less than 3,000 square feet. Retail liquor stores must be located on the ground floor. Retail liquor stores shall face a public street and shall have only one public entrance. Such entrance shall face the public street. If the retail liquor store is located on a street corner and faces two public roads, the establishment may have a public entrance facing each public road. To the extent practicable, each side of the retail liquor store facing a public road shall have a free and unobstructed vision to the interior of the liquor store from the street or public highway by way of large windows. Retail Liquor stores shall not use any type of LED signage.
- b) In addition, all retail liquor stores shall be a permanent type of construction and business. No retail liquor stores shall be located in a manufactured or other moveable or prefabricated type building. All retail liquor stores shall be subject to applicable zoning, land use, building and life safety regulations, adopted by the City, unless specifically provided otherwise.
- c) A retail liquor store shall include in its name, and on signs used to advertise the business "Wine and Spirit."

State law reference TCA § 57-3-404(f).

4-96. Televisions, amusement devices and seating facilities prohibited in retail establishments. No television sets, pinball machines, slot machines or other devices that tend to cause persons to congregate in such place shall be permitted in any retail establishment. No seating facilities shall be provided for persons other than employees. No lottery tickets shall be sold or games of chance operated in any retail liquor store.

4-97. Limitation on number of retailers. One retail liquor license will be issued for each 8,000 in population, provided that no more than three (3) licenses shall be issued pursuant to this Article. Population can be based on any certified census completed by the US Census Bureau or the City of Mt. Juliet.

State law reference TCA § 57-3-208(c).

4-98. Security. The retail liquor store shall have a security system in place, which shall include a video recording system that monitors the parking lot, the cashier's

machine and all shopping and storage areas as well as a burglary alarm system that notifies the City of Mt. Juliet Police Department of trespass. Security lights shall illuminate the parking lot from dusk until dawn. The retail liquor store shall keep such surveillance footage for a minimum of two (2) weeks.

4-99. Violations. Any violation of Sections 4-92 through 4-99 of this Article shall constitute a civil offense and shall, upon conviction, be punishable under the general penalty provision of this code. Upon conviction of any person under this chapter it shall be mandatory for the city judge to immediately certify the conviction regardless of an appeal to the Tennessee Alcoholic Beverage Commission. However, nothing herein shall be construed to prevent the city from exercising any criminal or civil remedies that it may have with respect to violations of this ordinance.

4-100. Tennessee Alcoholic Beverage Commission Rules. All licensed retailers must abide by TCA § 57-3-101 et. seq. and the rules and regulations promulgated by the TABC. Failure to do so will result in a notification being sent to the Commissioner of the TABC and may result in criminal penalties. The following is a non-exhaustive list of TCA statutes and rules and regulations promulgated by the TABC. This non-exhaustive list is subject to change at the TABC's discretion and is provided for the benefit of the citizens of the City of Mt. Juliet in order to promote awareness in regards to the retail sale of liquor.

- a) *Sales for consumption on premises.* No alcoholic beverages shall be sold for consumption, or shall be consumed, on the premises of the retail seller. State law reference TCA 57-3-404(h)(1).
- b) *Only one establishment to be operated by retailer.* No person shall have any interest, either directly or indirectly, in more than one retail liquor store in the State of Tennessee. State law reference TCA 57-3-406.
- c) *Felonies or violation of the liquor laws of any state.* No retail liquor license will be issued to a person who, within the ten (10) years preceding his application, has been convicted of any felony or has been convicted of violating the liquor laws of this state or any state. State law reference TCA § 57-3-201(d).
- d) *Public Official.* No public employee shall have any interest in a retail liquor license. This rule does not apply to uncompensated appointees to municipal boards and commissions where the boards or commissions on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages. TCA § 57-3-210(b).
- e) *Sales of Items Other than Alcoholic Beverages.* No licensee shall sell or offer to sell on the licensed premises any article or commodity whatsoever except alcoholic beverages. However, this does not prevent the licensee from cashing a check or other negotiable instrument for a fee of less than three (3) percent; provided that the person cashing the check is over the age of twenty-one (21) and a liquor purchase is not required to utilize the check cashing service. State law reference TCA 57-3-404(e).
- f) *Hours of Sale.* No retailer shall sell or give away any alcoholic beverage between eleven o'clock p.m. (11:00 p.m.) on Saturday and eight o'clock a.m. (8:00 a.m.) on Monday of each week. No retail store shall sell, give away or otherwise dispense alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday. The store may not be open to the

general public except during regular business hours. State law reference TCA 57-3-406(e).

- g) *Advertising.* No retailer shall send unsolicited electronic mail to a consumer nor shall any retailer send unsolicited direct mail to the place of residence of a person or business. Authorization to solicit must be in writing or via email. A retailer may advertise via the radio or television. Advertisements shall not contain statements that are: 1) false or misleading; 2) disparaging of a competitor's products; 3) obscene or indecent; or 4) capable of being construed as relating to the armed forces of the United States, or of the American flag, any State flag, or of any emblem, seal, insignia or decoration associated with any such flag or the armed forces of the United States. State law reference Tenn. Rules and Regs 0100-03.01, .02, .03.
- h) *Exterior Signs.* All signs must conform with the sign regulations in the Mt. Juliet Land Development Code and the sign specific regulations in the Mt. Juliet Retail Liquor ordinance. No sign shall contain any statement prohibited by subsections one through four of 4-100(h). If the sign refers to any particular brand, trademark, trade name, trade slogan, or image of a product, that sign shall not also contain the name of or advertise in any way a licensed retail liquor store. A retailer shall not accept, directly or indirectly, a sign from a wholesaler, importer, or manufacturer that bears the name of the retailer or refers to the retailer's services in any manner. A retailer may not receive reimbursement, directly or indirectly, for allowing any manufacturer, importer, or wholesaler to advertise on the property of the retail licensee. State law reference Tenn. Rules and Regs 0100-03-.05.
- i) *Interior Advertising.* All advertising inside of the retail liquor store must comply with subsections one through four of 4-100(h). Retailers may only receive advertising materials from Tennessee licensed wholesalers. A Tennessee licensed wholesaler may give, rent, loan or sell to licensed retailers signs, posters, placards, decorations, devices, statuettes, or geographic displays—printed, painted, or electronic—for point-of-sale brand advertising. The wholesaler cannot pay the retailer to display such material referenced above. Retailers may not give, rent, loan or sell such material referenced above to a consumer. All such material must have the primary value to the retailer of brand advertising only. The material may contain specific prices and statements of pecuniary appeal. Additionally, no retailer shall offer by sign or otherwise perform any service whatsoever for consumers, except the sale of alcoholic beverages and check cashing. State law reference Tenn. Rules and Regs 0100-03-.06 and 0100-03-.15.
- j) *Transferability.* No license issued by the City of Mt. Juliet shall be transferrable to another owner(s). An owner can transfer his license to another location upon approval by the Tennessee Alcoholic Beverage Commission and so long as the new location complies with municipal ordinances regulating retail liquor establishments. State law reference Tenn. Rules and Regs 0100.03-.18(g).
- k) *Change in Ownership.* If the licensee does not own the building for which the liquor license is issued and the ownership of the building changes after the license is issued the licensee shall notify in writing the Alcoholic Beverage Commission and the Mt. Juliet Board of Commissioners within ten (10) days of becoming aware of such change in ownership. This

notification shall include the name and address of the new owner. State law reference TCA 57-3-204(a).

- l) *Discontinuation of Business.* If the licensee discontinues his retail liquor business he shall immediately notify the Mt. Juliet Board of Commissioners and the Tennessee Alcoholic Beverages Commission. State law reference Tenn. Rules and Regs 0100-03.09(5).
- m) *Record Keeping.* All licensees shall keep, for three (3) years, all purchase orders, invoices and other records of all purchases and sales of alcoholic beverages made by such licensee. State law reference Tenn. Rules and Regs 0100-03-.13(2).
- n) *Management of Licensed Premises.* Every retail liquor store shall be managed by the holder of the license issued by TABC. If the licensee is a corporation or partnership the retail business must be managed by a partner or corporate officer. State law reference Tenn. Rules and Regs 0100-03-.13(3).
- o) *Holiday Hours.* No retailer shall sell or give away any alcoholic beverages on the following holidays: Christmas, Thanksgiving, Labor Day, New Year's Day and the Fourth of July. State law reference TCA 57-3-406(h).
- p) *Storage.* A wholesaler may not store alcoholic beverages for a retail dealer without written permission from the TABC and no retailer, under any circumstances, shall store alcoholic beverages for another retailer. State law reference Tenn. Rules and Regs 0100-03-.13(6).
- q) *Contests Prohibited.* No licensed retailer may: a) sponsor or conduct a contest in which alcoholic beverages are offered as prizes, premiums or rewards; b) offer as a prize, premium or reward any alcoholic beverages; or c) directly or indirectly aid or assist in the promotion of a contest involving alcoholic beverages that is conducted or sponsored by a person who does not hold a retail liquor license. State law reference Tenn. Rules and Regs 0100-03-.13
- r) *Gift Certificates.* A licensed retailer may sell gift certificates. However, no gift certificate shall be honored when presented by a person under the age of twenty-one (21) or who is visibly intoxicated. State law reference Tenn. Rules and Regs 0100-03-.13(10).
- s) *Licensee Responsible for Law and Order on Licensed Premises.* Each licensee shall maintain his establishment at all times in a decent, orderly and respectable manner in full compliance with all laws of Tennessee and the ordinances and laws of the City of Mt. Juliet. Licensees are at all times responsible for the conduct of their employees. Any unlawful, unauthorized, or prohibited act on the part of an agent or employee of the licensee will be construed as the act of the employer. State law reference Tenn. Rules and Regs 0100-03-.13(13), Tenn. Rules and Regs 0100-03-.17.
- t) *Business Between Retailers.* No licensed retailer shall be permitted to purchase merchandise in the name of any one (1) retailer and subsequently distribute such merchandise to another retailer, nor shall any retailer be permitted to transfer goods to another retailer. State law reference Tenn. Rules and Regs 0100-03-.15.
- u) *Conduct of Business.* Only the licensee, if an individual, or designated manager, if a partnership or corporation, may engage in any of the following activities: a) selecting, ordering, or pricing inventory; b) employing or discharging the employees of the retail establishment; and

employing or discharging the employees of the retail establishment; and
c) approving advertising or marketing programs of the licensee. State law reference Tenn. Rules and Regs 0100-03-.15.

- v) *Finances*. The TABC may refuse to grant a retail liquor license to any applicant who fails to demonstrate, by a preponderance of the evidence, the financial ability and responsibility to reasonably conduct business. State law reference Tenn. Rules and Regs 0100-03-.09.

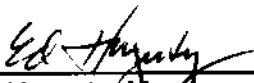
BE IT FURTHER ORDAINED

In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the City, the most restrictive code provision will apply. If any section, clause, provision or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision or portion of this ordinance.

That nothing in this ordinance or in the International Building Codes hereby adopted shall be construed to affect any suit or proceedings pending in any, court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed, nor shall any just or legal right, remedy of any character be lost, impaired or affected by this ordinance.

This ordinance shall take effect on the earliest date allowed by law.

PASSED: 2/11/13



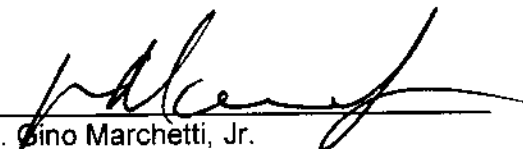
Ed Hagerty, Mayor

FIRST READING: 1/28/13
SECOND READING: 2/11/13

ATTEST: 

Sheila S. Lockett, MMC
City Recorder

APPROVED AS TO FORM:



L. Gino Marchetti, Jr.
City Attorney



Kenny Martin, City Manager