

ORDINANCE _____

**AN ORDINANCE AMENDING ORDINANCE #36 OF THE CITY OF WARTBURG
PERTAINING TO ALCOHOLIC BEVERAGES**

WHEREAS, the Board of Mayor and Aldermen of the City of Wartburg find it necessary to amend and update Wartburg's Ordinance #36 pertaining to alcoholic beverages

NOW BE IT THEREFORE ORDAINED by the Board of Mayor and Aldermen of the City of Wartburg, Tennessee as follows:

CHAPTER 1

GENERAL

SECTION

- 101. Definitions.
- 102. Sale of alcoholic beverages to minors or intoxicated persons.
- 103. Identification required prior to the sale of alcoholic beverages.
- 104. Sale to intoxicated persons prohibited.
- 105. Duties and prohibited activities of permittee and licensees.
- 106. Employment of minors prohibited.
- 107. Loitering of minors prohibited.
- 108. Signs required.
- 109. Manufacturing, selling and distributing generally.
- 110. Exceptions.

101. Definitions.

- (1) "Beer" means an alcoholic beverage having an alcoholic content of not more than five percent (5%) by weight and made by the alcoholic fermentation of an infusion or decoction or combination of both in potable brewing water of malted grains with hops or their parts or their products; provided, however, that not more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol but not including wine as defined below.
- (2) "Beer permit" means the tangible approval of the beer board allowing a business to sell and/or serve beer.
- (3) "Church" means a building or property where a congregation regularly meets at least one (1) day per week for religious worship.
- (4) "City" means the City of Wartburg, Tennessee.
- (5) "Event stadium" means a controlled spectator facility designed primarily for sporting, recreational, and/or entertainment use, whether indoor, open air, or amphitheater in design, and may contain space and facilities for exhibitions, retail sales, retail food dispensing, and restaurants.

(6) "Federal statutes" means the statutes of the United States now in effect or as they may hereafter be changed.

(7) "Light alcoholic content beverage" herein referred to as "LACB" means any alcoholic beverage, not including beer and wine, whose alcohol content is not more than five percent (5%) by weight.

(8) "Minor" means anyone under the age of twenty-one (21) years; provided, however, this provision shall not be construed as prohibiting any person eighteen (18) years of age or older from selling, transporting, possessing, or dispensing, beer, or LACB in the course of his employment, as authorized by Tennessee Code Annotated, § 57-4-203(b)(3).

(9) "Permittee" means the holder of a beer permit.

(10) "Person" means any natural person as well as any corporation, limited liability company, partnership, joint stock company, syndicate, firm or association or any other legal entity recognized by the laws of the State of Tennessee.

(11) "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose other than for resale.

(12) "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license or permit is required under the provisions of this ordinance.

(13) "School" means an institution, including kindergarten, where regular classes are conducted under the supervision of a teacher or instructor, including schools or colleges where specialized subjects are taught to persons under eighteen (18) years of age.

(14) "Tavern" means a business establishment whose primary business is or is to be the sale of beer to be consumed on the premises.

(15) "Vehicle" means a machine that has the means of transporting or carrying an object across a distance including, but not limited to, automobiles, trucks, motorcycles, and four wheelers.

(16) "Wholesaler" means any person who sells at wholesale any alcoholic beverage for the sale of which a license or permit is required under the provision of this ordinance.

(17) The following terms shall have the same definition as stated in Tennessee Code Annotated, § 57-4-102:

- (a) Club;
- (b) Convention center;
- (c) Hotel; and
- (d) Restaurant.

102. Sale or furnish to minors prohibited. It shall be unlawful for any person to knowingly sell, furnish, give, or allow to be sold any alcoholic beverages to a minor at any time or to allow a minor to drink such alcoholic beverages in the building or on the premises where such alcoholic beverages are being sold.

103. Identification required prior to the sale of alcoholic beverages. Any person selling alcoholic beverages within the corporate limits of the City of Wartburg shall be required to have produced to him or her a facially valid government issued identification showing that the age of the prospective purchaser of the alcoholic beverage is twenty-one (21) years of age or older. If such identification is not produced by the prospective purchaser, the alcoholic beverages shall not be sold. Such identification shall be required

prior to the sale of alcoholic beverages regardless of the apparent age of the prospective purchaser. The identification provided shall be a document issued by a state or federal governmental agency. Any person showing a facially valid government issued identification proving that said person's age is sixty (60) years of age or greater shall not be required to show a photo identification but instead shall be allowed to purchase alcoholic beverages based on the identification which does not include a photograph. Notwithstanding the above, any permittee or licensee allowing on-premises consumption of alcoholic beverages in the city shall be permitted to serve alcoholic beverages to a person for on-premises consumption without seeing such identification if, in the discretion of a manager on the premises, a person wishing to purchase such beverages is, beyond a reasonable doubt, twenty-one (21) years of age or older.

104. Sale to intoxicated persons prohibited. It shall be unlawful to sell alcoholic beverages or permit the same to be sold to any person in an intoxicated condition.

105. Duties and prohibited activities of permittee and licensees. It shall be unlawful for any person operating a place of business regulated by this title to allow any persons under the influence of intoxicants, including alcoholic beverages, upon the premises, and it shall be the affirmative duty of any such operator to notify the police department of any person upon the premises in an intoxicated condition.

106. Employment of minors prohibited. It shall be unlawful for the operator to use minors in the sale, transport, possession or dispensing of alcoholic beverages, wine or beer, except as provided in § 101 herein.

107. Loitering of minors prohibited. It shall be unlawful for any operator to allow or permit any minor to loaf or loiter in any place where alcoholic beverages are sold or offered for sale for consumption on the premises.

108. Signs required. Any establishment within the corporate limits of the city, which sells or gives away alcoholic beverages shall prominently display on the premises a sign not less than six inches (6") high and ten inches (10") wide reading: "A Minor attempting to purchase Alcoholic Beverages will be prosecuted to the fullest extent of the law." Such establishment shall further prominently display a sign not less than six inches (6") high and ten inches (10") wide reading: "Wartburg Municipal Code requires the production of a valid governmental issued photo ID prior to the purchase of Alcoholic Beverages." Signs required under this section shall be the responsibility of each permittee or licensee. Signs must be posted within ninety (90) days of the final passage of this section. It will be a violation of this section to fail to post such signs.

109. Manufacturing, selling and distributing generally. It shall be unlawful for any person to engage in the business of manufacturing, selling, or distributing any alcoholic beverage within the corporate limits of the city except as provided by all applicable laws, rules and regulations of the State of Tennessee applicable to alcoholic beverages as now in effect or as they may hereinafter be changed including, without limitation, the local

option liquor rules and regulations of the Tennessee Alcoholic Beverage Commission (hereinafter "ABC").

110. Exceptions. To the extent that buying or selling of beer, intoxicating liquors, HACB, LACB, or wine is prohibited, except as authorized pursuant to Tennessee Code Annotated as set forth in § 8-109 herein, said prohibitions shall not make it unlawful:

- (1) To buy, sell, possess, transport or manufacture beer or HACB as permitted in Tennessee Code Annotated, §§ 57-5-101, et seq., or any other provisions and this ordinance relating to such beverages are fully and strictly complied with.
- (2) To possess or manufacture beer or wine as permitted in Tennessee Code Annotated, § 39-17-708, for personal consumption by members and guests of a household, provided all provisions and conditions of said sections relating to such beverages are fully and strictly complied with.
- (3) For any priest or minister of any religious denomination or sect to receive and possess wines for sacramental purposes.
- (4) For druggists to receive and possess alcohol and other intoxicating liquors and such preparation as may be sold by druggists for the special purposes and in the manner as now or hereafter provided by law.
- (5) For the manufacturers of the following to receive and possess alcohol and other intoxicating liquor for use in the manufacturing process:
 - (a) Such medicines that conform to the provisions of the Pure Food and Drugs Act of the State of Tennessee;
 - (b) Flavoring extracts;
 - (c) Perfumery and toilet articles;
 - (d) Thermostatic devices or temperature regulators.
- (6) For bona fide hospitals to receive and possess alcohol and other intoxicating liquor for the use of bona fide patients of such hospitals.
- (7) For bona fide educational institutions to receive and possess alcohol and other intoxicating liquor for scientific and therapeutic purposes.
- (8) For any common or other carrier to ship or transport alcohol and other intoxicating liquor for any of the purposes listed in subsections (2) through (6) above.

CHAPTER 2

SALES OF BEER AND LIGHT ALCOHOLIC CONTENT BEVERAGES

201. Beer. For the purposes of this chapter, the term "beer" shall include LACB. The retail sale of beer and LACB shall be regulated by this ordinance.

202. Beer and LACB lawful. In conformity with Tennessee Code Annotated, §§ 57-5-101, et seq., it shall be lawful to transport, store, sell, distribute, possess, receive, and/or manufacture beer and LACB, subject to the privilege taxes and regulations hereinafter set out. No manufacturer or wholesaler of beer and LACB or their agent or agents shall be permitted to make any loan or furnish any fixtures of any kind or have any interest, direct or indirect, in the business of any retailer of such beverage, or in the premises occupied by such retailer; provided, however, such manufacturer or wholesaler may operate as a retailer at the manufacturer's location or a site contiguous thereto for sales of not more than twenty-five thousand (25,000) barrels of beer annually for consumption on or off the premises under the provisions of this chapter as long as the requirements of this chapter concerning the licensing of such retail establishments are met; or a manufacturer may qualify for and hold a license under the provisions of this chapter as a "restaurant." Such a manufacturer, however, operating as a retailer pursuant to this chapter, may not sell its beer directly to retailers that are located in a county other than the county in which the manufacturer is located.

203. Beer board. There is hereby created a beer board, which shall be composed of the Mayor, and Board of Aldermen, whose duty it shall be to regulate and supervise the issuance of permits to manufacture, distribute, and/or sell beverages regulated by this chapter to the persons and in the manner hereinafter provided. The board shall provide such other duties and have such other powers and authority as herein provided in this ordinance.

204. Beer permits. Before any person shall be authorized to sell, distribute, and/or manufacture beverages regulated by this chapter, the person shall make application to the beer board upon a form prescribed by it for a permit and shall pay to the municipality such fees for licenses as are provided in § 8-205. No permit shall be approved by the board and no license shall be issued by the recorder, except upon the following terms and conditions, and only to such persons as possess the qualifications hereinafter provided:

- (1) No beer shall be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches or other places of public gathering, or otherwise interfere with public health, safety and morals.
- (2) No beer shall be sold for consumption on premises within three hundred feet (300') of any church or school as measured along a straight line from the nearest property line of any such church or school to the front door of the establishment selling beer.
- (3) No sale shall be made to minors.
- (4) No person having at least a five percent (5%) ownership interest in the applicant has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude

within the past ten (10) years distribution or sales has been convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

(5) No person employed by the applicant and involved with such distribution or sales has been convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

(6) No sale shall be made for on-premises consumption unless the application so states.

(7) No permit shall be issued unless the application shall contain the following information and agreements, to-wit:

(a) Name of the applicant.

(b) Name of applicant's business(es).

(c) Location of business by street address or other geographical description to permit an accurate determination of conformity with the requirements of this section.

(d) If beer will be sold at two (2) or more restaurants or other businesses pursuant to the same permit as provided by Tennessee Code Annotated, § 57-5-103(a)(4), a description of all such businesses.

(e) Persons having at least five percent (5%) ownership interest in the applicant.

(f) Identity and address of a representative to receive annual tax notices and any other communication from the municipality.

(g) That no person having at least five percent (5%) ownership interest in the applicant or any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of any alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

(h) Whether or not the applicant is seeking a permit, which would allow the sale of beer, wither for on-premises consumption or for off-premises consumption, or both of the foregoing. If a permittee for either off-premises consumption or on-premises consumption desires to change the method of sale, the permittee shall apply to the municipality for a new permit.

(i) A statement that if any false statement is made in any part of said application, the permit and/or license granted or issued to the applicant may be revoked by the board.

(j) Said application may contain any other information required and deemed by the beer board to be pertinent to the issuance of a permit and the enforcement of this chapter.

(8) All persons must comply with the fee provisions provided in § 205.

205. Permit fees and privilege tax. (1) It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beverages regulated by this ordinance without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-104(a), and shall be accompanied by a non-refundable application fee of two hundred fifty and no/100ths dollars (\$250.00). Said fee shall be payable to the City of Wartburg. Each applicant must be a person of good moral

character and certify that he has read and is familiar with the applications of this ordinance.

(2) There is hereby imposed on the business of selling, distributing, storing, giving away, or manufacturing beverages regulated by this ordinance an annual privilege tax of one hundred and no/100ths dollars (\$100.00). Any person engaged in the sale, distribution, storage, gifting, or manufacture of beverage regulated by this ordinance shall remit the tax on January 1 of each year to the city. If the permittee does not pay the tax by January 31, then the city shall send notice of the delinquency by certified mail. Once the notice is received, the permittee has ten (10) days to remit the tax. If it is not remitted within that period, the permit automatically becomes void. At the time a new permit is issued to any business subject to this tax, the permittee shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

206. Permits and licenses must be displayed and are not transferable. Each permittee or licensee shall display and keep displayed such permit and license in conspicuous places on the premises where he is licensed to conduct such business. Permits and licenses shall not be transferable. A separate permit and license shall be obtained for each location where any applicant is to manufacture, distribute or sell said legalized beverages. When a permittee shall discontinue business or ceases to be associated on a day-to-day basis with the business, then the permit terminates, and no refund of any licenses or fees of any nature will be made. Sales of alcoholic beverages shall immediately cease unless or until someone else is issued a permit.

207. Permits shall be restrictive. (1) It shall be unlawful for any person, and no permit shall be issued, to sell or distribute beverages regulated by this chapter except in premises, which are located within areas in which commercial activity is permitted.

(2) It shall be unlawful for any person, and no permit shall be issued, to sell or distribute beverages regulated by this chapter for consumption upon the premises at the following places or on the following conditions; provided, however, that the following prohibitions shall not apply to any person who has obtained a license for the sale of alcoholic beverages for consumption on the premises pursuant to Tennessee Code Annotated, §§ 57-4-101, et seq.:

(a) To any person occupying any vehicle; except, however, when sold in package form.

(b) At any place except the places where meals or lunches are regularly served and regularly licensed therefore and then only to persons seated at tables or bars, except for taverns which are governed by § 8-213 herein.

(c) Except in premises which are located within areas in which commercial activity is permitted, and no permit will be issued therefor except for premises located therein.

208. Revocation of permits. In the event of the failure or refusal of any person holding a permit issued hereunder to comply with all the requirements of this chapter, or in the event of his violation of any of the provisions of this chapter, it shall be the duty of the beer board to give said permittee twenty-four (24) hours' notice of a hearing before the

board. The beer board may, at the time it imposes a revocation or suspension, offer a permittee the alternative of paying a civil penalty not to exceed one thousand five hundred dollars (\$1,500.00) for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the permittee shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

209. Special event permits. (1) The beer board is hereby authorized and empowered to permit the retail sale or free distribution of beer for on premises consumption of beer at any public or private property within the city pursuant to a special event permit at such times and as part of such events and under such terms and conditions, rules and regulations as the Wartburg Beer Board may establish which are not inconsistent with state laws regulating the sale of beer.

(2) Any person conducting a special event in the city in which beer is contemplated to be sold or given away other than within the premises of a permittee's establishment shall apply for a special event permit, at least forty-five (45) days in advance, in writing to the chairman of the beer board with a copy to the city recorder. The application required by this part shall include but not be limited to the following:

- (a) The applicant's name;
- (b) The date and time of event;
- (c) The address, and phone number of individual applicants, or the name, address, and phone number of a contact person for corporate applicants;
- (d) The specific location where beer is to be sold outside the premises of an establishment for which a beer permit previously has been issued;
- (e) The specific parameters of the event area;
- (f) The identity of any persons, establishments, or entities, which are contemplated to participate in dispensing beer at locations other than their usual premises and the number of the current beer, permit(s) for each applicant;
- (g) Any plans for proposed temporary closure of public rights-of-way;
- (h) Plans for security and policing the event;
- (i) The anticipated number of persons attending such event;
- (j) A certificate of insurance;
- (k) A signed statement allowing the beer board to run a background check on the police records of each individual applicant, if such applicants are not already in possession of a beer permit; and
- (l) Any other requirements deemed necessary by city staff shall be placed on the beer board's agenda at its next regularly scheduled meeting following receipt of the notice. Applicants shall send a representative or representatives to such beer board meeting to address any questions or issues arising out of the proposed special event.

(3) If such application for a special event permit is granted, the applicant shall pay a special event permit fee of two hundred fifty dollars (\$250.00).

(4) The special event permit shall state on its face the name of the proposed vendor(s) of beer, the respective permit number(s), and the specific location(s) and date(s) where such

vendor(s) is permitted to sell beer under the special event permit. A copy of the special event permit and a copy of the vendor's regular beer permit (if applicable) must be displayed at each location where beer is sold by such vendor.

210. Hours of sale regulated. It shall be unlawful for any person to sell the beverages regulated by this chapter, nor shall it allow the same to be sold by agents, servants or employees, between the hours of 3:00 A.M. and 6:00 A.M. on weekdays, or between the hours of 3:00 A.M. and 10:00 A.M. on Sunday.

211. Inspection of beer business. The police officers of the City of Wartburg shall have the right to inspect at any and all times the entire premises and property where or upon or in which the beverages regulated by this chapter are sold, stored, transported, or otherwise dispensed or distributed or handled, whether at retail or wholesale, in the city for any law violations.

212. Prima facie evidence of possession for sale. It shall be unlawful for any person to sell, offer to sell, or distribute any beverages regulated by this chapter without having obtained the permit and license provided for by this chapter, and possession of five (5) gallons or more of such beverages shall be prima facie evidence that such beverage was being stored or possessed for sale.

213. Taverns. It shall be lawful for beverages regulated by this chapter to be sold for consumption on-premises at a tavern where meals or lunches are not regularly served. There shall be a limit of one (1) tavern permit allowed for every seven hundred and fifty (750) population or fraction thereof, according to the latest official census of the City of Wartburg.

214. Restaurants and clubs. It shall be lawful to sell, store, possess, and/or distribute beverages regulated by this chapter for consumption on-premises at a restaurant or club, provided that, the establishment obtains an appropriate permit and complies with the regulations set out in this chapter and in state law. In accordance with Tennessee Code Annotated, § 57-5-103(3)(B), a permit will allow restaurants and clubs to distribute beer in an outdoor serving area including, but not limited to, any deck, patio, courtyard, or exterior area provided that said area:

- (1) Must be contiguous to the building;
- (2) Must be owned and operated by the business; and
- (3) Must be fenced in by a barrier of at least forty inches (40") high. The barrier need not be permanent, but must be constructed of a sturdy material and may only allow for gaps at designated entrances and exits. The boundaries of this outdoor serving area must remain ten feet (10') back from the property line, except that establishments within the "mixed-use district E-3" area may have outdoor serving areas up to the property line. Neither the outdoor serving area, nor the constructed barrier shall restrict or obstruct the visibility of traffic traveling on any adjacent roadway. If the outdoor serving area utilizes any part of a public space, such as a parking lot, the area designated for serving beer will no longer act in its capacity as a public space. No vehicles will be allowed in the portion of the parking lot

where beer is being served as long as it is designated as a serving area, except for display or exhibit vehicles.

215. Hotels/motels. It shall be lawful to sell, store, possess, and/or distribute any beverages regulated by this chapter for consumption on premises at a hotel/motel, provided that the establishment obtains a beer permit and acts in accordance with all of the regulations laid out herein and in state law. Said beverages may be distributed in multiple areas within the hotel/motel including, but not limited to, guests' rooms, suites and banquet rooms. Such hotel/motel shall in all respects comply with the applicable provisions of Tennessee Code Annotated.

216. Severability. Each section, subsection, paragraph, sentence and clause of this ordinance is declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence or clause shall not affect the validity of any other provision of the ordinance.

217. Repealer. All ordinances and parts of ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

This ordinance shall become effective after final reading and publication of the caption of this ordinance in a newspaper of general circulation in the town

Passed this: day of _____, 2016

First Reading: _____

Second Reading: _____

Mayor

Attest: _____
City Recorder