

ORDINANCE NO 882

**ORDINANCE OF THE CITY OF PICAYUNE, MISSISSIPPI ESTABLISHING
REGULATIONS FOR THE DESIGNATION AND LOCATION OF QUALIFIED RESORT
AREAS WITHIN THE MUNICIPAL BOUNDARY AND JURISDICTION OF THE CITY
OF PICAYUNE, MISSISSIPPI AND REPEALING ALL CONFLICTING
PROVISIONS OF THE ZONING ORDINANCE OF THE CITY OF PICAYUNE**

WHEREAS, the City of Picayune (the "City") conducted a special election on November 9, 2010, in which the majority of the voters voted for the establishment of qualified resort areas in the City of Picayune, Mississippi, pursuant to House Bill 1441, which was approved by the Governor on April 17, 2009.

WHEREAS, the City, by and through its elected representatives, has adopted and followed zoning regulations and ordinances to ensure an orderly and coherent growth of the City of Picayune

WHEREAS, the use of reasonable regulations and controls as set forth in the City's zoning regulations and ordinances has facilitated and improved the growth and development of the City.

WHEREAS, the current regulations and controls set forth in the City's zoning regulations and ordinances are inadequate to properly address the appropriate location, designation and regulation of qualified resort areas within the City and,

WHEREAS, the City desires to adopt a new ordinance providing for regulation and control of the qualified resort areas within the municipal boundaries of the City of Picayune, and other matters to accomplish the purposes and goals set forth herein, and the City Council of the City of Picayune having determined that the adoption of this ordinance shall serve, preserve and protect the health, safety and welfare of the residents of the City of Picayune, Mississippi.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Picayune, Mississippi, as follows, to-wit:

Section 1. Designated Qualified Resort Areas

This Ordinance is an extension of the City of Picayune Zoning Ordinances and shall be interpreted in accordance with the Miss. Code Ann. Sections 17-1-1, et. seq. (1972), as amended. Additionally, all requirements, restrictions and powers that are imposed to Zoning Ordinances through Miss. Code Ann. Sections 17-1-1, et. seq. shall apply to this Ordinance.

The purpose of this Ordinance is to establish rules regulating qualified resort areas within the City with the objective of protecting and promoting public safety and welfare, and to mitigate adverse impacts on the community while promoting economic development.

Notwithstanding any other provision of the ordinances of the City of Picayune, City Qualified Resort Areas shall be regulated and governed by the following regulations and requirements.

Section 2. Definitions

A. 50% Food Rule - the requirement that no business location shall qualify as a Restaurant under this Ordinance unless fifty percent (50%) or more of the revenue derived from such business location shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to fifty percent (50%) or more of total revenue. This provision shall not apply to Hotels or Clubs defined hereafter.

B. Alcoholic Beverage - any alcoholic liquid, including wines, light wines, and native wines, containing any alcohol content, capable of being consumed as a beverage by a human being which shall include beer containing any alcohol content. The words "Alcoholic Beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes.

C. City Qualified Resort Areas - Hotels or Restaurants within the City which have received a special use permit to allow for the sale of Alcoholic Beverages in accordance with the guidelines detailed in this Ordinance.

D. Hotel - an establishment which, in consideration of payment, food and lodging is habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply

for and receive as overnight accommodations.

E. Ordinance - Ordinance of the City of Picayune, Mississippi Establishing Regulations for the Designation and Location of Qualified Resort Areas within the Municipal Boundary and Jurisdiction of the City of Picayune, Mississippi, and Repealing All Conflicting Provisions of the Zoning Ordinance of the City of Picayune.

F. Person - any individual, partnership, corporation, association, or other legal entity whatsoever.

G. Restaurant - a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. No place shall qualify as a Restaurant under this Ordinance unless fifty percent (50%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to fifty percent (50%) or more of total revenue.

H. Club -means an association or a corporation: (1) organized or created under the laws of the State of Mississippi for a period of five (5) years prior to July 1, 1966; (2) organized not primarily for pecuniary profit but for the promotion of some common object other than the sale or consumption of alcoholic beverages; (3) maintained by its members through the payment of annual dues; (4) owning, hiring or leasing a building or space in a building of such extent and character as may be safe, suitable and adequate for the reasonable and comfortable use and accommodation of the Club's member and their guests; (5) the affairs and management of which are conducted by a board of directors, board of governors, executive committee, or similar governing body chosen by the members at a regular meeting held at some periodic interval; and, (6) no member, officer, agent or employee of which is paid, or directly or indirectly receives, in the form of a salary or other compensation any profit from the distribution or sale of alcoholic beverages to the Club or to members or guests of the club beyond such salary or

compensation as may be fixed and voted at a proper meeting by the board of directors or other governing body out of the general revenues of the Club.

Section 3. Special Use Permits

City Qualified Resort Areas may be located in commercial zoning districts designated only as C-2 and C-3 in the City only by the issuance of a special use permit pursuant to the provisions of this Ordinance. Special use permits for a City Qualified Resort Area shall be issued under the following process, to-wit:

1. Hereby created pursuant to this Ordinance is a is a Alcoholic Beverage Panel ("Panel"). The Panel shall consist of the City Manager, Police Chief, and City Clerk. This Panel shall receive the sworn written application from the applicant in the manner set forth hereafter in this Ordinance. The Panel shall examine and verify the information is true and correct on said written application; determine if the applicant and/or the written application conforms to the provisions of this Ordinance; and, determine if the issuance of same does not violate any Federal or State laws; or, does not violate any Ordinance. The Panel shall recommend either approval or denial of the written application and shall return the application with such recommendation in writing to the City Council within twenty (20) working days from receipt of same. If the application is denied by the City Council, then, the applicant shall have the right to appeal such decision as set forth in Section 9. of this Ordinance.

2. At the time of filing the written application for the issuance of a special use permit under this Ordinance, there shall be paid to the City of Picayune a fee of Three Thousand Dollars (\$3,000.00) per application for a special use permit to sell, dispense, furnish or give away Alcoholic Beverages defined as any alcoholic liquid, including wines, of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being which shall not include beer or light wine containing not more than five percent (5%) of alcohol by weight as provided for in Section 67-3-5, Mississippi Code of 1972, but shall include native wines. This fee shall not be refundable.

3. At the time of filing the written application for the issuance of a special use permit under this Ordinance, there shall be paid to the City of Picayune a fee of Three Hundred Dollars (\$300.00) per application for a special use permit to sell, dispense, furnish or give away Alcoholic Beverages defined as any alcoholic liquid, including light wines or beer, of less than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being as provided for in Section 67-3-5, Mississippi Code of 1972, but shall not include native wines. This fee shall not be refundable.

4. The applicant shall be responsible for performing, at his/her/its expense, all actions required by this Ordinance or by law for the request, If authorized or granted, to be effective, including the preparation of all applications, draft orders, notices, exhibits, affidavits, transcripts, documents and records; etc....

5. The Panel shall determine in writing the request for a Special Use is in conformance with the City's formally adopted Comprehensive Plan; shall not adversely affect the neighborhood, public interest, and general welfare; shall not violate the provisions of this Ordinance; shall not violate any Federal or State Law or any City Ordinance; and, shall provide for suitable off street parking spaces.

6. Upon arriving at a recommendation as set forth above, the Panel will prepare and forward to the City Council a written recommendation along with a complete copy of all documents submitted to the Panel. The City Council shall have the final authority regarding the approval or disapproval of the issuance of the Special Use Permit in accordance with this Ordinance and the laws of the State of Mississippi. Following the consideration of the documents from the Panel, together with any evidence presented to the City Council, the City Council may approve in whole or in part the recommendation of the Panel; reject in whole or in part the recommendation of the Panel; modify in whole or in part the recommendation of the Panel; remand in whole or in part the recommendation, record and application with instructions from the City Council; or, take the application, record and recommendation from the Panel under advisement. The applicant shall have the right to appeal the decision of the City Council as set forth in Section 9. of this Ordinance.

Section 4. Qualified Resort Area Standards

A. The sale of Alcoholic Beverages in City Qualified Resort Areas shall be limited to on premises consumption in Restaurants, Clubs, and Hotels, subject to the restrictions detailed in this Ordinance.

B. Restaurants and Clubs shall be permitted to sell, dispense, furnish or give away Alcoholic Beverages between the hours of 10:00 a.m. and 12:00 midnight Monday through Sunday; and, New Years Eve day from 10:00 a.m. through New Years Day 2:00 a.m. A Restaurant or Club may serve or allow consumption of Alcoholic Beverages only in an enclosed area that is approved by the State of Mississippi for the sale and consumption of Alcoholic Beverages. Any such enclosed area approved by the State of Mississippi for the sale, service or consumption of Alcoholic Beverages shall have access that is controlled by the Restaurant or Club. That said Restaurant or Club shall not sale, serve or allow consumption of Alcoholic Beverages outside the area approved by the State of Mississippi.

C. Notwithstanding any of the other provisions of this Ordinance, it shall not be unlawful for Hotels, which do not have Restaurants to sell, give, or furnish Alcoholic Beverages to guests of the Hotel. The serving of Alcoholic Beverages by Hotels to Hotel guests shall be permitted between the hours of 4:00 p.m. and 10:00 p.m., Monday through Sunday and from 10:00 a.m. on New Years Eve through New Years Day at 2:00 a.m. The Hotel shall provide complimentary hors d'oeuvres in conjunction with the service of Alcoholic Beverages. Alcoholic Beverages shall not be served except to guests of the Hotel.

D. Hotels shall also be permitted to sell, furnish or allow Alcoholic Beverages in a meeting room or ballroom rented or reserved for the purposes of a special event, including but not limited to weddings, hospitality rooms for conferences, rehearsal dinners and political functions, provided that the special event is a catered event serving food. Hotels shall only be allowed to serve guests of the special event, and the serving of Alcoholic Beverages by Hotels to guests of a special event shall be permitted between the hours of 10:00 a.m. and 12:00 midnight Monday through Sunday and from 10:00 a.m. on New Years Eve through New Years Day at 2:00 a.m.

E. No adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater may be established as a City Qualified Resort Area.

F. It shall be unlawful for any Restaurant, Club, Hotel or any other Person within the corporate limits of Picayune, Mississippi:

i. To sell, dispense, or give away Alcoholic Beverages without obtaining a special use permit from the City establishing the business as a City Qualified Resort Area in accordance with this Ordinance.

ii. To sell, dispense, or give away Alcoholic Beverages in any type business establishment other than a Restaurant, Club, or a Hotel.

iii. For Restaurants or Clubs to sell, dispense, furnish, allow consumption of or give away Alcoholic Beverages to anyone before or after the times set forth in Section 4(B) of this Ordinance.

iv. For Hotels to sell, dispense, furnish, allow consumption of or give Alcoholic Beverages to Hotel guests before or after the times set forth in Section 4(C) of this Ordinance; or, to sell, dispense, furnish, allow consumption of or give Alcoholic Beverages to guests of a special event before or after the times set forth in Section 4(D) of this Ordinance.

v. To sell, dispense, furnish, allow consumption of or give away Alcoholic Beverages at any Restaurant which does not meet the 50% Food Rule.

vi. To sell, give, furnish, or allow the consumption of any Alcoholic Beverages to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of 21 years.

vii. To permit on the premises of any City Qualified Resort Area any lewd, immoral, or improper

entertainment, conduct or practices.

viii. To permit loud, boisterous or disorderly conduct of any kind upon the premises of any City Qualified Resort Area.

ix. To permit persons of ill repute, known criminals, prostitutes, or minors to frequent said City Qualified Resort Areas, except minors accompanied by parents or guardians or under proper supervision.

x. To permit or suffer gambling or the operation of games of chance upon the City Qualified Resort Areas.

xi. To throw, leave, or put Alcoholic Beverage containers on the streets, avenues, and road of the City or to throw, leave, or put these containers on the property of anyone except the Person or Persons possessing said containers.

xii. To sell Alcoholic Beverages to any Person under the age of 21 years or to any person knowing that the person to whom it is sold is buying the same for a person under the age of 21 years.

xiii. To serve Alcoholic Beverages from the place of business to a Person or Persons in a automobile or automobiles in the form of curb service.

xiv. To work or employ anyone under 18 years of age in said place, business, or establishment where Alcoholic Beverages are sold except under proper and constant supervision of the adult owner or owners or an adult employee or employees.

A. No Restaurant, Hotel, or Club holding a special use permit, and no agent, associate, employee, representative, entertainer or servant of any such Restaurant, Hotel or Club shall do, or permit, any of the following activities or events on or about the licensed premises:

i. Fraternalize by sitting at tables with customers while on duty; or to employ persons to solicit patrons for drinks AND to accept drinks from patrons AND receive therefore a commission or any other re-numeration in any other way.

ii. Permit any prostitute to frequent the licensed premises, or to solicit patrons for prostitution.

iii. Permit any person to remain on the premises while such person is unclothed or in such attire, costume or clothing to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, the pubic hair area, anus, cleft of the buttocks, vulva, penis or genitals. Furthermore, no Hotel, Restaurant, or Club or any female agent, associate, employee, representative, or servant, of said Restaurant, Hotel or Club shall wear such attire, costume or clothing on the licensed premises which reveals any part of the female breast below the top of the areola, and such attire, costume, or clothing cannot be extraordinarily designed or displayed to specifically accentuate the breasts.

iv. Encourage or permit any person, for entertainment purposes, to touch, caress or fondle the breast, buttocks, anus, penis or genitals of their own, or those of any person, animal or inanimate object.

v. Permit any person to wear or use any device or covering, exposed to view, which simulates the breast, buttocks, anus, penis or genitals of their own, or those of any person, animal or inanimate object.

vi. Permit any entertainment or conduct which is lewd, immoral or offensive to public decency, including:

a. Any act or performance of, or which simulates:

xiv. Sexual intercourse, masturbation, sodomy, bestiality, or oral copulation, flagellation or any sexual act.

xv. The touching, caressing, or fondling of the breast, buttocks, anus, penis, or genitals.

iii The displaying of the pubic hair, the pubic hair area, anus, vulva, penis, genitals, or any portion of the female breast below the top of the areola.

iv. The use of any artificial device or object to depict any of the prohibited activities described above.

a. Any act or performance which appeals primarily to sexually oriented, lustful, prurient, or erotic interest including, but not limited to, the following: erotic dancers; male or female strippers; topless dancers (male or female); dancers where clothes are removed to reveal portions of the body and constituting a strip act or simulation thereof; contests or exhibitions such as wet t-shirt, biggest breast, biggest bulge, body beautiful, best leg, hairiest chest, best tan, best honey, mud wrestling, tight jeans, and similar contests or exhibitions. No string bikinis, spaghetti straps or thong attire are permitted with any swimwear, costume, or lingerie clothing.

vii. The showing of films, still pictures, electronic reproduction, or other visual reproductions depicting:

a. Acts, or simulated acts, or sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts which are prohibited by law.

b. Any person being touched, caressed or fondled on the breast, buttocks, anus, penis or pubic area.

c. Scenes wherein a person displays the breasts, vulva, anus, penis or genitals or pubic area.

d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

A. No signs advertising the sale of any Alcoholic Beverages, including signs located outside a building or any type of sign located within a building which is visible from the outside are permitted.

I. A Restaurant, Club, Hotel or Person shall not be permitted

to sell, dispense, furnish, allow consumption of, or give away Alcoholic Beverages, until prior to proper application for and obtaining the following permits and licenses: (1) A privilege license to engage in such business issued by the City; and, All required licensees/permits specified in the Zoning Ordinances, building code, fire prevention code, electrical code, plumbing code and gas code adopted by the City.

J. No Restaurant, Club, Hotel or any person holding an special use permit, and no agent, associate, employee, representative, entertainer or servant of any such Restaurant, Hotel or person shall own any interest in or operate a sexually oriented business as defined in the Ordinances in and for the City of Picayune; or shall do, or permit, any of the activities or events on or about the licensed premises as defined in Ordinance No. 721 and Ordinance 727 (Article IV, Sexually Oriented Businesses, Section 26-101, et seq., Code of Ordinances, City of Picayune).

Section 5. Permit by State Tax Commission

All City Qualified Resort Areas must also be permitted by the State Tax Commission or must be in the process of being permitted by the State Tax Commission in order to receive a special use permit.

Section 6. General Provisions

A. Application for Special Use Permit

i. Any Person desiring a special use permit to establish a business as a City Qualified Resort Area shall file an application with the Alcoholic Beverage Panel ("Panel") in the form of a sworn statement giving the address, the name of the business, its location, and if a partnership or firm, the name and address of each partner or member, if a limited liability company, the name and address of each member and manager, and, if a corporation, the names of the officers, directors and certain stockholders, the post office address, the nature of business in which engaged and other additional information as required by the City. In case any business is conducted by the same person at two or more separate locations, a separate special use permit for each location of business shall be required.

ii. The applicant shall further state in its sworn application for a special use permit that it possesses the following qualifications:

1. Applicant, if an individual, or if a partnership, each of the members of the partnership, or if a corporation, each of its principal officers and directors, or if a limited liability company, each member of the limited liability company, must be over 21 years of age, a person of good moral character, and a citizen of the United States and the State of Mississippi.

2. Applicant shall not have been convicted in Mississippi or any other state of a felony or of pandering, or of keeping or maintaining a house of prostitution.

3. Applicant shall not have been convicted of violating any laws in this or any other state, or of the United States relating to Alcoholic Beverages or gambling or have had revoked any license or permit to sell Alcoholic Beverages of any kind or beer or light wine within five (5) years preceding the date of application.

4. Applicant shall be the owner of the premises for which the permit is sought or the holder of a bona fide written lease thereupon of not less than one (1) year in duration for the premises on which is the license is sought.

5. If applicant is a partnership, limited liability company, or any other entity, all members and officers must be named and shall be qualified in order to obtain a special use permit.

6. If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than 5% of the stock of such corporation, and the person or persons who shall conduct and maintain the premises for the corporation shall possess all the qualifications required herein for an individual applicant provided however, that the requirements as to residency shall not apply to officers, directors,

and stockholders of such corporation, but such requirements shall apply to any officer, director, or stockholder who is also the manager of the premises obtaining a special use permit or who is engaged or employed at such premises in any capacity, in the conduct or operation of such premises.

7. All Restaurants must provide proof that they meet the 50% Food Rule. New Restaurants must provide information regarding the inventory of the Restaurant to prove that they meet the 50% Food Rule. All new Restaurants shall be required to confirm proof of their gross sales as reported to the State Tax Commission six (6) months after the opening of the Restaurant. The City may request proof of meeting the 50% Food Rule at any time after the original application is made. For all existing Restaurants, proof of the gross sales reported to the State Tax Commission shall be required at the time of application. The City may request proof of meeting the 50% Food Rule at any time after the original application is made.

A. Right of Inspection

The City Council, City Manager, Police Chief, or City Clerk shall have the power and authority to demand the inspection of all invoices, sales tax reports and other business papers or records which would reflect the true amount of sales being made by a Restaurant which has been designated as a City Qualified Resort Area. The City Council, City Manager, Police Chief, or City Clerk shall have the right to demand such records at least quarterly, or more often, if the City Council, City Manager, Police Chief, or City Clerk shall have any reason to believe that the Restaurant is not meeting the 50% Food Rule. The failure to furnish said records to the City Council, City Manager, Police Chief, or City Clerk shall be a violation of the Ordinance and shall be punishable as herein provided. Further, the City Council may immediately suspend or revoke the special use permit of any Restaurant refusing to furnish said records to the City Council, City Manager, Police Chief, or City Clerk. Additionally, if a Restaurant refuses to cooperate with an audit or if the results of an audit result in the restaurant failing

to meet the 50% Food Rule, the Restaurant shall be responsible for all expenses incurred by the City associated with the audit.

C. Transfer of Ownership

If a business which has been established as a City Qualified Resort Area changes ownership so that fifty percent (50%) or more of the business or the entity that owns the business is sold or transferred to anyone other than those Persons listed on the current application with the City of Picayune, then the business must reapply for a special use permit to qualify as a City Qualified Resort Area. If a business which has been established as a City Qualified Resort Area has any change in ownership, even if less than fifty percent (50%) of the ownership of the business is transferred or if less than fifty percent (50%) of the ownership of the entity that owns the business is transferred, the changes in ownership must be submitted to the City and the business's special use permit application must be amended to include the new owners.

D. Participation in Alcohol Awareness Program

A City Qualified Resort Area serving Alcoholic Beverages shall be required to have all personnel involved in the serving of Alcoholic Beverages certified to have completed the primary ServSafe Alcohol Online Course, which can be accessed at www.servsafe.com, or an equivalent program approved by the City. Such employees shall be certified and shall have such certification in place prior to the selling of any Alcoholic Beverages to customers.

E. Mandatory Disclosures

Any Restaurant holding a special use permit which establishes a City Qualified Resort Area inside the limits of the City Picayune, shall file with the Office of the City Manager or his/her designee, under oath, a written report for the previous year no later than January 29 showing on an annual basis the following, to-wit:

1. Gross sales of food in dollars
2. Gross sales of Alcoholic Beverages in dollars
3. Gross sales from other on-premises enterprises in

dollars

4. Total gross sales for the year

Along with such sworn report, the Restaurant shall file all supporting documents supporting the representations made in said written report which accurately reflect and will allow the City Manager, Police Chief or City Clerk to determine if the Restaurant is complying with the 50% Percent Rule as set forth above in this Ordinance. Failure by the Restaurant to fully comply with this filing requirement may result in the special use permit issued to the Restaurant to be suspended or revoked by the City Council.

Section 7. Qualified Resort Area Location Standards and Waiver of Same

A. The City Council reserve the right to determine whether or not such business shall be permitted to conduct the sale or allowance of Alcoholic Beverages at such location, and no permit shall be granted to any person where a church, school, daycare, kindergarten, or funeral home is located or where it might prove harmful to the general welfare, health, and morals of the community.

B. With regard to a special use permit to sell, dispense, furnish or give away Alcoholic Beverages defined as any alcoholic liquid, including wines, of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being which shall not include beer or light wine containing not more than five percent (5%) of alcohol by weight as provided for in Section 67-3-5, Mississippi Code of 1972, but shall include native wines, the following location standards shall apply, to-wit:

1. If the church, school, daycare, kindergarten, or funeral home is located in any zone classified as residential, then under no circumstances shall such business be located closer than 400 feet from any church, school, daycare, kindergarten, or funeral home. The 400 feet shall be measured in a straight line from the point on the building or common wall housing the hotel, club, or restaurant nearest to the nearest point on the building or common wall housing the church, school, daycare, kindergarten, or funeral

home.

2. If the church, school, daycare, kindergarten, or funeral home is located in any zone not classified as a residential zone, then under no circumstances shall such business be located closer than 100 feet from any church, school, daycare, kindergarten, or funeral home. The 100 feet shall be measured in a straight line from the point on the building or common wall housing the hotel, club, or restaurant nearest to the nearest point on the building or common wall housing the church, school, daycare, kindergarten, and funeral home.

C. With regards to a special use permit to sell, dispense, furnish or give away Alcoholic Beverages defined as any alcoholic liquid, including light wines or beer, of less than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being as provided for in Section 67-3-5, Mississippi Code of 1972, but shall not include native wines, the following location standards shall apply, to-wit:

1. Regardless of the zoning classification in which a church, school, daycare, kindergarten or funeral home is located, under no circumstances shall such business be located closer than 100 feet from any church, school, daycare, kindergarten, or funeral home. The 100 feet shall be measured in a straight line from the point on the building or common wall housing the hotel, club, or restaurant nearest to the nearest point on the building or common wall housing the church, school, daycare, kindergarten, and funeral home.

D. Any business seeking a special use permit under this Ordinance, may be located only in those areas zoned commercial designated as C-2 or C-3 according to the zoning map and ordinances of the City of Picayune, Mississippi.

E. The restriction as to the location of business shall not apply if its premises have already received a special use permit under the terms of this ordinance prior to the construction or operation of any church, school, daycare, kindergarten, or funeral home.

F. A church or funeral home may waive the distance restrictions in favor of allowing issuance of a special use permit under this Ordinance authorizing the creation of City Qualified Resort Area authorizing the Restaurant, Hotel or Club to sell, dispense, furnish or give away Alcoholic Beverages of any kind that would otherwise would be prohibited under the minimum distance requirements set out in this Ordinance. Such waiver shall be in written form from the owner, governing body or the appropriate officer of the church or funeral home having the authority to execute such a waiver, and the waiver shall be filed with the Panel and approved by the City Council before becoming effective.

Section 8. Violation(s) and Enforcement

Enforcement of this Ordinance may be by undertaken by the City of Picayune or any employee designated by the City. These enforcement activities include administrative actions; institution of civil proceedings in a Court of law or equity; or the institution of criminal proceedings in the appropriate Court having jurisdiction.

8. Administrative Enforcement: Any violation of this Ordinance is hereby declared to be grounds for discontinuation of the special use permit and such discontinuation of the special use permit will revoke or suspend the zoning necessary to sell Alcoholic Beverages in the City. This discontinuation may be a temporary suspension or a revocation of the special use permit and the zoning necessary to sell Alcoholic Beverages in the City. The decision to suspend or revoke the special use permit and hence the zoning necessary to sell Alcoholic Beverages in the City shall be made by the City Council.

A. In determining the period of suspension or revocation of such special use permit/zoning, the City Council may consider the following factors, to-wit:

9. The number of offense (first, second, third, etc...);
10. Whether the violations of the provisions of this Ordinance are repetitive;
11. Whether the violations of this Ordinance are flagrant or severe;

12. Whether the Office of Alcohol Beverage Control ("ABC") is seeking and/or has imposed any administrative sanctions for the same or similar conduct against the holder of the special use permit;

13. Failure to maintain proper records;

14. Refusal to cooperate with City Council, City Manager, City Clerk, Police Chief and/or their designee(s) in the administration and/or enforcement of this Ordinance;

15. The failure to file the annual required sworn statement by a Restaurant as set out above;

16. Prior history of violations under this Ordinance with regards to the holder of the special use permit; or,

17. Other circumstances or actions that relate to the administration of this Ordinance and/or the enforcement or violation of the terms of this Ordinance relevant to the actions of the holder of the special use permit under consideration for temporary suspension.

B. When the special use permit of the holder thereof is suspended in accordance with this Ordinance by the City Council, then the Office of the Manager shall promptly notify, in writing, the holder of such special use permit of the suspension; the effective date of such suspension; the reason(s) for the suspension; and, the right of appeal of such suspension.

C Upon the motion of the City Council or the request of the City Manager, Police Chief, or City Clerk, the City Council may revoke the special use permit and the discontinuance of the zoning necessary to sell Alcoholic Beverages in the City for violation(s) of the provision(s) of this Ordinance. The revocation of such special use permit may be had in the first instance without prior

resort to a temporary suspension of such special use permit. The holder of the special use permit shall be given written notice, by United States Mail, first class, of the date, time and place of the revocation hearing. Such notice of hearing shall be given not less than fifteen (15) days prior to the dated scheduled for the revocation hearing. The City Council, in rendering Its decision, shall consider the factors set forth in this Ordinance. The City Council may, as part of any decision, may impose against the holder of a special use permit the lesser administrative sanction of a suspension in lieu of revocation.

D. Any appeal from any decision of the City Council may be had as set forth hereafter in this Ordinance.

1. Civil Proceedings: In addition to any other relief provided by this Ordinance, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this Ordinance, and other available relief. As a condition of the issuance of the special use permit, if found in violation of the terms of this Ordinance holder of such special use permit shall reimburse the City for all attorney's fees and costs of court incurred in the bringing of this action.

2. Criminal Sanctions: Additionally, any Person who shall knowingly and willfully violate the terms, conditions or provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction therefore shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment, and, in case of continuing violations without reasonable effort on the part of the defendant to correct same, each day the violation continues thereafter shall be a separate offense.

3. Forum Selection Clause: As a condition of the submission of an application for or issuance of a special use permit under this Ordinance, the applicant or holder and/or successor of interest to such holder of a special use permit issued under this Ordinance shall have been deemed to have irrevocably consented that the sole and exclusive venue for any enforcement action taken by the City pursuant to the terms of this

Ordinance, or any appeal, defense or action initiated by the applicant for or a holder of a special use permit issued under this Ordinance, shall be either the County Court or Chancery Court of Pearl River County, Mississippi. As a further condition of the submission or an application for or issuance of a special use permit under this Ordinance, the applicant or holder hereby shall have been deemed to consent the subject matter jurisdiction and personal jurisdiction of the County Court or Chancery Court of Pearl River County pursuant to the submission of an application or issuance and receipt of the special use permit by the holder thereof.

Section 9. Appeal

Appeals from a final decision rendered by the City Council under this Ordinance shall be in accordance and as provided for under the laws of the State of Mississippi.

Section 10. Separability and Validity Clause

Should any section, clause, paragraph, provision, or part of this Ordinance for any reason be held invalid or unconstitutional by any Court of competent jurisdiction, this act shall not affect the validity or any other section , clause, paragraph, provision, or part of this ordinance. All provision of this Ordinance shall be considered separate provision, and completely severable from all other portions.

Section 11. Repeal of Conflicting Ordinances or Parts Thereof

The enactment of this Ordinance shall be construed to specifically repeal Sections 10-136 through 10-141 of the Code of Ordinances in and for the City of Picayune, Mississippi, denominated under the heading of "Lounges"

The enactment of this Ordinance shall be construed not to operate as a repeal Sections 10-1 through 10-115 of the Code of Ordinances in and for the City of Picayune, Mississippi, except to the extent the terms and provisions of same are in conflict herewith or inconsistent with the Provisions of this Ordinance.

All Ordinances or parts of Ordinances adopted heretofore by the City of Picayune, Mississippi, which are in conflict herewith or inconsistent with the provisions of this

Ordinance, ARE HEREBY REPEALED.

As of the effective date of this Ordinance, any building housing a business, including a lounge, selling, dispensing, giving away or furnishing any light wines or beer of less than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being as provided for in Section 67-3-5, Mississippi Code of 1972, excluding native wines, may continue to do so unless beer or light wine as defined herein is not sold in that building for a period of ninety (90) days for any reason. After ninety (90) days with no beer or light wine sales from that location the terms of this Ordinance shall be in effect.

Section 12. Failure to Enforce Ordinance

Failure to enforce any provision of this Ordinance shall not constitute a waiver nor imply that the action is legal.

Section 13. Effective Date of Ordinance

This Ordinance shall become effective thirty (30) days after its adoption and publication by the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi.

The foregoing Ordinance, having first been reduced to writing, was moved upon by Council member Lane, seconded by Council member Gouguet, and voted upon as follows:

VOTING YEA: Mayor Ed Pinero, Jr., Council Members: Gouguet, Land, Watkins, Bumpers, and Breland

VOTING NAY: None.

NOT VOTING: None.

NOT PRESENT: None.

The motion having received the affirmative vote of the majority of the members present, the Mayor declared the motion carried and the Ordinance passed, approved, and adopted on this the 16th day of December, 2010.

ED PINERO, Jr. Mayor

ATTEST:

City Clerk

Published: December 23, 2010