

ORDINANCE NUMBER: 942**ORDINANCE OF THE CITY OF PICAYUNE, MISSISSIPPI, DESIGNATING CERTAIN PUBLIC AREAS IN THE CITY OF PICAYUNE, MISSISSIPPI, AS SPECIAL USE AREAS AND ESTABLISHING RULES FOR PERMITTING AND REGULATING SPECIAL USE EVENTS HELD THEREIN**

WHEREAS, the City conducted a special election on November 7, 1967, in which the majority of the voters of the City of Picayune did vote affirmatively to permit the transportation; storage, sale, distribution, and receipt of beer and light wine, as defined in Miss. Code Ann. § 67-3-3, as amended;

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 should be amended and/or adopted to prescribe and enforce reasonable and proper rules and regulations for fixing zones and territories, prescribing hours of opening and closing, and for such other measures as will promote the public health, morals, and safety, pursuant to the general police powers of the City of Picayune, and further, pursuant to Miss. Code Ann. § 67-1-51, as amended, and Miss. Code Ann. § 67-3-65, as amended;

WHEREAS, the City finds that it should adopt a separate ordinance designating certain public areas within the City of Picayune as Special Use Areas and establishing rules for permitting and regulating Special Use Events held therein; and,

WHEREAS, the City desires to adopt a new ordinance, pursuant to the general police powers of the City, and further, pursuant to Miss. Code Ann. § 67-1-51 and Miss. Code Ann. § 67-3-65, 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:

This Ordinance is an extension of the City of Picayune Zoning Ordinances and shall be interpreted in accordance with the provisions of Miss. Code Ann. §§ 17-1-1, *et. seq.* (1972), as amended. Additionally, all requirements, restrictions, and powers that are imposed upon and applicable to Zoning Ordinances by and through Miss. Code Ann. §§ 17-1-1, *et. seq.*, shall apply to this Ordinance. Further, this Ordinance is being adopted pursuant to the general police powers of the City, and further, pursuant to the provisions of Miss. Code Ann. § 67-1-51 and Miss. Code Ann. § 67-3-65.

Notwithstanding any other provision of the ordinances of the City of Picayune does hereby adopt the following Ordinance.

Section 1. Purpose

The purpose of this Ordinance is to designate certain public areas within the City of Picayune as Special Use Areas and to establish rules for permitting and regulating Special Use Events held therein, with the objectives of protecting and promoting public safety and welfare, mitigating the adverse impacts on the community, and promoting

economic development.

Section 2. Definitions

- A. "Beer" means a malt beverage as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act of an alcoholic content of not more than eight percent (8%) by weight.
- B. "Light Wine" means wine of an alcoholic content of not more than five percent (5%) weight. "Native Wines" shall not be considered wine.
- C. "Ordinance" means the Ordinance of the City of Picayune, Mississippi, Designating Crosby Commons as a Special Use Area and Establishing Rules for Permitting and Regulating Special Use Events Held Therein
- D. "Person" means any individual, partnership, corporation, association, limited liability company, or other legal entity whatsoever.
- E. "Department" means the various offices, bureaus, and divisions of the Mississippi Department of Revenue that incorporate the functional duties and responsibilities of the Commissioner of the Department of Revenue or his designee as authorized by law.
- F. "Special Use Area" means Crosby Commons on Goodyear Boulevard in the City of Picayune, Mississippi.
- G. "Special Use Event" means a temporary event held in a Special Use Area, and at which , beer, and light wine may be sold, consumed, dispensed, furnished, or given away from a pre-approved source or sources pursuant to a Special Use Event Permit issued for a specific period of time that has definite times of commencement and conclusion.

Section 3. Special Use Event Permits

- A. Special Use Events may be located and held only in a Special Use Area and only upon the issuance of a Special Use Event Permit. A Special Use Event Permit shall be issued according to the following rules and process:
1. Each person desiring to hold a Special Use Event in or upon a Special Use Area shall file a written application with the Event Coordinator at least two (2) months prior to the set date of the Special Use Event.
 2. At the time of filing of the written application for a Special Use Event Permit under this Ordinance, the applicant shall pay to the City of Picayune a fee of Three Hundred Dollars (\$300.00) per application. Non-profits holding a 501(c) exemption shall pay a fee to the City of Picayune a fee of Twenty-Five Dollars (\$25.00) per application. This fee shall be refunded to the applicant if the application for a Special Use Event Permit is denied.
 3. If the application for a Special Use Event Permit is approved, it shall entitle the applicant to sell, dispense, furnish, or give away, beer, and light wine only during the definite time period of the Special Use Event held in and upon a Special Use Area. All sales for consumption of, beer, and light wine must be provided by the holder of the Special Use Event Permit. For the sale and consumption of, beer, and light wine in the permitted Special Use Area, the holder of the Special Use Event Permit shall ensure that only paper/plastic/styro cups are used. , beer, or light wine will be permitted in cans or bottles in the permitted Special Use Area. No ice chests or any other containers containing, beer, or light wine from another

source shall be brought to the permitted Special Use Area.

4. If the application for a Special Use Event Permit is approved, the applicant shall pay a damage deposit to the City of Picayune, in an amount to be determined by the City Manager, to assure that the applicant will leave the permitted Special Use Area clean and free of trash/debris following the conclusion of the permitted Special Use Event. The City of Picayune will provide trash receptacles for the Special Use Event and will pick up and dispose of trash/debris contained in receptacles.
5. If the application for a Special Use Event Permit is approved, and in order for the applicant to have the authority to sell, dispense, furnish or give away alcoholic beverages, beer, and light wine in a Special Use Area, the applicant shall be responsible for performing, at his/her/its expense, all actions required by this Ordinance and/or by law, including the preparation of all applications, draft orders, notices, exhibits, affidavits, transcripts, documents, and records; etc.
6. The City Manager shall have the final authority regarding the approval or disapproval of all applications for Special Use Event Permits in accordance with this Ordinance and the laws of the State of Mississippi. Following the consideration of the documents from the Zoning Office, together with any evidence presented to the City Manager, the City Manager may approve (in whole or in part), reject (in whole or in part), and/or remand (in whole or in part), the recommendation, record, and/or application, with instructions from the City Manager; or the City Manager may take the application under advisement. The applicant shall have the right to appeal the decision of the City Council as set forth in of this Ordinance

B. All Special Use Event Permits are subject the City of Picayune's Litter Ordinance.

C. All Special Use Event Permits are subject to Ordinance 913, an Ordinance allowing vehicular parking on and along Goodyear Boulevard between the hours of 9:00 p.m. and up to 12:00 p.m. An additional permit is required from the Planning & Zoning Department.

Section 4. Special Use Area for Special Use Event Permits

A. The sale of beer, and light wine in accordance with a Special Use Event Permit shall be limited to on-premises consumption only in said Special Use Area, as designated on said Permit, subject to the restrictions detailed in this Ordinance. The sale of beer, and light wine in accordance to a Special Use Event Permit shall be limited to consumption in a pre-approved area during a pre-approved time, as designated on said Permit.

B. For each Special Use Event, the holder of an approved Special Use Event Permit shall be responsible to ensure that beer, and light wine are served only in the pre-approved Special Use Area during those hours stated and allowed in the Special Use Event Permit issued by the City Manager.

C. No adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater may operate at any Special Use Event in any Special Use Area or under any Special Use Event Permit.

D. It shall be unlawful for any holder of a Special Use Event Permit and/or any agent, associate, employee, representative, entertainer, or servant of any such holder of a Special Use Event Permit within the corporate limits of Picayune,

Mississippi:

1. To sell, dispense, or give away beer, or light wine without obtaining and holding a current valid permit and/or license required by and issued by the Department as allowed by law and without being licensed by the State of Mississippi to sell same.
2. To sell, dispense, or give away beer, or light wine at any location other than the permitted Special Use Area and without first obtaining a Special Use Event Permit as required by this Ordinance.
3. To sell, dispense, furnish, allow consumption of, or give away any beer, or light wine to anyone before or after the times set by the City, as designated in the Special Use Event Permit.
4. To sell, give, furnish, allow the consumption of, or give away any beer, or light wine to any person who is visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard.
5. To permit on the permitted Special Use Area any lewd, immoral, or improper entertainment, conduct, or practices.
6. To permit persons of ill repute, known criminals, or prostitutes to attend any Special Use Event or be present upon the permitted Special Use Area.
7. To permit loud, boisterous, or disorderly conduct of any kind upon the permitted Special Use Area, or to permit the use of loud musical instruments which may disturb the peace or tranquility of the community within the area of any immediate business locations, unless a Noise Permit has first been obtained.
8. To permit or suffer gambling or the operation of games of chance upon the permitted Special Use Area.
9. To throw, leave, or put beer, or light wine containers on the streets, avenues, or roads of the City or to throw, leave, or put these containers on the property of anyone except the person or persons possessing said containers.
10. To sell, give, furnish, or give away any beer, or light wine to any person under the age of twenty-one (21) years old or to any person knowing that the person to whom it is provided is obtaining it for a person under the age of twenty-one (21) years.
11. To serve, beer, or light wine from the permitted Special Use Area to a person or persons in an automobile or automobiles in the form of curb service.
12. To work or employ anyone under eighteen (18) years of age in said permitted Special Use Area where, beer, or light wine are sold, except under proper and constant supervision of the adult owner or owners or an adult employee or employees.

E. No holder of Special Use Event Permit, and no agent, associate, employee, representative, entertainer, or servant of any such holder of a Special Use Event Permit, shall do or allow any of the following activities or events on or about the permitted Special Use Area:

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

way.

2. Permit any prostitute to frequent the permitted Special Use Area, or to solicit patrons for prostitution.
3. Permit any person to remain on the permitted Special Use Area 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.
4. Wear, or permit any female agent, associate, employee, representative, or servant of the holder of a Special Use Event Permit to wear, such attire, costume, or clothing on the permitted Special Use Area, which reveals any part of the female breast below the top of the areola, or extraordinarily design or display any such attire, costume, or clothing specifically to accentuate the breasts.
5. 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.

F. 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.

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

1. Any act or performance of, or which simulates:
 - a. Sexual intercourse, masturbation, sodomy, bestiality, or oral copulation, flagellation, or any sexual act.
 - b. The touching, caressing or fondling of the breast, buttocks, anus, penis or genitals.
 - c. 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.
 - d. The use of any artificial device or object to depict any of the prohibited activities described above.

2. 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 hiney, mud wrestling, tight jeans, and similar contests or exhibitions. No string bikinis, spaghetti straps, or thong attire are permitted with any swim wear, costume, or lingerie clothing.

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

1. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts which are prohibited by law.
2. Any person being touched, caressed or fondled on the breast, buttocks,

anus, penis, or pubic area.

3. Scenes wherein a person displays the breasts, vulva, anus, penis, genitals, or pubic area.
4. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

I. No Special Use Event Permit holder, nor any agent, associate, employee, representative, entertainer, or servant of any such Special Use Event Permit holder, shall operate a sexually oriented business as defined in the Ordinances in and for the City of Picayune on the permitted Special Use Area; or shall do or permit to be done any of the activities or events on or about the Special Use Area 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).

J. A Special Use Event Permit holder shall not be permitted to sell, dispense, furnish, allow consumption of, or give away beer, or light wine until said person has first made proper application for and obtained the following permits and licenses:

1. A privilege license to engage in such business issued by the City; and
2. 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.

K. A Special Use Event Permit holder shall not violate the laws of the State of Mississippi, the laws of the United States, the regulations of the Department, or the Ordinances of the City of Picayune.

L. A Special Use Event Permit holder shall sell, dispense, or give away beer, and light wine only in open disposable containers in those areas set out in the Special Use Event Permit, as set forth in this Ordinance. No beer, or light wine shall be sold, dispensed, given away, or consumed in glass bottles or cans.

M. Any person holding a permit to sell beer, and/or light wine issued by the State of Mississippi may obtain a Special Use Event Permit to sell beer, and/or light wine at a Special Use Event.

Section 5. Permit by the Department of Revenue

A Special Use Event Permit holder must be issued and hold valid and current permits and/or licenses required by and issued by the Department of Revenue, in order to sell beer, and light wine at the Special Use Area inside the corporate limits of the City of Picayune.

Section 6. General Provisions

A. Application for Special Use Event Permit

1. Any person desiring a Special Use Event Permit to establish or hold a Special Use Event shall file an application with the Planning & Zoning Department in the form of a sworn statement giving the applicant's name, address, the name of the business, and its location.
2. The applicant shall further state in its sworn application for a Special Use Event Permit that it possesses the following qualifications:
 - a. A Non-Profit located within the City of Picayune registered as a Non-Profit with the Secretary of the State of Mississippi.

- b. 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.
- c. 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, beer, or light wine of any kind within five (5) years preceding the date of application.

B. Special Provisions

- 1. The holder of a Special Use Event Permit shall pay for the number of any on-duty certified law enforcement officers from the City as required by the City Manager to be present in order to provide security at the permitted Special Use Event. If additional on-duty Picayune Police Officers are required to respond to any calls at the permitted Special Use Event, even for traffic control outside of said event, then, the holder of the Special Use Event Permit may be required to pay for any costs associated with said on-duty Picayune Police Officers that respond to any calls at said event. The City Manager shall have the authority to determine if any such costs associated with the response by any on-duty Picayune Police Officers to any call at said event should be taxed against the holder of the Special Use Event Permit for the said Special Use Event.
- 2. The holder a Special Use Event Permit shall provide the City Manager with a certificate of insurance evidencing comprehensive liability coverage naming the City of Picayune as co-insured with combined limits of not less than \$ 1,000,000 for bodily injury and property damage. The Special Use Event Permit holder shall expressly release the City and its agents, officers, and employees from all damage or injury to persons or property arising out of the activities conducted in the permitted Special Use Area at the Special Use Event, and shall indemnify the City against all damages, liabilities, expenses, and losses incurred by the City as a result of the actions of the Special Use Event Permit holder and its employees and agents.
- 3. Damage: If damages occurring during the Special Use Event are more than the damage deposit, the City reserves the right to take the Special Use Event Permit holder to court for all damages in excess of the damage deposit.
- 4. Damage Deposit: Damage Deposits must be paid at time of filing the application for Special Use Event Permit. The damage deposit will be refunded on the next available docket once approve to be refunded. The amount of damage deposit will be determined by the size and type of event.

C. No firearms are allowed in any Special Use Area, other than those carried by security provided by City.

D. Garbage and debris: All garbage/trash and disposable debris shall be placed in garbage receptacles as provided by the City. If receptacles are full, then garbage/trash and disposable debris shall be placed in thrash bags for the City to dispose of. In the event the Special Use Area is left with scattered garbage/trash or any disposable debris for City to clean, the City may withhold the cost of cleaning said area from the Damage Deposit paid by the Special Use Event Permit holder.

E. All fees in this Ordinance are based on the Special Use Area of Crosby Commons as it is in its current condition. Fees are subject to change as Improvements are added to the Special Use Area.

Section 7. Violation(s) and Enforcement

A. 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.

1. **Administrative Enforcement:** Any violation of this Ordinance is hereby declared to be a nuisance per se which is subject to abatement by way of administrative action undertake by the City of Picayune Code Enforcement Department pursuant to the issuance of a citation by the Code Enforcement Officer or any Police Officer for the City of Picayune. The Municipal Court of the City of Picayune shall have jurisdiction to hear and render a decision pursuant to any citation(s) issued by said Code Enforcement Officer or Police Officer for the City of Picayune. The City or any person cited to appear shall have the right to appeal the decision of the Municipal Court of the City of Picayune as provided for by law. The following administrative relief may be sought by the City, and the Municipal Court is hereby empowered to grant all or any of the following relief:
 - a. The assessment of an administrative penalty of not less than \$100.00 and not more than \$500.00 per violation; and, in the case of continuing violations without reasonable effort on the part of the Special Use Event Permit holder to correct same, each day the violation continues thereafter shall be a separate violation;
 - b. The closure of the Special Use Area for a period of not more than thirty (30) days for each violation; and, in the case of continuing violations without reasonable effort on part of the Special Use Event Permit holder to correct same, each day the violation continues thereafter shall be a separate violation;
 - c. The suspension of any Special Use Event Permit for a period of time from one (1) day to one (1) calendar year;
 - d. The termination of the Special Use Event Permit; and/or
 - e. The assessment of an administrative penalty as a lien against any personal or real property of the Special Use Event Permit holder, with a copy of same being enrolled as a judgment in the office of the Circuit Clerk of Pearl River County, Mississippi, to be collected or foreclosed upon by the City as allowed by law.
2. **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 all other available relief. As a condition of the issuance of the Special Use Event Permit, if found in violation of the terms of this Ordinance, the Special Use Event Permit holder shall reimburse the City for all attorney's fees and costs of court incurred in the bringing of any such action.
3. **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 therefor, 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.

B. **Forum Selection Clause:** As a condition of the submission of an application for or issuance of a Special Use Event Permit under this Ordinance, the applicant and holder of a Special Use Event Permit shall be deemed to have irrevocably consented to 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 Special Use Event Permit applicant or holder, to be either the County Court, Circuit Court, or Chancery Court of Pearl River County, Mississippi. As a further condition of the Special Use Event Permit under this Ordinance, the Special Use Event Permit holder shall be deemed to have consented to the subject-matter jurisdiction and personal jurisdiction of the County Court, Circuit Court, or Chancery Court of Pearl River County, Mississippi.

Section 8. Policies and Regulations and Rates

The City Council may, at its discretion, promulgate and adopt separate policies and regulations for the rental of City equipment and facilities, including but not limited to Special Use Areas. The City Council may, at its discretion, adopt a separate rate structure for the fees to be charged for the rental of City facilities, including Special Use Areas. The City Council may, in its discretion, revise and/or amend said policies and regulations and rate structure by Council Order, without the necessity of amending this Ordinance.

Section 9. Separability and Validity

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

Section 10. Repeal of Conflicting Ordinances or Parts Thereof

A. Ordinance Number 915 is hereby repealed.

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

C. 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.

Section 11. Failure to Enforce Ordinance

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

Section 12. 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 Gouguet, seconded by Council member Stevens, and voted upon as follows:

VOTING YEA: Mayor Pro Temp Valente, Council members Stevens, Bumpers,

Breland, and Gouguet

VOTING NAY: None

NOT VOTING: None

NOT PRESENT: Mayor Ed Pinero

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 20th day of February, 2018.

Dr. Ed Pinero, Mayor

Attest:

City Clerk