

## ORDINANCE NO. 1048

### AN ORDINANCE AMENDING TITLE 8 OF THE ATHENS MUNICIPAL CODE BY ADDING CHAPTER 4, SALE OF WINE IN RETAIL FOOD STORES.

**WHEREAS**, Title 8 of the Athens Municipal Code establishes procedures, requirements and restrictions pertaining to alcoholic beverages; and

**WHEREAS**, the Tennessee Code Annotated has been amended to add provisions concerning the sale of wine in retail food stores, said provision being codified at Tennessee Code Annotated § 57-3-801 et seq.; and

**WHEREAS**, the amendments adopted herein address the responsibilities of the City of Athens in regard to the aforementioned amendments to state law concerning the sale of wine in retail food stores; and

**WHEREAS**, the City Council has determined that the amendments adopted herein are necessary and appropriate.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ATHENS, TENNESSEE, AS FOLLOWS:**

**SECTION 1.** Title 8 of the Athens Municipal Code, Alcoholic Beverages, is hereby amended by adding a new Chapter 4 to read as follows:

#### CHAPTER 4

#### SALE OF WINE IN RETAIL FOOD STORES

##### **SECTION**

8-401. Definitions.

8-402. License required for sale of wine in retail food stores.

8-403. Certificate of compliance.

8-404. Application for certificate of compliance.

8-405. Issuance of certificate of compliance; appeal.

8-406. Full and accurate disclosure required.

8-407. Expiration of certificate of compliance; new application.

8-408. Licensee responsible for officers and agents.

8-409. Enforcement.

8-410. Chapter not applicable to beer.

**8-401. Definitions.** Whenever used in this chapter, the following terms shall have the following meanings unless the context necessarily requires otherwise:

(1) "Applicant" means a person applying for a certificate of compliance.

(2) "Application" means the form or forms or other information an applicant is required to file with the city in order to attempt to obtain a certificate of compliance.

(3) "Certificate" or "Certificate of compliance" means the certificate required pursuant to Tennessee Code Annotated § 57-3-806, as the same may be amended, supplemented or replaced, and subject to the provisions set forth in this chapter for issuance of such a certificate.

(4) "City" means the City of Athens, Tennessee.

(5) "License" means a license issued by the alcoholic beverage commission of the State of Tennessee pursuant to Tennessee Code Annotated § 57-3-803, as the same may be amended, supplemented or replaced.

(6) "Licensee" means any person holding a license, as that term is defined in this chapter.

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

(8) "Retail food store" means an establishment that is open to the public and that derives at least twenty percent (20%) of its taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in Tennessee Code Annotated § 67-6-228(a) and that has retail floor space of at least one thousand two hundred square feet (1,200 sq. ft.).

(9) "At retail" means a sale to any person for any purpose other than for resale.

(10) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, as further defined by Tennessee Code Annotated § 57-3-802(2), as the same may be amended, supplemented or replaced.

**8-402. License required for sale of wine in retail food stores.** As of July 1, 2016, it shall be lawful for a licensee to sell wine at retail in a retail food store, provided that such sales are made in strict compliance with all applicable federal and state laws, rules, and regulations, and with the provisions of this chapter, and provided that such licensee has a valid and duly issued state license.

**8-403. Certificate of compliance.** As a condition precedent to the issuance of a state license for the sale of wine in a retail food store, an applicant for a license shall first obtain a certificate of compliance from the city, pursuant to Tennessee Code Annotated § 57-3-806. A certificate of compliance issued under this chapter shall be valid only for the premises proposed in the application, and any change of location of the business shall be cause for immediate nullification of the certificate. No certificate of compliance shall be issued for the sale of wine in a retail food store where such store would be a prohibited use under the city's zoning ordinance.

**8-404. Application for certificate of compliance.** The application for a certificate of compliance shall be submitted in writing on the form furnished by the city manager and shall contain the following information and whatever additional information the city may require:

(1) The name and street address of each person who will be in charge of or in control of the business, and a statement that the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of the application with the state alcoholic beverage commission and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

(2) The name and address of the proposed retail food store applying for a license, and a statement that the applicant or applicants have secured a location for the business, which complies with all zoning laws of the city;

(3) That the applicant or applicants have complied with this chapter and the applicable state laws on retail food store wine sales.

**8-405. Issuance of certificate of compliance; appeal.** Upon verification that the applicant meets the requirements of Tennessee Code Annotated § 57-3-806(b), the City mayor may issue the certificate without action by the City Council. Alternatively, the City Council may issue the certificate upon signature by a majority of its members. A failure on the part of the issuing authority to grant or deny the applicant's request for the certificate of compliance within sixty (60) days of the written application shall be deemed a granting of the certificate. If an applicant is denied a certificate of compliance, the applicant may seek review of such denial by instituting an action in chancery court within sixty (60) days of the denial.

**8-406. Full and accurate disclosure required.** Each application for a certificate of compliance under this chapter shall identify each person who is to be in actual charge of the business and, if a partnership, limited liability company or corporation, each executive officer or manager of the partnership, limited liability company or corporation and each individual in control of the business. For the purposes of this section, an individual who owns or has a 50 percent ownership interest or greater in the partnership, limited liability company, or corporation shall be considered or deemed to be in control of the business.

Misrepresentation of a material fact, or concealment of a material fact required to be shown in the application for a certificate, shall be a violation of this chapter. The city may refuse to issue a certificate if, upon investigation, the city finds that the applicant for a certificate has concealed or misrepresented any material fact or circumstance concerning the operation of the business, or if the interest of any person in the operation of the business is not truly stated in the application, or in case of any fraud or false statements by the applicant pertaining to any matter relating to the operation of the business. All information, written statements, affidavits, evidence or other documents submitted in support of an application are a part of the application.

**8-407. Expiration of certificate of compliance; new application.** A certificate for the sale of wine in a retail food store shall expire and become void if the applicant to whom the certificate was granted fails to apply for a license from the alcoholic beverage commission within

six months of the date of the certificate, or if the retail food store for which a certificate was granted is not in operation within 12 months following the issuance of the certificate; provided, however, a majority of the City Council may, upon written request of the applicant, extend the expiration date of a certificate for up to three additional months in the event of circumstances beyond the applicant's control. If a certificate becomes void, no new certificate may be issued to the same applicant unless a new application is submitted and all applicable requirements of this chapter are met at the time the new application is received.

**8-408. Licensee responsible for officers and agents.** Each licensee shall be responsible for all acts of such licensee as well as the acts of a co-licensee, and acts of the licensee's officers, employees, agents and representatives so that any violation of this chapter by any co-licensee, officer, employee, agent or representative of a licensee shall constitute a violation of this chapter by such licensee.

**8-409. Enforcement.** The restrictions, prohibitions, and conditions, necessary to obtain and maintain a retail food store wine license and the hours of sale contained in Part 8, Chapter 3 of Title 57 of the Tennessee Code Annotated, including, but not limited to Parts 806 through 811 are adopted as a part of Chapter 4 of Title 8 of this Athens Municipal Code and incorporated herein by reference. Any violation of the provisions of this chapter shall be punishable under the city's general penalty clause, and in the discretion of the City Council, by any combination of a fine up to Five Hundred Dollars (\$500.00) per violation, or temporary suspension or permanent revocation of the certificate of compliance. A violation may either be prosecuted in the Athens City Court or brought before the Athens City Council for a hearing. Enforcement provisions are also applicable as found under state law. In addition to the above, the City Council may direct that the City Manager notify the Tennessee Alcohol and Beverage Commission of any violation of this chapter or state law, together with a petition that the Tennessee Alcoholic Beverage Commission revoke the retail food store wine license of the licensee.

**8-410. Chapter not applicable to beer.** No provision of this chapter shall be considered or construed as in any way modifying, changing or restricting the rules and regulations governing the sale, storage, transportation, etc., or tax upon beer or other liquids with an alcoholic content of five percent or less that are regulated under chapter 3 of this title.


**SECTION 2.** Any Ordinance, Resolution, Motion or parts thereof in conflict herewith are hereby repealed and superseded. If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction, such holding will not affect any other portion of this Ordinance.

**SECTION 3. BE IT FURTHER ORDAINED,** that this Ordinance shall take effect upon final passage and as provided by law.

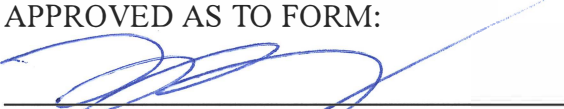
**PASSED ON FIRST READING:** March 15, 2016

**PASSED ON SECOND READING:** April 19, 2016

**DATE OF PUBLIC HEARING:** April 19, 2016

  
ANN S. DAVIS, Mayor

  
MITCHELL B. MOORE, City Manager

APPROVED AS TO FORM:  
  
H. CHRIS TREW, City Attorney

MEMORANDUM CONCERNING RETAIL FOOD STORES  
WINE ORDINANCE

To: Athens City Council  
From H. Chris Trew

RE: Changes to Retail Food Stores Wine Ordinance (3/15/16)

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Change to 8-406:

“For the purposes of this section, an individual who owns or has a 50 percent ownership interest or greater in the partnership, limited liability company, or corporation shall be considered or deemed to be in control of the business.”

Change to 8-407:

“...provided, however, a majority of the City Council may, upon written request...”

Change to 8-409:

“The restrictions, prohibitions, and conditions, necessary to obtain and maintain a retail food store wine license and the hours of sale contained in Part 8, Chapter 3 of Title 57 of the Tennessee Code Annotated, including, but not limited to Parts 806 through 811 are adopted as a part of Chapter 4 of Title 8 of this Athens Municipal Code and incorporated herein by reference. Any violation of the provisions of this chapter shall be punishable under the city’s general penalty clause, and in the discretion of the City Council, by any combination of a fine up to Five Hundred Dollars (\$500.00) per violation, or temporary suspension or permanent revocation of the certificate of compliance. A violation may either be prosecuted in the Athens City Court or brought before the Athens City Council for a hearing. Enforcement provisions are also applicable as found under state law. In addition to the above, the City Council may direct that the City Manager notify the Tennessee Alcohol and Beverage Commission of any violation of this chapter or state law, together with a petition that the Tennessee Alcoholic Beverage Commission revoke the retail food store wine license of the licensee.”

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