

ORDINANCE NO. 2012-01-03-386

AN ORDINANCE AMENDING CHAPTER 110 AND CHAPTER 112
OF THE CITY OF TONTITOWN, ARKANSAS CODE OF ORDINANCES,
DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

WHEREAS, the City of Tontitown, Arkansas, has certain ordinances requiring businesses to possess a valid business license in order to conduct business within the city limits; and

WHEREAS, it is necessary for the City of Tontitown to be able to enforce its business license ordinance in order to protect public health, safety, peace and welfare; and

WHEREAS, recent litigation has called into question whether the current enforcement provisions in city ordinances are sufficient to ensure compliance with the ordinances; and

WHEREAS, recent litigation has called into question the wording of certain ordinances pertaining to the hours during which alcoholic beverages may be served or consumed in private clubs within the city limits; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Tontitown, Arkansas, and necessary for the protection of public health, safety, peace and welfare to Amend Code Sections § 110.02, §110.03, §110.99, and § 112.03;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF TONTITOWN, ARKANSAS, AS FOLLOWS:

SECTION 1: Section 110.02 of the City of Tontitown, Arkansas Code of Ordinances is hereby amended and shall provide as follows:

110.02 APPLICATIONS FOR LICENSES AND SUSPENSION OR REVOCATION

(A) Applications for all licenses required by this chapter shall be made in writing to the Code Enforcement Officer or the Recorder/Treasurer. Each application shall state the name of the applicant, the names of all owners, all names used in business, state and federal tax identification numbers, address of principal location, addresses of all annexes or any other buildings related to business, the number of buildings occupying each address, the number of individuals employed at each address, the type of business, type of materials used or stored at each address, the time covered and the fee to be paid, and

each application shall contain any such additional information as may be needed for the proper guidance of the city officials in issuing the license applied for.

(B) All applications required hereunder shall be kept and filed by the Code Enforcement Officer or Recorder/Treasurer and bear the signature of either.

(C) (1) Any person or entity which is granted a license under this Chapter of the City of Tontitown, Arkansas Code of Ordinances may have said license revoked or suspended if the City Council determines, after a hearing, that the business is being operated or conducted so as to constitute a nuisance in fact, is not complying with State Statutes or City Ordinances, or is being operated or conducted in such a manner so as to endanger the public health, safety, peace or welfare.

(2) At the hearing to consider revocation or suspension of the license, the license holder shall be entitled to reasonable notice, an opportunity to be represented by an attorney, an opportunity to present evidence and witnesses on its behalf, and an opportunity to question any other witness who testifies. To serve purposes of economy and to preserve public resources, if a hearing meeting these requirements was held prior to the adoption of this ordinance but not more than sixty (60) days prior to any decision by the City Council to revoke or suspend a license, said hearing shall be sufficient to meet the hearing requirements of this Chapter. An additional hearing is not required, and the City Council may consider the evidence received at said hearing when considering whether to revoke or suspend a license. Nothing in this Chapter shall invalidate action by the City Council with regards to revocation or suspension of any license taken prior to the effective date of this ordinance.

(3) Any business or former license holder whose license granted under this Chapter is revoked or suspended may not operate or conduct said business within the city limits of Tontitown, Arkansas, until such time as the license is reinstated or a new license is issued. In addition to any other remedy, fine, or enforcement available to the City of Tontitown, if any business or other license holder continues to operate or conduct business in the city limits of Tontitown, Arkansas, without the required license following revocation or suspension of said license, the City may seek an injunction in a court of competent jurisdiction to prevent the former license holder from operating without a license.

(4) Any business which operates or conducts business within the city limits without the license required by this Chapter may, upon majority vote of the City Council, be issued a Notice to Cease and Desist. Such Notice shall be issued by the Code Enforcement Officer or Recorder/Treasurer as directed by the City Council and served upon the business by personal delivery to the owner of the business or managing agent of the business or by placing a copy of the Notice on the door of the business. In addition to any other remedy, fine, or enforcement available to the City of Tontitown, if any business continues to operate or conduct business in the city limits of Tontitown, Arkansas, without the required license following service of the Notice, the City may seek an injunction in a court of competent jurisdiction to prevent the business from operating without a license.

SECTION 2: Section 110.03 of the City of Tontitown, Arkansas Code of Ordinances is hereby amended and shall provide as follows:

110.03 APPLICATION OF PROVISIONS

(A) Any person, partnership, corporation or other entity shall be subject to the requirements of this chapter if by himself or herself or through an agent, employee or partner, he or she holds himself or herself forth as being engaged in a business or occupation, solicits patronage therefor, actively or passively, or performs or attempts to perform any part of such business or occupation in the city.

(B) As used in this Chapter, the term "business" shall include any business, trade, vocation, occupation, profession, calling or enterprise.

SECTION 3: Section 110.99 of the City of Tontitown, Arkansas Code of Ordinances is hereby amended and shall provide as follows:

110.99 PENALTY

(A) Any person or entity violating any provision of this chapter, upon conviction, shall be fined a sum of not less than the amount of the license fee provided for, nor more than double such amount for each offense. Each day of violation shall constitute a separate and distinct offense.

(B) Provided, however, that any person or entity who continues to operate or conduct its business without the required license after having said license revoked or suspended, or after service of a Notice to Cease and Desist, upon conviction, shall be fined not less than five hundred dollars (\$500.0) and not more than one thousand dollars (\$1,000.00) for each offense, with each day of violation constituting a separate and distinct offense.

SECTION 4: Section 112.03 of the City of Tontitown, Arkansas Code of Ordinances is hereby amended and shall provide as follows:

112.03 SERVING FOR ON-PREMISES CONSUMPTION

No person, firm, club, either public or private, corporation or association doing business in the city by virtue of a permit issued or by virtue of a Charter from the State of Arkansas permitting the sale or serving of liquor, beer and/or wines for consumption on the licensed premises shall permit to be consumed or served any liquor, beer or wines on the licensed premises between the following hours of each day of each week as follows: between the hours of 10 p.m. Monday and 7 a.m. Tuesday; between the hours of 10 p.m. Tuesday and 7 a.m. Wednesday; between the hours of 10 p.m. Wednesday and 7 a.m. Thursday; between the hours of 10 p.m. Thursday and 7 a.m. Friday; between the hours

of 10 p.m. Friday and 7 a.m. Saturday; between the hours of 12 a.m. Sunday and 11 a.m. Sunday; and between the hours of 10 p.m. Sunday and 7 a.m. Monday.

SECTION 5: All other provisions of Chapter 110 and Chapter 112 of the City of Tontitown, Arkansas Code of Ordinances shall remain unchanged, except as specifically provided for herein.

SECTION 6: The provisions of this Ordinance are intended to be and shall be interpreted as being severable, so that if any one provision of the Ordinance is declared invalid, such declaration shall not be construed to affect the enforcement or validity of the remaining provisions.

SECTION 7: EMERGENCY CLAUSE: THE CITY COUNCIL OF THE CITY OF TONTITOWN HEREBY DELARES AN EMERGENCY TO EXIST BASED UPON THE FOLLOWNING FACTUAL FINDINGS: THE CURRENTLY EXISTING ORDINANCES HAVE PROVEN INADEQUATE TO ENSURE THE ENFORCEMENT OF CITY ORDINANCES AND HAVE MADE IT MORE DIFFICULT FOR THE CITY TO REGULATE BUSINESSES SO AS TO PROTECT THE PUBLIC SAFETY, HEALTH, PEACE AND WELFARE; AT LEAST ONE BUSINESS HAS HAD ITS LICENSE REVOKED BUT CONTNUES TO OPERATE WITHOUT A LICENSE; AT LEAST ONE BUSINESS WHOSE LICENSE HAS BEEN REVOKED HAS DECIDED TO OPERATE IN VIOLATION OF CITY ORDINANCE BECAUSE THE FINES IMPOSED BY ORDINANCE ARE NOT SUFFICIENT TO COMPEL COMPLIANCE WITH THE ORDINANCE; THAT THE COURT HAS REFUSED TO GRANT A TEMPORARY INJUNCTION ENFORCING THE ORDINANCE DUE TO THE LANGUAGE AND REMEDY PROVIDED IN THE ORDINANCE; THAT THE LANGUAGE OF THE ORDINANCE SETTING TIMES WHEN ALCOHOL MAY BE SERVED FOR ON-PREMISES CONSUMPTION HAS BEEN CHALLENGED AS BEING CONTRARY TO ARKANSAS LAW; AND IT IS NECESSARY FOR THE PROTECTION OF THE PUBLIC PEACE, SAFETY, HEALTH AND WELFARE, THAT THIS ORDIANCE BECOME IMMEDIATELY EFFECTIVE UPON ITS PASSAGE AND APPROVAL. THEREFORE, THIS ORDINANCE, BEING NECESSARY FOR THE PROTECTION OF THE PUBLIC HEALTH, PEACE, SAFETY AND WELFARE, SHALL BE EFFECTIVE IMMEDIATELY UPON ITS PASSAGE AND APPROVAL.

PASSED AND APPROVED THIS 3rd DAY OF January 2012.

APPROVED:



Mayor, Tommy Granata

ATTEST:

Sammiel Fisher
Recorder/Treasurer, _____

SPONSOR:
