ORD. # 5459

ORDINANCE TO AMEND CHAPTERS 2, 7, 12, AND 14 OF THE CITY OF MEMPHIS, CODE OF ORDINANCES, SO AS TO UPDATE THE CODE OF ORDINANCES IN ACCORDANCE WITH THE UNIFIED DEVELOPMENT CODE

WHEREAS, the zoning districts of the city of Memphis have been redefined and new districts have been added under the Memphis and Shelby County Unified Development Code; and

WHEREAS, provisions of the city of Memphis code of ordinances are in conflict with the provisions of the Memphis and Shelby County Unified Development Code; and

WHEREAS, provisions of the city of Memphis code of ordinances have been relocated into the Memphis and Shelby County Unified Development Code

WHEREAS, *Tennessee Code Annotated*, Section 57-5-101, authorizes certain manufacturers of beer containing less than 5% alcohol by weight to operate as retail establishments; and

WHEREAS, it is in the interests of the City of Memphis to recognize the distinction between craft breweries with tasting rooms and restaurants, bars, taverns, dance halls and other establishments that sell alcoholic beverages for retail consumption on premises;

NOW THEREFORE, (Additions in underlined in bold italics and deletions identified with strikethrough)

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 2-48-14 of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

> ***The board of adjustment is authorized to set a uniform schedule of fees subject to the approval of the respective legislative bodies of the city and county by resolution. All fees accruing hereunder shall be promptly deposited with the treasurer of the county, who shall cause the same to be credited to the account of the office of planning and development and one-half shall be further credited to the general fund revenues of the city, and one-half credited to the account of the county, and remittance made quarterly.***

SECTION 2. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 2-82-2 paragraph (C) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

c) ***In the event of an absence of a quorum at the scheduled meeting of the alcohol commission, the secretary may notify the mayor or chief administrative officer who then may designate in writing a temporary appointee for that meeting. The appointee shall be administered the oath, and shall have all the rights and responsibilities of a member at the meeting for which the temporary appointed has been designated to serve.***

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SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 2-82-6 of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

> A majority of the ~~five (5)~~ ***nine (9)*** members of the alcohol commission shall constitute a quorum

SECTION 4. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-4-1 of the code of ordinances of the city of Memphis is hereby re-titled and amended and replaced to read as follows:

> Alcoholic beverage ***and zoning districts*** defined
>
> "Alcoholic beverage" or "beverage," as used in this title, means and includes alcohol, spirits, liquor, wine and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patent medicine, or beer where the latter contains an alcoholic content of five percent by weight or less.
>
> ***All zoning districts referenced in this Title shall include those zoning districts reflected on the City of Memphis and Shelby County Zoning District Map, as well as the areas in approved planned developments that are designated for those zoning districts or their preceding equivalent zoning districts according to the Memphis and Shelby County Unified Development Code.***

SECTION 5. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-4-5 paragraph (A) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

> ...At any time a license is surrendered, all prior existing rights are nullified. In addition to the above set forth restrictions on location due to measurement to such school, church, park or library, or any other liquor store, no liquor store may be located where any part of any residential property zoned ***R-15, R-10, R-8, R-6, RU-1, or RU-2*** ~~RS-15, RS-10, RS-8, RS-6, RD or R-TH~~ shall be within a radius of two hundred (200) feet from the point in the center of the threshold of the wall of the liquor store if the threshold faces the street and if not, then at the midpoint of the liquor store building. Liquor stores having received permits before September 17, 1968 shall be allowed to remain so long as they otherwise meet the ordinances. The subsequent location of a church, school, park or library nearer to the liquor store than the prescribed distance shall not of itself cause the removal of the liquor store so long as the liquor store remains at the same location. Likewise, should any real property be already zoned or which is rezoned ***R-15, R-10, R-8, R-6, RU-1, or RU-2*** ~~RS-15, RS-10, RS-8, RS-6, RD or R-TH~~ within the radius of such two hundred (200) feet above described, such zoning or rezoning shall not of itself cause the removal of the liquor store as long as the liquor store remains in the same location.

SECTION 6. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-8-11 paragraph (B) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

> Where the sale shall be for on-premise, and food sales shall consist of less than forty (40) percent of gross sales, the business establishment shall be located no less than five hundred (500) feet (as measured along the center line of the street or streets as defined further herein) or not less than within a two hundred fifty (250) foot radius in any other direction from the property line of any single-family or duplex residential property zoned ~~R-S or R-D~~ ***R-15, R-10, R-8, R-6, R-3, or RU-1***, any church (defined as property owned and used by a church having regular attendance at its meetings and whose property is exempt from taxation by the property assessor) or school (defined as fully accredited public, private, or parochial school for grades one through twelve (12), or any other division of such grades). The five hundred (500) feet shall be measured from a point in the center line of the public or private street adjacent to the threshold (private street being defined to be a private passageway for vehicles in a multi-establishment commercial area of at least two acres in size) on which the beer establishment fronts, such point being directly opposite the center of the threshold of the wall of the establishment if the threshold faces the street and if not, then at the midpoint of the establishment building; thence along the intersecting street or streets to a point on the center line of the street opposite the nearest point to the property line of the residence, church or school. Such two hundred fifty (250) foot restriction shall be measured from the center of the threshold of the store to the nearest point in the property line of such residence, church, or school, it being the intent of the restriction that no part of the property of such residence, church or school shall be within a radius of two hundred fifty (250) feet from the point in the center of the threshold herein shall apply only to beer establishment locations after the effective date of this section. ***Further, TCA 57-5-103 (5) states "a business can sell beer for both on-premises and off premises consumption at the same location pursuant to one (1) permit." Where the business establishment does not meet the distance requirements set above, percentage of food sales notwithstanding, sale of more than two (2) sixteen ounce sealed containers, for off-premise consumption, per customer is not permitted per this section.***. This section shall not prohibit the sale and transfer of the assets, goodwill, equipment and fixtures of any on-going business to a new owner to continue the operation of such business, however, such new owner must comply with all the provisions of this section.

SECTION 7. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-8-11 paragraph (C) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

> Where the sale shall be for off-premises consumption, the business establishment shall be located no less than five hundred (500) feet (as measured along the center line of the street or streets and such measurement is defined further herein by reference to subsection B above) or not less than within a two hundred fifty (250) foot radius in any other direction from the

property line of any residential property zoned ~~R-S, R-M, R-TH or R-D~~ ***R-E, R-15, R-10, R-8, R-6, R-3 or RU-1,*** any church (as defined in subsection B above) or school (as defined in subsection B above) except establishments located along interstate, U.S. and state highways. Said five hundred (500) feet and two hundred fifty (250) foot radius restrictions shall be measured in the same manner as that set out in subsection B above with regard to on-premise sales. This location restriction is intended to and shall apply only to new beer establishment locations that make application for off-premises sales after the effective date of this Subsection. This location restriction shall apply to any existing beer establishment location licensed for off-premises sales that ceases to sell, distribute or manufacture beer at that location during any continuous six-month period after the effective date of this subsection. ***The distance requirements of this Paragraph do not apply to an establishment where less than 10% of its gross sales consists of alcohol sales.***

SECTION 8. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-8-15 of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

Before a person is employed to dispense beer, said person shall provide proof acceptable by the Permits Office of the city of Memphis that such person is not in violation of T.C.A. 57-5-301.

SECTION 9. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 7-8-25 of the code of ordinances of the city of Memphis is hereby amended to read as follows:

Notwithstanding any other provisions of this chapter, or any rule or regulation of the City of Memphis Alcohol Commission to the contrary, any brewery meeting the exemption requirements set forth in Tennessee Code Annotated §57-5-101(c)(1)(A) that does not also operate as a restaurant as defined in §9-52-1 of this code ("Brewery"), shall be subject to the following provisions and restrictions:

(a) ***Legislative Intent – The intent of this section is to recognize the distinction between Breweries with tasting rooms and other establishments that sell alcoholic beverages, specifically that a Brewery tasting room is an adjunct to the primary business of manufacture and sale to wholesale or retail establishments. It being the intent of this ordinance to encourage the growth of local business and tourism while protecting the public welfare and morals.***

(b) ***Permit Required - Each Brewery with a tasting room in which beer is to be manufactured and sold must apply for a beer permit through the City of Memphis Alcohol Commission in conformity with §7-8-7 above. Such permit application shall make reference to the fact that the application is for a Brewery with a tasting room. The permit application shall conform to all on-premises permit requirements if the Brewery intends to allow the consumption of beer in its tasting room, but so long as the application is accompanied by a sworn petition indicating that the restrictions of part (d)***

of this section are met, then there shall be no requirement for a Brewery with a tasting room to maintain kitchen facilities or serve food.

(c) *On and Off Premises Consumption Allowed – So long as the tasting room of the Brewery conforms with the requirements of part (d) below, Breweries with tasting rooms shall be authorized to sell beer manufactured on premises for on-premises consumption or off-premises consumption (off-premises consumption shall include beer sold to licensed wholesalers or retail establishments) so long as all beer sold for off-premises consumption is in the original, sealed container.*

(d) *No Food Requirement – Restrictions - No Brewery with a tasting room shall be required to serve food, maintain kitchen facilities or conform to any requirement relating to the percentage of sales attributable to food so long as it:*

i. *Does not engage in the sale of any alcoholic beverage other than beer manufactured on premises;*
ii. *Does not derive more than 25% of its gross annual income from the sale of beer for consumption on premises;*
iii. *Does not open to the public for any period between the hours of 12:00 a.m. and 12:00 p.m.;*
iv. *Does offer water or other non-alcoholic beverages at no cost to its patrons;*
v. *If located within a 500 foot radius or 250 foot radius of a church as set forth in Section 7-8-11(B) above shall remain closed to the public on Sundays, and if located within such radius of a school or residential dwelling, shall remain closed to the public on Sundays and shall close to the public each Monday through Thursday no later than 10:00 p.m. this section being intended to prevent traffic congestion, to reduce noise and to protect the public welfare and morals of the community.*

SECTION 10. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 12-16-2 of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

When the city shall acquire any street or other thoroughfare by purchase or dedication, the city engineer shall file with the director of public works his or her recommendation of a suitable name of such street or thoroughfare. It shall be the duty of the city council to select a suitable name of for such new street. ~~The official name adopted for a street or other public thoroughfare shall not be changed except by ordinance duly passed.~~ *The official name adopted for a street or other public thoroughfare shall not be changed except in accordance with Chapter 9.10 of the Memphis and Shelby County Unified Development Code.*

SECTION 11. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 12-16-6 of code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

A map of the city showing streets, alleys, avenues, boulevards, lanes, places, parkways and other thoroughfares, and the official names assigned to each, prepared under the supervision of the city engineer, authenticated by him or her, shall be published, from time to time. All streets, avenues, alleys, lanes, boulevards, parkways, places and other thoroughfares in the city shall be known by the name allocated to each on this official map, and such later additions and changes as may be provided ~~by the city council~~ ***in accordance with chapter 9.10 of the Memphis and Shelby County Unified Development Code.***

SECTION 12. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 12-24-2 of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

It shall be a misdemeanor to obstruct any sidewalk or walkway with boxes, barrels, or other things interfering with the free passageway of the public or which may render such sidewalk or walkway unsafe for public travel. ***Bicycle parking is permitted on sidewalks, pursuant to Section 4.5.3 C of the Memphis and Shelby County Unified Development Code.***

SECTION 13. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 12-28-2 paragraph (A) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

Sidewalks shall be constructed along ~~the~~ public street frontages ~~of all lots in developing areas that have curbs and gutters installed along the public streets abutting and within the development, in accordance with the specifications, standards and grades established by the city engineer with the following exceptions:~~ ***in accordance with Chapter 4.3 of the Memphis and Shelby County Unified Development Code.***

~~1. The lot frontages on culs-de-sac with twenty-five (25) or less dwelling units;~~

~~2. The lot frontages on loop streets and "L" streets with fifty (50) or less dwelling units;~~

~~such exceptions to be determined by the city engineer based on the definitions of the street classifications established in the subdivision regulations.~~

SECTION 14. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 12-28-3 paragraph (A) of the code of ordinances of the city of Memphis is hereby amended and replaced to read as follows:

On existing streets improved prior to the effective date of this section, sidewalks shall be required, provided that at least twenty-five (25) percent of the sidewalks already exist. These sidewalks shall be constructed immediately upon receipt of notice from the city engineer. For topographic reasons, the city engineer may waive this requirement on all or any portion of any street, parkway, boulevard, avenue or other public street of the city for which an established grade has been lawfully fixed. ***Exceptions to this section may be***

granted pursuant to Section 4.3.4 of the Memphis and Shelby County Unified Development Code.

SECTION 15. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the provisions of Chapter 12-60, Residential Corridors, is amended and replaced to read as follows:

See Section 8.3 of the Memphis and Shelby County Unified Development Code.

SECTION 16. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 14-24, Landmarks Preservation, is amended and replaced to read as follows:

See Section 8.4 of the Memphis and Shelby County Unified Development Code.

Bill Morrison, Chairman
Memphis City Council

THE FOREGOING ORDINANCE
5459 PASSED
1st Reading 6-5-2012
2nd Reading 6-19-2012
3rd Reading 7-17-2012
Approved
Chairman of Council
Date Signed: 8/2/2012

Approved:
Mayor, City of Memphis
Date Signed: 8.10.12

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Swipes
Comptroller

ATTEST:

Comptroller