

**ORDINANCE NO. 2018 - 16**

**AN ORDINANCE AMENDING THE SEARCY CODE OF ORDINANCES; AMENDING CHAPTER 4 OF THE SEARCY CODE OF ORDINANCES; ESTABLISHING PROCEDURES RELATED TO APPLICATIONS FOR PRIVATE CLUB PERMITS UNDER ARKANSAS LAW; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES**

**WHEREAS**, the State of Arkansas adopted Act 1112 of 2017 which among other things amended ACA § 3-9-222 and the method of making an application for a private club and the sale of alcoholic beverages in a city such as Searcy, Arkansas, allowing such applications to now be made to the city council of the municipality in which the private club wishes to operate, and

**WHEREAS**, the City of Searcy wishes to provide for a procedure for the processing an application for a private club permit for entities seeking to serve alcoholic beverages within the City of Searcy pursuant to aforesaid Arkansas law, and

**WHEREAS**, in light of the procedural changes which are now in effect the adoption of this ordinance is needed to establish the means and procedures related to the processing of any such private club application to the City of Searcy and as such declares that an emergency exists and that the need to provide for the public peace, health, safety and welfare dictates that the provisions of this ordinance shall be in full force and effect from and after its adoption.

**NOW, THEREFORE**, be it ordained by the City Council of the City of Searcy, Arkansas, to wit:

Section 1. The Code of Ordinances of the City of Searcy, Arkansas, is hereby amended by adding a section to Chapter 4 of the said code, which said Article reads as follows:

“Section 4-4. Private Club Permit Applications.

Section 4-4-1 – General. That some of the provisions of this Section are made pursuant to ACA § 3-9-222, as may be amended from time to time, as well as other Arkansas Codes as noted herein and as applicable to this purpose of this Ordinance. This Section should be regarded as being supplementary to, and not in replacement of, the code provisions of this State relating to the matters covered by this Section and the operations of any private club.

Section 4-4-2 – Definitions.

“Private Club” means a non-profit entity organized and existing under the laws of the State of Arkansas, for the purpose of the sale and the dispensing of alcoholic beverages in conjunction with the sale of food in the City of Searcy, Arkansas, the operations for which are more fully defined and regulated by the rules

and procedures of the Arkansas Alcoholic Beverage Control Division of the Arkansas Department of Finance and Administration, hereinafter referred to as the ABC.

“Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least 50 people, and has a suitable kitchen facility to serve the entire menu of the facility. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall be kept in a sanitary condition, and shall comply with the regulations of the Department of Health. Food from the menu shall be available from opening time until closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day.

“Operation of Restaurant” The restaurant shall be located in a zone as established by the Searcy Planning Commission as approved by the Searcy City Council which allows for the operation of a restaurant. The hours of operation shall be between the hours of 6AM until 12 Midnight during which time there shall be required the availability and the sale of any food and meal item on the menu for any such restaurant.

“Penalty for Violation of Requirements” The City of Searcy, Arkansas, upon a judicial determination of a violation of the provisions of this ordinance and the operational requirements set forth herein may impose in accordance with the Arkansas “Home Rule” law and ACA §14-43-602 et al and as amended and ACA § 14-55-601 as amended a fine of up to \$1,000.00 for the first offense; up to \$2,000.00 for a second offense and up to \$3,000.00 for a third or subsequent offense.

#### Section 4-4-3 – Application for a Private Club Permit.

- A. A private club application shall be made to the City of Searcy and in particular the Code Enforcement Department on forms to be provided by the City of Searcy and shall be in compliance with this section. The application shall be accompanied by a non-refundable application fee of \$1,500.00. The application shall be accompanied by the required documents listed in Subsection 4-4-3-B of this Section.
- B. The private club application shall furnish the following information, statements and documents, made by the applicant for the private club permit which shall be verified under oath by the appropriate representative of the applicant of said private club and non-profit entity:
  1. The name of the non-profit entity along with the name and address of each member of the board of directors or other governing body of said private club or proposed private club.

2. The location of the proposed private club operation which will include the address of the property upon which the private club is to be located or to be constructed along with the location of the nearest public or private school, day care center, church, hospital or medical facility and residential area within the City of Searcy, Arkansas, the existence of which shall be taken into consideration in the issuance of any permit.

3. The applicant's experience in the operation of a private club which has served alcoholic beverages along with a statement that the applicant has the sufficient financial ability to operate or construct such a facility.

4. The application shall include a statement that should the application for a permit be approved that the permittee shall adhere to and comply with all applicable laws and restrictions on the sale and distribution of any alcoholic beverages including but not limited to the sale and dispensing of such beverages to minors, off site sales or distributions off the permitted location as regulated by the ABC.

5. A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises.

4-4-4 Effect of Non-Complying Application. The City Code Enforcement Department shall determine whether the application required by Section 4-4-3-B has been properly submitted. In the event that the Code Enforcement Department determines that the application does not contain the elements required the Code Enforcement Department shall so advise the applicant and allow the applicant a reasonable time not to exceed 10 days to cure the deficiencies. In the event the applicant does not cure said deficiencies within the aforesaid time period the Code Enforcement Department shall mark the application as "DEFICIENT – NOT APPROVED" and the application shall be deemed to be denied as having not complied with the provisions of this Section. The applicant may resubmit an application along with the applicable fee though.

4-4-5 – Procedure for Review of Application.

A. Upon receipt by the Searcy Code Enforcement Department of an application that complies with the provisions of this Section, the application shall be filed with the Clerk of the City of Searcy who shall place the proposed application on the next agenda meeting of the Searcy City Council as may be provided in Chapter 2 of the Searcy Code of Ordinances for review.

- B. The Searcy City Council shall review the application at said agenda meeting and then place it on the next regular city council meeting for the purpose of setting a public hearing on the application at the city council's next following regularly scheduled meeting so there is a 30 day notice period to the public concerning any application that is filed with the City Clerk. The notice of public hearing shall be published in the manner required by Arkansas law and the Searcy procedure for public hearings on re-zoning applications. At the public hearing persons wishing to present their position upon this matter may be heard in the following order of precedence:
1. The representative of the applicant or the attorney for any applicant shall present the application for a private club permit to the City Council.
  2. Any resident of the City of Searcy or the attorney for any such resident may speak in favor of or against the private club permit.
  3. The representative of the applicant or the attorney for any applicant shall have rebuttal time to any person speaking against the proposed application. Such time shall only be for rebuttal to any statement or information submitted by any resident or the attorney for such resident but shall not be for the purpose of re-submitting the same information presented earlier.
- C. After the public hearing the application shall be considered by the Searcy City Council.
- D. The Searcy City Council shall vote to either approve or to reject the application and shall adopt an ordinance accordingly. The reasons for any rejection of an application shall be entered into the minutes of the city council meeting for use by any party desiring to appeal the action of the city council.
- E. In the event an application is approved, the ordinance adopted by the city council shall direct the Code Enforcement Office to approve the Private Club Permit application which along with a copy of the application and all records submitted to the City of Searcy shall be forwarded to the Arkansas Alcoholic Beverage Commission upon the day after the ordinance takes effect.
- F. In the event the approval of a Private Club Permit application is appealed as provided by this ordinance and Arkansas law the Code Enforcement office shall not forward the private club permit until a determination has been made by the White County Circuit Court having jurisdiction over said appeal.

#### 4-4-6 – Right of Appeal.

- A. Any applicant for a private club permit which is rejected may appeal any such denial or rejection to the White County Circuit Court within thirty 30 days of the

date of the adoption of the ordinance rejecting or denying such application.

- B. The procedure for any appeal shall be as provided in the applicable laws related to referred matters pursuant to Arkansas law.

Section 2. Section 4-2 of the Code of Ordinances of the City of Searcy is amended to read as follows:

“Sec. 4-2. Sale Prohibited.

Any person who shall sell, barter or loan, or who shall keep, carry around, or have in possession in any manner any intoxicating liquors for sale or with the intent to sell the same, or who shall in any manner directly or indirectly solicit or accept any order for the purchase or sale of intoxicating liquors within the corporate limits of the City of Searcy, Arkansas, in a manner not authorized by the laws of the State of Arkansas and with this Chapter 4 of the Searcy Code of Ordinances, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense, and, for the second and subsequent offenses, in any sum not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1000.00) and may be imprisoned in the City jail for not less than thirty (30) days nor more than six (6) months, or by both such fines and imprisonment.”

Section 3. Section 4-3 of the Code of Ordinances of the City of Searcy is repealed.

Section 4. The provisions of this ordinance are separable and, upon any finding that any provision of this ordinance is unenforceable, the remaining provision shall be enforceable according to their terms.

Section 5. Emergency Clause. The need to provide for the provisions of changes in Arkansas law and to provide for the need to make an application process for private clubs within the City of Searcy, and to provide for the public peace, health, safety and welfare, is deemed by the Searcy City Council to be an emergency and this ordinance shall be in full force and effect from and after its passage.

Adopted this 8<sup>th</sup> day of May, 2018.

**The City of Searcy, Arkansas:**

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**/s/ David Morris  
Mayor of Searcy**

**Attest:**

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**/s/ Jerry Morris  
City Clerk-Treasurer**