

CHAPTER 6
ALCOHOLIC BEVERAGES
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ORDINANCE 2010-1
Amendment 1

AN ORDINANCE TO AMEND AN ORDINANCE FOR THE LICENSING, CONTROL, TAXATION, AND REGULATION OF THE RETAIL PACKAGE SALE OF MALT BEVERAGES AND WINE AND FOR THE RETAIL BY THE DRINK SALE FOR CONSUMPTION ONLY ON THE PREMISES WHERE SOLD OF DISTILLED SPIRITS, MALT BEVERAGES, AND WINE IN CLARKESVILLE, GEORGIA

**CHAPTER 6 OF THE CODE OF THE CITY OF CLARKESVILLE GEORGIA IS
HEREBY AMENDED AND RESTATED IN ITS ENTIRETY TO READ AS FOLLOWS:**

WHEREAS, the citizens of Clarkesville, Georgia approved a referendum for the purpose of determining whether Clarkesville should be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink for consumption only on the premises where sold pursuant to an election held on November 3, 2009; and

WHEREAS, the City Council of Clarkesville, Georgia desires to combat the undesirable secondary effects of businesses where distilled spirits, malt beverages, and wine may be sold for beverage purposes by the drink for consumption only on the premises where sold; and

WHEREAS, the City Council of Clarkesville, Georgia desires to avoid negative experiences of other municipalities and counties regarding problems with certain businesses where distilled spirits, malt beverages, and wine are sold for beverage purposes by the drink for consumption only on the premises where sold, which include criminal activity, undesirable community conditions, the depression of property value in the areas surrounding certain establishments, increased expenditure for law enforcement, an increased burden on the judicial system because of increased criminal behavior, and acceleration of community blight (collectively referred to hereinafter as the "pernicious secondary effects"); and

WHEREAS, The City Council of Clarkesville, Georgia has a substantial interest in preserving the quality of life for the citizens of Clarkesville; and

WHEREAS, The City Council of Clarkesville, Georgia desires to establish a comprehensive and consolidated ordinance for the licensing, control, taxation, and regulation of the retail package sale of malt beverages and wine and for the retail sale of distilled spirits, malt beverages, and wine for consumption purposes only on the premises where sold.

NOW, THEREFORE, it is hereby ordained by the City Council of Clarkesville, Georgia that the provisions contained herein shall apply regarding the retail package sale of malt beverages and wine and for the retail sale of distilled spirits, malt beverages, and wine for consumption purposes only on the premises where sold.

CHAPTER 6

ALCOHOLIC BEVERAGES

ARTICLE I. IN GENERAL

Sec. 6-1. License a privilege.

(a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the City Council under the terms and conditions provided in this chapter.

(b) All licenses issued pursuant to this chapter shall be a mere grant of privilege to carry on the business during the term of the license, subject to all terms and conditions imposed by this chapter and state law.

(c) All licenses pursuant to this chapter shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled and is subject to any further ordinances that may be enacted."

(d) Any holder of a license issued in accordance with this chapter is required to apply for and obtain an alcoholic beverage license from the state before any sales commence. Additionally, city licensees are required to abide by all applicable state regulations and laws.

Sec. 6-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine or fortified wine.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other product, or any combination of such products in water containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The terms "beer" and "malt beverage" do not include sake, known as Japanese rice wine, but do include beverages known as "nonalcoholic" beer, which is made by fermentation of any infusion or decoction of barley, malt, hops or other products, and containing less than three percent, but more than 0.1 percent alcohol by volume.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in

O.C.G.A. § 3-5-36 for retail consumption on the premises and dispenses solely in draft form.

City Council means the City Council of Clarkesville, Georgia.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

Eating establishment means any public place, including a place available for rental by the public, selling prepared food for consumption by the public on the premises with a full service kitchen. A full service kitchen shall consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments. An eating establishment shall be prepared to serve food every hour the establishment is open, shall have a minimum seating capacity at tables of 25 persons, and shall derive at least 50 percent of the gross receipts annually from the sale of prepared meals or food.

Employee pouring permit means an authorization granted by the city to dispense, sell, serve, take orders for, or mix alcoholic beverages in an establishment licensed as a retail consumption dealer.

Fortified wine means any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. The term "fortified wine" includes, but is not limited to, brandy.

Indoor commercial recreational establishment means and is limited to an establishment:

- (1) That regularly serves prepared food with a full service kitchen (a full service kitchen, as used in this definition, shall consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments) prepared to serve food every hour the establishment is open and deriving at least 50 percent of its total annual gross sales from the sale of prepared meals or food and recreation activities; and
- (2) Wherein the sale of food and alcoholic beverages is incidental to its primary enterprise and activity on the premises. The primary activity on the premises of the indoor commercial recreational establishment shall be family-oriented in nature, generally meaning that such use attracts a range of individuals from all age groups. Uses may specifically include, but are not limited to, dinner theaters, bowling centers, and other similar uses. Outdoor commercial recreation is not included, nor shall concession sales of alcoholic beverages be permitted in an outdoor commercial recreational establishment. The term "indoor commercial recreational establishment" does not include bingo parlors, dance halls, nightclubs, taverns, billiard parlors, video arcades, adult entertainment and/or sexually related entertainment activities, and similar uses.

Licensee means the individual to whom a license for the sale or distribution of distilled spirits, malt beverages, or wine under this chapter is issued. If a licensee is a partnership or corporation, the term shall include all partners, officers, and directors of the partnership or corporation.

Nonresidential zone means the PRO, DB, CB, HB, and M-1 zoning districts, as defined under the city comprehensive zoning ordinance.

Retail consumption dealer means any person who sells alcoholic beverages for consumption on the premises, at retail, only to consumers and not for resale.

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. The term "wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at the point in the manufacturing process when it conforms to this definition.

Sec. 6-3. Notice.

For purposes of this chapter, notice shall be deemed served when personally served or when served by certified mail on the registered agent required under section 6-30(f) within three days after the date of deposit in the United States mail.

Sec. 6-4. Violation and penalties.

Any person who violates any provision of this chapter may, upon conviction, be punished by a fine of not less than \$500.00 for each offense and/or 30 days in jail, unless a different penalty is set out in any ordinance from which the violation is derived.

Secs. 6-5--6-26. Reserved.

ARTICLE II. LICENSING AND APPLICATION

Sec. 6-27. Licenses--Generally.

A license issued under this article shall:

- (1) Permit the licensee to sell or distribute the beverage for which the license is issued inside the city pursuant to the terms of this article and consistent with the laws of the State of Georgia and the United States.
- (2) Expire on December 31 of each year. An application for renewal shall be made annually on or before November 15 of each year. Any licensee must annually meet the requirements set forth by the City Council in order to obtain a renewal of any license. Any licensee making proper application with supporting documents for a license to

operate during the following calendar year and having filed such application before November 15 shall be permitted to continue to operate pending final approval of the licensee's application for the following year if final approval is not granted before January 1.

(3) Not be transferred from one person to another or from one location to another without prior approval from the City Council upon written application from the licensee in the manner described in section 6-36 of this ordinance.

(4) Depending on the license issued, permit the licensee to sell distilled spirits, malt beverages, wines, or any combination thereof, depending upon the license issued, for beverage purposes by the drink for consumption only on the premises where sold.

(5) Depending on the licenses issued, permit the licensee to sell at retail, packaged malt beverages and wines in their original and unopened consumer containers in certain retail establishments for consumption off the premises.

Sec. 6-28. Same--Types issued.

Only the following licenses shall be issued under this article:

- (1) Retail sale of packaged malt beverages and/or wines for consumption off the premises.
- (2) Retail sale of malt beverages by the drink for consumption on the premises.
- (3) Retail sale of wine by the drink for consumption on the premises.
- (4) Retail sale of distilled spirits by the drink for consumption on the premises.
- (5) Farm winery/farm winery tasting room
- (6) Art Shop
- (7) Growler sampling permit

Sec. 6-29. Separate license required for each location of sale.

Separate applications must be made for each location and separate licenses must be issued.

Sec. 6-30. Qualifications for licensing; no license issued; registered agent.

(a) The term "applicant," for the purpose of this section and unless otherwise indicated, means the corporation, partnership, sole proprietorship, or other organization and the managing agent.

(b) Every managing agent applicant for a license under this article shall be at least 21 years of age, a U.S. citizen or an alien lawfully admitted for permanent residency, and a resident of the state. The applicant shall apply on forms furnished by the city clerk and in connection therewith shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, bonds and other supporting data as required thereby.

- (1) Where the application is made on behalf of a corporation, the license shall be issued jointly to the corporation and an officer or agent thereof who meets the

requirements as set forth in this subsection (b). The officer or agent named as the applicant shall be an individual who does, in fact, have regular managerial authority over the business conducted on the licensed premises, including the sale of alcoholic beverages and who is employed fulltime by the corporation. Said individual shall be known as the managing agent.

(2) Where the application is made on behalf of a partnership, the license shall be issued jointly to the partnership and either the managing general partner thereof or an individual who meets the requirements set forth in this subsection (b), who does, in fact, have managerial authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, and who is employed fulltime by the partnership. Such individual shall be known as the managing agent.

(3) Where the application is made on behalf of a sole proprietorship, the license shall be issued jointly to the sole proprietorship and an individual who meets the requirements set forth in this subsection (b), who does, in fact, have management authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, and who is employed fulltime by the proprietor. Such individual shall be known as the managing agent. The managing agent may be the sole proprietor if he/she otherwise qualifies under this section.

(4) Where the application is made on behalf of any other type organization, the license shall be issued jointly to the organization and an individual who meets the requirements set forth in this subsection (b), who does, in fact, have management authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, and who is employed fulltime by the organization. Such individual shall be known as the managing agent. If the applicant is a nonprofit private club, the managing agent may be an officer of the organization in lieu of a fulltime employee if the individual is otherwise qualified under this subsection (b).

(5) In the event the managing agent changes, the licensee shall notify the city clerk within five days of the change. A fee of \$100.00 will be charged for the processing of the change of the managing agent, and such applicant must be approved by the City Council.

(c) When contrary to the public interest and welfare, no license to sell alcoholic beverages of any kind shall be issued by the City Council to or for:

(1) Any person, as determined by the City Council, by reason of such person's business experience, financial standing, trade associations, personal associations, arrest record, or reputation in any community in which he/she has resided, who is not likely to maintain the operation for which the license is sought in conformity with federal, state or local laws, rules and regulations.

(2) Any person who has been convicted under any federal, state or local law of any felony involving moral turpitude.

(3) Any person who has been convicted under any federal, state or local law of any felony not involving moral turpitude within ten years immediately preceding the filing of an application for such license.

(4) Any person convicted under any federal, state or local law of a misdemeanor, particularly, but not limited to, those involving alcoholic beverages,

gambling or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.

(5) A location not suitable in the judgment and discretion of the City Council because of traffic congestion, general character of the neighborhood, or by reason of the effect which such an establishment would have on the adjacent and surrounding properties or on the neighborhood.

(6) A location within an area where, in the judgment of the City Council, the number of alcoholic beverage licenses already granted makes it contrary to the public interest or welfare.

(7) A location at which a previous alcoholic beverage license has been revoked or suspended, and where, in the judgment of the City Council, the problems which have arisen from the operation of an alcoholic beverage license at such location indicate that it is not in the best interest of the public health, safety, welfare, or morals that the sale of alcoholic beverages be permitted at such location.

(8) Any location which meets the definitions of Adult Entertainment Establishments as defined in Chapter 18 Article III.

(9) Which the granting of such license would constitute a violation of state law or regulations.

(d) It shall be unlawful for any city employee directly involved in the issuance of alcoholic beverage licenses under this chapter to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.

(e) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued under the police powers of the city previously revoked within two years prior to filing of the application.

(f) All licensees shall have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be over the age of 18 and a resident of Habersham County at all times that the license and any renewal thereof is in effect. The licensee shall file the full name, date of birth, physical address, mailing address, and telephone number of such agent, along with the written, notarized consent of such agent with the city clerk, in such form as the city may prescribe. Such registered agent shall be of good moral character and shall be a representative of the licensee and must be approved by the city manager. The city manager shall refuse to approve any registered agent who is not a bona fide resident of the county or who has been convicted, including pleas of nolo contendere, within the five years preceding his/her nomination, of any felony of any kind. If any registered agent shall cease to be a representative of the licensee, to be a resident of the county, or in any manner to meet the requirements of this section, the licensee shall notify the city clerk in writing of such event and shall nominate a new registered agent within five days after such event occurs. Such new registered agent shall meet the requirements of this section and must be approved by the city manager. The city shall charge a fee of \$100.00 for a change of the licensee's registered agent; provided, however, that if the licensee fails to notify the city and nominate a new registered agent within such five-day

period, then the city shall charge a fee of \$300.00 for a change of the licensee's registered agent and/or revoke the licensee's license.

(g) A license application may be denied to any applicant for any alcoholic beverage license if the applicant lacks adequate financial participation in the proposed business to direct and manage its affairs, or if the application is intended to be a mere surrogate for a person who would not otherwise qualify for a license for any reason whatsoever.

Sec. 6-31. Application contents and terms.

(a) An application for a license to sell alcoholic beverages of any kind shall be made in person by the applicant to the city clerk in writing on forms furnished by the clerk, signed by the applicant in compliance with section 6-30, and shall contain, but not be restricted to, the following statements and information:

- (1) The name, age, address and length of residency of the applicant.
- (2) The name of the corporation, partnership, sole proprietorship, or other organization applying for the license. Such name shall include the legal name as well as the trade name of the business.
- (3) A statement of whether the applicant or any person with an interest in the application has made application at any previous time for any alcoholic beverage license and the disposition of such application.
- (4) Whether the applicant or any person with an interest in the application has ever been convicted of a crime, other than for traffic violations.
- (5) Whether a previous license issued to the applicant or any person with interest in the application has been revoked by any state or subdivision thereof or by the federal government and the reason therefore.
- (6) Whether any other person is to be interested directly or indirectly in the profits or losses or both of the proposed business.
- (7) Evidence of ownership of the building in which the business will be located or a copy of the lease, if the applicant is leasing the building. Detailed plans of such building and outside premises shall also be attached to the application, and an occupancy permit for the premises to be licensed shall have been issued by the city. No alcoholic beverage license shall be issued to any person unless the building in which the business will be located is complete. The completed building shall comply with laws and regulations of the State of Georgia and the city. Each building in which the business is to be located shall contain sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all times from the front of the street on which the building is located so as to reveal the inside retail area of the building and so as to reveal all of the outside premises of such building.
- (8) A drawing, to scale, showing the nearest church, funeral chapel, school or college or by the affidavit of a registered surveyor that the proposed location of the business complies with section 6-138.
- (9) A complete statement of his/her financial condition. The financial responsibility of every applicant for an alcoholic beverage license must be shown to the satisfaction of the City Council.

- (10) Applicant shall furnish a complete set of fingerprints as required by O.C.G.A. §3-3-2 and a signed release to permit a full criminal background check by the City police department.
- (b) All new applications for alcoholic beverage licenses shall be accompanied either by lawful money of the U.S., or by a certified check or cashier's check, payable to the city, for the proper amount of the license fee. In the event the license is refused, any sums deposited as license fees will be refunded to the applicant. No refunds will be made under any circumstances for administrative and investigative fees required in this chapter.
- (c) All applications for renewal of alcoholic beverage licenses shall be filed with the city clerk. All applications for renewal of licenses for the ensuing year shall be treated as applications for new licenses, except that they need not be advertised.
- (d) No application shall be acted upon by the City Council except at a regular meeting of the Council and after the applicant shall have published a notice of such application in the legal organ of the county once per week for two weeks prior to the regular meeting at which such application is to be presented and considered. Such notice shall contain the name of the corporation, partnership, sole proprietorship, or organization, the name of the managing agent applying for the license, and the location of the proposed business. This notice shall not be required from an existing alcoholic beverage license holder making application for the renewal of an existing license at the same location.
- (e) The making of any untrue or misleading statement in the application for an alcoholic beverage license shall be sufficient cause for the refusal, suspension, revocation or cancellation of such license, as the City Council shall deem proper.
- (f) The license fees for which provision is made within this article are due and payable immediately.
- (g) In the case of the revocation or surrender of an alcoholic beverage license before expiration, the holder thereof shall not be entitled to receive any refund.
- (h) Notwithstanding anything in this article to the contrary, the issuance of a license under this chapter shall not create any property rights in the license holder.
- (i) A violation of this article shall, upon conviction, be punishable as provided herein, and shall also subject the holder of such license to suspension or revocation of such license as the City Council deems proper.

Sec. 6-32. License fee scale.

Before a license shall be granted, the applicant shall comply with all rules and regulations adopted by the City Council regulating the sale of alcoholic beverages. Each applicant shall pay a license fee in accordance with the scale fixed, from time to time, by the City Council and kept on file in the office of the city clerk. The full amount of the fee, plus the full amount of the investigative and administrative fee, shall be submitted with the application. If the application is denied, the funds submitted, less the investigative and administrative fee, will be refunded. Once a license has been issued, however, no portion of the application fee shall be refunded if the license is revoked, suspended, transferred or surrendered.

Sec. 6-33. Fee schedule.

a) License and application fees applicable to this chapter are set out as follows:

- (1) Retail sale of packaged malt beverages and wines for consumption off the premises - \$750.00
- (2) Retail sale of malt beverages by the drink for consumption on the premises - \$500.00
- (3) Retail sale of wine by the drink for consumption on the premises - \$500.00
- (4) Retail sale of distilled spirits by the drink for consumption on the premises - \$2,000.00
- (5) Farm winery/farm winery tasting room - \$1,000.00
- (6) Art Shop - \$500.00
- (7) Administrative/Investigative fees per location - \$250.00

b) License fees for first time applicants shall be prorated as follows. There shall be no proration of the Administrative/Investigative fees.

- (1) First time applications received during the first quarter, dates being defined as January 1 through March 31, shall pay 100% of the License fees.
- (2) First time applications received during the second quarter, dates being defined as April 1 through June 30, shall pay 75% of the License fees.
- (3) First time applications received during the third quarter, dates being defined as July 1 through September 30, shall pay 50% of the License fees.
- (4) First time applications received during the fourth quarter, dates being defined as October 1 through December 31, shall pay 25% of the License fees.

Sec. 6-34. Withdrawal of application.

Any license application made pursuant to this article may be withdrawn by the applicant at any time. If the application is withdrawn before the license is issued, any sums deposited as license fees will be refunded. After issuance of the license, no refunds will be made. No refunds shall be made under any circumstances for administrative and investigative fees required in this chapter.

Sec. 6-35. Collection of fee or tax sums due.

If any person shall fail to pay the sum due under this chapter, then the City Council or the City Council's designee shall issue an execution against delinquent person and such person's property for the amount of the fee or tax, and any license shall be subject to immediate suspension until such fees and taxes are paid in full.

Sec. 6-36. Transferability of license; change of ownership.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided herein.
- (b) In case of the death of a licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of forty-five (45) days from the date of death, or until expiration of the license, or until approval of a new licensee, whichever shall first occur; provided, that no sale of alcoholic beverages shall be allowed until such time as

a personal representative of the estate, appointed by a probate court of competent jurisdiction, shall make application for authorization with the city clerk.

(c) In the event that a license is surrendered, or a licensee severs such person's association with a licensed establishment, the establishment may continue to sell alcoholic beverages for a period of forty-five (45) days from the date of surrender, or from the date determined to be the date of severance; provided, that no such sale shall be authorized until such time as a new application for a license is made, such application indicating that no change of ownership has occurred, except as excepted herein. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.

(d) Nothing in this section, however, shall prohibit one (1) or more of the partners in a partnership holding a license to withdraw from the partnership in favor of one (1) or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license, nor shall it prohibit transfers of stock which do not result in any person increasing such person's stock holdings to a total of ten (10) percent or more of any class of stock.

(e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.

(f) Except as provided above, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued hereunder automatically, without the necessity of any hearing.

(g) Violation of this section shall result in revocation of the license being used and a fine as provided in section 6-4. No license will be issued to the old or the new owner in the city for one (1) year from the date of the violation.

Sec. 6-37. Display of license at place of business.

The city alcoholic beverage license shall at all times be kept plainly exposed to view to the public at the place of the business of the licensee.

Sec. 6-38. Expiration; renewal of license.

(a) All licenses granted under this article shall expire on December 31 of each year. A licensee desiring to renew his/her license shall file an application, with the requisite fee enumerated in section 6-33, with the city clerk on the form provided for renewal of the license for the ensuing year. Applications for renewal must be filed on or before November 15, of each year. Any renewal applications received after November 15 shall pay in addition to the annual fee, a late charge of 20 percent. If a license application is received after January 1, such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held. If a license application is received after January 1, investigative and administrative costs will be assessed.

(b) All licenses granted under this article shall be for the calendar year except for temporary special event licenses as allowed pursuant to section 6-40.

(c) Any person renewing any license issued under the ordinance from which this section is derived who shall pay the required fee, or any portion thereof, after January 1, shall, in addition to the annual fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

Sec. 6-39 - Reserved

Sec. 6-40. Eligibility for issuance of a temporary special event license.

- a) A temporary license may be issued to any person, firm or corporation, for a period of time not to exceed the maximum number of days available pursuant to State of Georgia regulations in any one year for an approved special event, but not to exceed three consecutive days at any one time regardless of State regulations. The person, firm or corporation must make application and pay the fee that may be required by the ordinances and shall be required to comply with all the general ordinances and the licensing regulations for a consumption on the premises establishment with the exception of the full service kitchen requirement.
- (b) The special event must meet the following criteria before the issuance of a temporary license to sell alcoholic beverages:
 - (1) The special event must be associated with and the benefit the cause of a charitable, local trade, or civic organization.
 - (2) The special event must receive approval from the city police department on crowd control and security measures.
 - (3) The special event must receive approval from the city manager or his/her designee on traffic control measures.
 - (4) The location at which the special event is to take place must be zoned for such use and the event approved for such use by the city planning department and the city fire department.
- (c) Any employee or volunteer of the special event licensee working the special event in any position dispensing, selling, serving, taking orders or mixing alcoholic beverages shall not be required to obtain an employee permit for the special event.
- (d) The chief of police or his/her designee may immediately revoke any temporary license for a special event if continued alcohol sales may endanger the health, welfare or safety of the public.
- (e) As a condition on the issuance of a temporary special event license, the licensee shall indemnify and hold the city harmless from claims, demands or causes of action that may arise from activities associated with the special event.

Secs. 6-41--6-68. Reserved.

ARTICLE III. AUDITS, REVOCATION, SUSPENSION AND HEARINGS

Sec. 6-69. Revocation or nonrenewal of license.

(a) The City Council may revoke any license issued under this chapter or refuse to issue the same if the licensee or applicant for renewal:

- (1) Is convicted of a felony or any crime involving moral turpitude;
- (2) Makes any false statement of a material fact on the application for a license or renewal thereof, or on any document required to be filed with the City Council or city clerk;
- (3) Fails to give written notice in a timely manner of any change of ownership interest as required in section 6-36;
- (4) Violates any federal or state law, rule or regulation promulgated by the City Council under this chapter; or
- (5) Becomes disqualified under this chapter to hold a license.

(b) The City Council shall revoke a license under this chapter for any of the following reasons:

- (1) The license has been suspended three or more times in any consecutive 12-month period;
- (2) Alcoholic beverages have been sold or distributed at the licensed premises during a period of suspension of such license; or
- (3) Whenever it can be shown that a licensee under this chapter no longer maintains adequate financial responsibility upon which issuance of the license was conditioned, or whenever the licensee has defaulted in any obligation of any kind whatsoever lawfully owing to the city.

Sec. 6-70. Suspension of license.

(a) The following shall be grounds for the suspension of a license issued under this chapter for such period of time as the City Council shall, in its sole discretion, determine appropriate:

- (1) Violation by the licensee of any state or federal law or regulation, or any provision of this chapter or the regulations promulgated under its authority;
- (2) Failure of the licensee and employees or agents of the licensee to promptly report to the police department any violation of law, breach of peace, disturbance, or altercation occurring on or near the licensee's premises;
- (3) Violation of any law, regulation or ordinance pertaining to alcoholic beverages, distilled spirits, malt beverages and wines, by any employee or agent of the licensee in connection with the operation of the business of the licensee;
- (4) Operation of the business of the licensee in such a manner as to create a public nuisance or in a manner contrary to public welfare, safety, health or morals;
- (5) Failure to furnish to the City Council, upon request, any information or records that would be necessary or needed for use in determining the licensee's compliance and qualifications under this chapter; or
- (6) Knowingly selling malt beverages, wines or distilled spirits to any person while such person is in an intoxicated condition.

(b) Wherever this chapter permits the City Council to suspend any license issued under this chapter and does not mandate the period of such suspension, such discretion shall be exercised within the guidelines of this subsection.

- (1) No suspension shall be for a period of time longer than the time remaining on such license.
- (2) The following factors shall be considered on any suspension as set out in this subsection:
 - a. Consistency of penalties mandated by this chapter and those set by the City Council.
 - b. Likelihood of deterring future wrongdoing.
 - c. Impact of the offense on the community.
 - d. Any mitigating circumstances or remedial or corrective steps taken by licensee.
 - e. Any aggravating circumstances or failure by the licensee to take remedial or corrective steps.

Sec. 6-71. Hearings.

- (a) No license shall be denied, suspended or revoked without the opportunity for a hearing as provided in this section.
- (b) The City Council shall provide written notice to the applicant or licensee of its intent to deny, suspend or revoke the license. Such written notification shall be hand delivered or sent certified mail to the applicant or registered agent at the address shown on the application, and the applicant shall be directed to show cause, if any, why the proposed action should not be taken by the City Council. The notice shall:
 - (1) Advise of the time and place specified for the hearing, which shall be held not less than 20 days (if the notice is mailed) or 15 days (if the notice is hand delivered) from the date of service of the notice. For the purpose of this ordinance, notice shall be deemed delivered when personally served or when served by certified mail, within three days after the date of deposit in the United States mail.
 - (2) Set forth, in reasonable detail, the grounds for such action and the factual basis supporting those grounds; and
 - (3) Advise the applicant or licensee of the right to present evidence, witnesses or arguments and to be represented by counsel at the hearing.

Sec. 6-72. Audits of licensees.

- (a) If the City Council or its designee deems it necessary to conduct an audit of the records and books of the licensee, it shall notify the licensee of the date, time and place of the audit. The licensee shall cooperate with the audit or forfeit any license issued under this chapter.
- (b) All licensed establishments must maintain the following records for a three-year period and make them available for audit at the licensed premises.
 - (1) Monthly income or operating statements.
 - (2) Daily sales receipts showing liquor, beer, wine and food sales separately (this requirement does not apply to package beer and wine licensees).
 - (3) Daily cash register receipts such as Z-tapes or guest tickets.
 - (4) Monthly state sales and use tax reports.
 - (5) Federal income tax return with all Form 1099's.

- (6) All invoices or other statements reflecting a record of alcohol purchases by the Licensee.

Secs. 6-73--6-102. Reserved.

ARTICLE IV. LICENSEE DUTIES AND RESPONSIBILITIES

Sec. 6-103. Retail consumption dealers to store inventory only on premises.

No retail consumption dealer licensed under this chapter shall keep any beer or wine or other alcoholic beverages at any place except the licensed place of business. No retail consumption dealer shall be permitted to enter into any type of arrangement whereby distilled spirits ordered by a licensee are stored by a licensed wholesaler.

Sec. 6-104. Poured alcohol to be transported by employees.

Poured alcoholic beverages shall be transported from the point of dispensing to the customer by permitted employees only. Permitted employees are those who have applied for and received an employee pouring permit authorizing such employees to take orders and transport alcoholic beverages to customers.

Sec. 6-105. Licensees to maintain copy of chapter; employees to be familiar with terms; licensee responsible for violations.

Each alcoholic beverage dealer licensed under this chapter shall keep a copy of this chapter upon the licensed premises and shall instruct any person working there with respect to the terms of this chapter. Every licensee, including the licensee's agents and employees selling alcoholic beverages, shall at all times be familiar with the terms of this chapter.

Sec. 6-106. Employment of underage persons prohibited; exceptions.

- (a) No person shall allow or require a person in his/her employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverage.
- (b) It is unlawful for any person under the age of 18 years of age to work in any establishment licensed under this article without written consent from his/her parents or guardian.

Sec. 6-107. Failure to require and properly check identification.

It shall be a violation of this article not to require and properly check identification for such persons as reasonably necessary to ensure that an underage person is not sold, served, or does not have in his/her possession alcoholic beverages while in a licensed establishment. The term "identification," for the purpose of this section, means any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth and shall include, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card. Nothing herein shall require mandatory checking of all customers' identifications.

Sec. 6-108. Sales to underage person prohibited.

(a) No holder or employee of the holder of a license authorizing the sale of alcoholic beverages shall do any of the following upon the licensed premises:

(1) Sell or offer to sell any distilled spirits, wine, malt beverage, or any other alcoholic beverage to any person under the age of 21 years.

(2) Sell or offer to sell wine, malt beverage, or any other alcoholic beverage to any person unless such person has furnished proper identification showing that the person to whom the distilled spirits are being sold is 21 years of age or older. For the purposes of this subsection, the term "proper identification" means any document issued by a government agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth, including, but not limited to, a passport, a military identification card, driver's license, or identification card authorized under an act to require the department of public safety to issue identification cards to persons who do not have a motor vehicle driver's license. Proper identification shall not include a birth certificate.

(3) Sell or offer to sell any alcoholic beverages to any person who is noticeably intoxicated, who is of unsound mind, or who is a habitual drunkard whose intemperate habits are known to the licensee or his/her employees.

(4) Sell alcoholic beverages upon the licensed premises or permit alcoholic beverages to be consumed thereon on any day or at any time when the sale or consumption is prohibited by law.

(b) The penalty for violation of this section by an individual shall be as follows:

(1) For the first offense, a minimum fine of \$500.00.

(2) For the second offense and subsequent violations within one year, a minimum fine of \$750.00.

(c) Any licensed establishment where three or more violations of this section or of O.C.G.A. § 3-3-23 have occurred within any 36-month period shall be punished as follows:

(1) For the third offense within any 36-month period, suspension of license for a period not to exceed 90 days and a fine of \$1,000.00.

(2) For the fourth and any subsequent violation within any 36-month period, suspension of license for a period not to exceed one year and a fine of \$1,000.00.

As to these penalties, if there is a change in a majority of the licensed establishment's owners, partners or shareholders, the violations under the old ownership shall not count against the new owners; however, a different corporation, partnership or other association will be charged with the violations of its predecessor if a majority of the owners, partners or shareholders are the same.

Sec. 6-109. Purchase or possession of alcoholic beverages by underage persons.

(a) Except as may be otherwise allowed by state law, no person under the age of 21 years of age shall purchase or possess any alcoholic beverage.

(b) No person under the age of 21 years shall attempt to purchase any alcoholic beverage or misrepresent his/her age in any manner whatever for the purpose of obtaining alcoholic beverages.

Sec. 6-110. Employee and manager regulations; employee pouring permits.

The following regulations shall apply to all establishments holding a license for consumption of alcoholic beverages on the premises:

(a) No person shall be employed to dispense, sell, serve, take orders, mix alcoholic beverages, or serve in any managerial position by an establishment holding a license under this chapter until such person has been fingerprinted and cleared by the chief of police or his/her designee indicating that the person is eligible for such employment.

(b) This section shall not be construed to include employees whose duties are limited solely to those of a busboy, cook, or dishwasher.

(c) No employee pouring permit shall be issued until such time as a signed application has been filed with the city clerk or such department's designee and upon payment of a fee established by the city and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the person, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.

(d) The chief of police or his/her designee shall have a complete and exhaustive search made relative to any criminal record of the person fingerprinted or cleared. If there is no record of a violation of this chapter, the chief or his/her designee shall issue an employee pouring permit to the person stating that the person is eligible for employment. If it is found that the person is not eligible for employment, the chief of police or his/her designee shall notify such person at the address contained in the application, in writing, that such person is not eligible for employment, the cause of such denial, and right of such person to appeal.

(e) No person shall be granted an employee pouring permit unless it appears to the satisfaction of the chief of police or his/her designee that such person has not been convicted of, pled guilty to, or entered a plea of nolo contendere to any crime involving moral turpitude, illegal gambling, illegal possession or sale of controlled substances, illegal sale or possession of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, keeping a place of prostitution, solicitation of sodomy, or the commission of any sexually related crime within a period of five years of the date of conviction and been released from parole or probation. A person's first conviction for illegal possession of alcohol as a misdemeanor or violation of a city ordinance shall not, by itself, make a person ineligible for an employee pouring permit. No person shall be granted an employee pouring permit who has been convicted of, pled guilty to or entered a plea of nolo contendere to any federal, state, or local law for any felony within five years of the date of conviction and has not been released on parole or probation prior to the filing of an application for such permit. For purposes of this subsection, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense for which a person whose sentence was entered under the Georgia First Offender Act, as amended; provided, however, that any such offense shall

not be ignored if the person violated any term of probation imposed by the court granting first offender treatment or committed another crime and the sentencing court therefore entered an adjudication of guilt as to the crime for which the person had previously been sentenced as a first offender.

(f) An employee pouring permit shall be issued for a period of three calendar years from the date of the original application. As noted in subsection (k) of this section, the employee pouring permit must be in the possession of the employee while the employee is working at the licensed establishment. This permit must be in the possession of the employee while the employee permit holder is working and must be available for inspection by members of the police department or the city's staff.

(g) No person shall be issued a permit if it is determined that the person falsified, concealed or covered up any material fact by any device, trick or scheme while making an application to the city clerk for an employee pouring permit under this section. If it is determined that a person is in violation of this subsection and a permit is denied for this reason, then 30 calendar days must elapse from the date of notification by certified mailing before a new application and fee may be resubmitted.

(h) All permits issued through administrative error can be terminated and seized by the chief of police or his/her designee or the city manager or his/her designee.

(i) Replacement permits will be issued within 30 days of the original date, upon paying one-half of the fee charged for employee pouring permits. A new application and fee must be submitted after 30 days from the original application date.

(j) All permits issued under this section remain the property of the city and shall be produced for inspection upon the demand of any officer or designee of the chief of police. All permits are subject to revocation upon violation of any federal, state, or local law.

(k) No licensee shall allow any employee or manager required to hold a permit to work on the premises unless the employee or manager has in his/her possession a current valid city employee pouring permit. For new employees, a receipt issued by the city may be used for a maximum of 30 days from the date of its issue. Licensees are required to inspect and verify that each employee required to do so has in his/her possession a valid current employee pouring permit.

(l) A license fee of \$40.00 shall be charged

(m) It shall be the duty of all persons holding any license to sell alcoholic beverages to file with the city clerk or his/her designee the name of the establishment, the license number and a list of employees, including home addresses and home telephone numbers, twice annually, during the month of June and again in the month of December.

Sec. 6-111 Reserved.

Sec. 6-112. Promotions and sales.

(a) No licensee or employee or agent of a licensee, in connection with the sale or other disposition of alcoholic beverages for consumption on the premises, shall:

- (1) Offer or deliver any free alcoholic beverage to any person or group of persons;
- (2) Deliver more than one alcoholic beverage to one person at a time;

- (3) Sell, offer to sell, or deliver to any person or group of persons any alcoholic beverage at a price less than the price regularly charged for such alcoholic beverage during the same calendar week, except at private functions not opened to the public;
 - (4) Sell, offer to sell, or deliver to any person or group of persons an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public;
 - (5) Sell, offer to sell, or deliver alcoholic beverages to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not opened to the public;
 - (6) Sell, offer to sell, or deliver alcoholic beverages, including malt beverages, in any container which holds more than 32 fluid ounces (0.947 liters), except to two or more persons at any one time;
 - (7) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage during the same calendar week; or
 - (8) Encourage or permit on the licensed premises any game or contest which involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.
- (b) Each licensee shall maintain a schedule of the prices charged for all alcoholic beverages to be served and consumed on the licensed premises or in any room or part thereof. The licensee shall not vary the schedule of prices from day to day or from hour to hour within a single day. The schedule of prices shall be effective for not less than one calendar week.
- (c) No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under subsection (a) of this section.
- (d) No provision of this section shall be construed to prohibit licensees from offering free food or entertainment at any time, to prohibit licensees from including an alcoholic beverage as part of a meal package, or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person.
- (e) It is the intent of this section to prohibit activities typically associated with promotions referred to as happy hour or similarly designated promotions.
- (f) The police department shall have responsibility for the enforcement of this section.
- (g) No licensee may require the purchase of any alcoholic beverage as a part of or prerequisite to the purchase of any other product or service. If alcoholic beverages are included as part of a package of other goods and/or services, the alcoholic beverages must be priced separately and all customers must be allowed to purchase the remaining goods and services without the alcoholic beverages at a price from which the full price of the alcoholic beverages has been deducted.

Secs. 6-113--6-137. Reserved.

ARTICLE V. REGULATION OF PREMISES

Sec. 6-138. Location of licensed operation; distance requirements from schools and church buildings.

(a) Licenses shall be issued only for locations in nonresidential zones, as defined in section 6-2.

b) No person may sell or offer to sell any alcoholic beverage in or within 100 yards of any church building or alcohol treatment facility or in or within 200 yards of any school building, educational grounds or college campus, or day care facility.

(c) The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcohol treatment facility means any alcohol treatment facility operated by the State of Georgia, or any county or city government located therein.

Church building means the main structure being used by any religious organization for purposes of worship.

School building means and shall include only those structures in which instruction is offered. The term "school building" shall apply only to state, county, city or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in O.C.G.A. § 20-2-690(b).

(d) For the purposes of this section, distance shall be measured in a straight line from the point of the main structure of the day care, school, church building, or alcohol treatment facility that is closest to the establishment for the sale of alcoholic beverages in question, to the point of the main structure of the building for the sale of alcoholic beverages in question that is closest to the day care, school, or church building (in a straight line from corner to corner).

(e) As to any location licensed in the future, if the distance requirements in this section are met at the time of issuance of any license, the subsequent opening and operation of a church or school or day care or alcohol treatment facility within the distance prohibited in this section shall not prevent the continuance of an existing license or the renewal thereof or the issuance of a new license to any subsequent owner of such property.

Sec. 6-139. Sale without license or beyond boundaries of licensed premises prohibited; penalties.

It shall be unlawful for any person to sell or possess for the purpose of sale any alcoholic beverage if the person does not have a license granted by the city to sell or possess for sale the alcoholic beverages or to sell or make deliveries beyond the boundaries of the premises covered by the license. Violation of this section shall result in a fine of not less than \$500.00.

Sec. 6-140. Open area and patio sales.

(a) Alcoholic beverage sales can be made by a licensed consumption on-premises establishment in a patio or open area type environment if the establishment has been approved to do so by the City Council.

(b) The requirement for approval is that the patio or open area be enclosed by some structure providing for public ingress and egress only through the main licensed

premises. The purpose of this requirement is to prevent a customer from leaving the outside sales area with an open drink without the licensee's knowledge.

(c) The height of the structure required by subsection (b) of this section shall be a minimum of 3 1/2 feet above the patio floor, but the structure does not have to be solid or restrict visibility into or out of the patio or open sales area. Such structure must be permitted and approved by the city's building inspection department and the city's fire department as required by governing regulations or codes.

(d) The only exit from the area enclosed by the structure is to be through the licensed establishment's main premises and through an approved fire exit not for general public use unless an emergency exists. The fire exit should be of the type that sounds an alarm so that the establishment will be alerted in the event of unauthorized use when no emergency exists.

(e) If a licensee desires a patio or open sales area inside an existing structure, plans will be reviewed and approved on an individual basis by the City Council. Interior type patio or open sales areas must also meet the requirements of the city's development and fire codes.

(f) Nothing contained in this section shall prohibit a hotel or motel with a consumption on-premises license from making sales and allowing consumption of alcoholic beverages in ballrooms, meeting rooms, reception rooms, or patio areas of such hotel or motel, provided such functions are catered in connection with a meeting, conference, convention or similar type gathering at such hotel or motel. Patio areas, for the purposes of this subsection, do not have to conform to the standards of this section.

Sec. 6-141. No consumption outside premises.

(a) It is prohibited for customers to leave the premises with open alcoholic beverages, and it is the licensee's responsibility to ensure that no open beverages are sold and carried out.

(b) It is prohibited for customers to gather outside a licensed alcoholic beverage establishment and consume alcoholic beverages.

(c) It is prohibited for the manager or any employee to allow persons to gather outside a licensed alcoholic beverage establishment and consume alcoholic beverages.

(d) Notwithstanding any other contrary provisions of law, any Licensee licensed to sell alcoholic beverages for consumption on the premises may permit a patron to remove one unsealed bottle of wine per patron for consumption off the premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the restaurant's premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container.

Sec. 6-142. Specification of premises.

No alcoholic beverage license shall be issued to any person unless the building in which the business will be located is complete and detailed plans of the building and

outside premises are attached to the application or unless proposed plans and specifications and a building permit of a proposed building to be built are attached to the application. The completed building or the proposed building shall comply with ordinances of the city, county, regulations of the state revenue commissioner, and regulations of the state. The proposed building shall also be subject to final inspection and approval when completed by the building inspector. Each building in which the business will be located shall contain sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all times from the front of the street on which the building is located so as to reveal all of the outside premises of such building. Each applicant for an alcoholic beverage license shall attach to the application evidence of ownership of the building or proposed building or a copy of the lease, if the applicant is leasing the building. If the applicant is a franchisee, then such applicant shall attach a copy of the franchise agreement or contract with the application. All premises for which an alcoholic beverage license shall be issued shall afford therein adequate sanitary toilet facilities and shall be adequately illuminated so that all hallways, passageways and open areas may be clearly seen by the customers therein.

Sec. 6-143. Solicitation prohibited.

No retail consumption dealer licensed under this chapter shall require, permit, suffer, encourage, or induce any employee or person to solicit in the licensed premises, for himself/herself, or for any person other than the patron and guest of the patron, the purchase by the patron of any drink, whether alcoholic beverage or nonalcoholic beverage, or money with which to purchase the beverage, and no licensee shall pay a commission or any other compensation to any employee or person frequenting the establishment or to an agent or manager to solicit for herself/himself or for others, the purchases by the patron of any drink, whether alcoholic beverage or nonalcoholic beverage, or money with which to purchase the beverage.

Sec. 6-144. Prohibited noise from establishments.

It shall be unlawful for any establishment licensed under this chapter to make or cause to be made any loud, unnecessary or unusual sound or noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others in the city and that is audible to a person of normal hearing ability from the nearest property line of the business in question. In no event, however, shall any such loud, unnecessary or unusual sound or noise be made by an establishment licensed under this chapter after the hours of 11:00 p.m.

Sec. 6-145. Inspection of licensed establishments by Clarkesville Police Department.

Sworn officers of the Clarkesville Police Department shall have the authority to inspect establishments licensed under this chapter during the hours in which such premises are open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other city officer to conduct inspections authorized by other provisions of this Code.

Sec. 6-146. Emergency closure.

The chief of police or his/her designee may immediately close an establishment licensed under this article in case of emergency for the safety of the public or to investigate a crime for a period of time not to exceed 24 hours.

Sec. 6-147. Sale on election days.

Pursuant to O.C.G.A. § 3-3-20(b) (2) (B), the sale at wholesale and retail of alcoholic beverages, to wit: distilled spirits (by the drink), and wine and malt beverages, shall be lawful during the polling hours of any election; provided, however, nothing herein shall authorize the sale of alcoholic beverages within 250 feet of a polling place during such time as the polls are open.

Sec. 6-148. "Bring-your-own-bottle" (brown bagging) prohibited.

It is prohibited for any person to bring in his/her own alcoholic beverage (brown bag) in any establishment, whether licensed or unlicensed to serve alcoholic beverages provided however that facilities licensed as an Art Shop under this Chapter may allow customers to bring in a bottle or bottles of wine subject to the specific provisions governing the operation of an Art Shop.

Secs. 6-149--6-179. Reserved.

ARTICLE VI. MALT BEVERAGES AND WINE PACKAGED SALES FOR CONSUMPTION OFF PREMISES

Sec. 6-180. Type of retail establishment; where permitted.

(a) No malt beverages or wine shall be sold for consumption off the premises except in sites located in nonresidential zones and that meet the following criteria:

- (1) Such an establishment is in the business of retail sale of items of tangible personal property (merchandise); and
- (2) The monthly receipts for such business from the sale of merchandise other than malt beverages and wines will exceed 75 percent of the total monthly receipts of such business from the sale of all merchandise including alcoholic beverages.

(b) Notwithstanding the fact that a retail malt beverages and wine packaged sales license has been issued to a licensee, such licensee shall not be authorized to sell packaged malt beverages or wines at any time when the sales receipts of the business of such licensee derived from the sale of merchandise other than packaged malt beverages and wines are less than 75 percent of the total gross receipts of such business from the sale of all merchandise, including alcoholic beverages, for the proceeding calendar month.

Sec. 6-181. Hours and days of sale.

(a) Malt beverages and/or wine shall not be sold or distributed for consumption off the premises where sold except between the hours of 6:00 a.m. and 11:00 p.m., Monday through Saturday and between the hours of 12:30 p.m. and 11:00p.m. on Sunday.

(b) No malt beverages and/or wine shall be sold for consumption off premises at any time in violation of any federal, state, or local ordinance or regulation or of any special order of the City Council.

Sec. 6-182. Advertising in official paper of county.

A notice of each application to sell malt beverages and/or wine for consumption off the premises shall be advertised in the official legal organ of the county once a week for two weeks immediately preceding consideration of the application. An affidavit of publication verifying the required notice shall be executed by the applicant on a form provided by the city.

Secs. 6-183--6-202. Reserved.

ARTICLE VII. RETAIL SALE OF MALT BEVERAGES AND/OR WINE BY THE DRINK FOR CONSUMPTION ON THE PREMISES

Sec. 6-203. Type of retail establishment; where permitted.

No malt beverages or wine shall be sold for consumption on the premises where sold except in the following, when located in nonresidential zones:

(1) Eating establishments regularly serving prepared food with a full service kitchen. A full service kitchen will consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments. Such an eating establishment will regularly serve food every hour the eating establishment is open, shall have a minimum seating capacity at tables of 25 persons, and shall derive at least 50 percent of sales from food.

(2) Indoor commercial recreation establishments regularly serving prepared food with a full service kitchen. A full service kitchen will consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments. Such an establishment will regularly serve food every hour the eating establishment is open and shall derive at least 50 percent of its total annual gross revenue from the sale of prepared meals or food and recreation activities. Such eating establishments must be located in a zoning district which permits restaurants as conforming uses or where these eating establishments are incidental to a hotel or motel.

Sec. 6-204. Hours and days of sale.

(a) Malt beverages and/or wine shall not be sold or distributed for consumption on the premises except between the hours of 10:00 a.m. and 1:55 a.m., Monday through Saturday and between the hours of 12:30 p.m. and 12:00 midnight on Sunday. Seasonal time changes shall be 2:00 a.m. current time.

(b) No malt beverages and/or wine shall be sold for consumption at any time in violation of any federal, state, or local ordinance or regulation or of any special order of the City Council.

Sec. 6-205 Advertising in official paper of county.

A notice of each application to sell malt beverages and/or wine for consumption on the premises shall be advertised in the official legal organ of the county once a week for two weeks immediately preceding consideration of the application. An affidavit of publication verifying the required notice shall be executed by the applicant on a form provided by the city.

Secs. 6-206--6-233. Reserved.

ARTICLE VIII. RETAIL SALE OF DISTILLED SPIRITS BY THE DRINK FOR CONSUMPTION ON PREMISES

Sec. 6-234. Type of retail establishment; where permitted.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in the following, when located in nonresidential zones:

(1) Eating establishments regularly serving prepared food with a full service kitchen. A full service kitchen will consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments. Such an eating establishment will regularly serve food every hour the eating establishment is open, shall have a minimum seating capacity at tables of 25 persons, and shall derive at least 50 percent of sales from food.

(2) Indoor commercial recreation establishments regularly serving prepared food with a full service kitchen. A full service kitchen will consist of a three-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the health and fire departments. Such an establishment will regularly serve food every hour the eating establishment is open and shall derive at least 50 percent of its total annual gross revenue from the sale of prepared meals or food and recreation activities.

Sec. 6-235. Advertising in official paper of county.

A notice of each application to sell distilled spirits for consumption on the premises shall be advertised in the official legal organ of the county once a week for two weeks immediately preceding consideration of the application. An affidavit of publication verifying the required notice shall be executed by the applicant on a form provided by the city.

Sec. 6-236. Hours and days of sale.

(a) Distilled spirits shall not be sold for consumption on the premises except between the hours of 10:00 a.m. 1:55 a.m. Monday through Saturday and between the hours of

12:30 p.m. and 12:00 midnight on Sunday. Seasonal time changes shall be 2:00 a.m. current time.

(b) Distilled spirits shall not be sold for consumption on the premises at any time in violation of any local ordinance or regulation or of any special order of the City Council.

Sec. 6-237. Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell or distribute any alcoholic beverage by the package or bottle.

Secs. 6-238--6-269. Reserved.

ARTICLE IX. PRIVATE CLUBS

Sec. 6-270. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bona fide private club means any nonprofit association organized under the laws of this state which:

- (1) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this article;
- (2) Has at least 75 regular dues-paying members;
- (3) Owns, hires or leases a building or space within a building for the reasonable use of its members with:

- a. Suitable kitchen and dining room space and equipment;
- b. A sufficient number of employees for cooking, preparing and serving meals for its members and guests; and
- c. No member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

Fixed salary means the amount of compensation paid any member, officer, agent, or employee of a bona fide private club as may be fixed for him by its members at a prior annual meeting or by the governing body of the club out of the general revenue of the club and shall not include a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities which are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages or a commission.

Sec. 6-271. Regulation of sale of alcoholic beverages.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.

Sec. 6-272. Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations, and other nonprofit organizations currently having tax exempt status under either the United States Internal Revenue Code or the Georgia Income Tax Law shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption on-premises establishments.

Sec. 6-273. Hours and days of sale.

(a) No alcoholic beverages shall be sold for consumption on the premises except between the hours of 10:00 a.m. and 1:55 a.m., Monday through Saturday and between the hours of 12:30 p.m. and 12:00 midnight on Sunday. Seasonal time changes shall be 2:00 a.m. current time.

(b) Alcoholic beverages shall not be sold for consumption at any time in violation of any local ordinance or regulation or of any special order of the City Council.

ARTICLE X. BREW PUBS

Sec. 6-274. Exception for brew pubs.

(a) For all purposes of this section, a "brew pub" is defined as an eating establishment in which beer or malt beverages are manufactured or brewed for retail consumption on the premises and solely in draft form.

(b) Notwithstanding any other provision of this chapter to the contrary, a limited exception shall exist for owners and operators of brew pubs provided that:

(1) No individual shall be permitted to own or operate a brew pub without first obtaining a proper brew pub license from the City Council pursuant to the same procedures as are set forth in Article II, and each brew pub license holder shall comply with all other applicable state and local license requirements; and

(2) A brew pub license authorizes the holder of such license to (i) manufacture on the licensed premises not more than five thousand (5,000) barrels of beer in a calendar year solely for retail on the premises and solely in draft form; and (ii) operate an eating establishment that shall be the sole retail outlet for such beer and may offer for sale any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, provided that such alcoholic beverages are purchased from a licensed wholesaler for consumption on the premises only; and, provided, further, that in addition to draft beer manufactured on the premises, each brew pub licensee shall offer for sale commercially available canned or bottled malt beverages from licensed wholesalers.

(c) Possession of a brew pub license shall not prevent the holder of such license from obtaining any other license available under this chapter for the same premises.

(d) A brew pub license does not authorize the holder of such license to sell alcoholic beverages by package for consumption off the premises.

(e) A brew pub licensee shall pay all state and local license fees and excise taxes applicable to individuals licensed under this chapter as manufacturers, retailers, and, where applicable, wholesalers.

(f) Except as set forth above in this section, a brew pub license holder shall be subject to all provisions of this chapter.

Sec. 6-275 Reserved.

ARTICLE XI. LICENSED CATERERS

Sec. 6-276. Exception for licensed caterers.

(a) *License Requirements--Resident Caterers.*

(1) Any food caterer who is also an alcoholic beverage caterer possessing a valid license from the City of Clarkesville to sell malt beverages, wine or distilled spirits by the drink at a fixed location within the city may apply for an off-premises license that authorizes sales at authorized catered event(s) or function(s).

Event(s) or function(s) may not exceed five (5) days.

(2) Each off-premises catering license as authorized herein shall be valid only for the calendar month in which the license is issued. The fee for each such license shall be \$50.00.

(3) It shall be unlawful for any person to engage in, carry on or conduct the sale or distribution of alcoholic beverages off-premises and in connection with a catered event or function without first having obtained a license as provided herein.

(b) *Permit Requirements--Nonresident Caterers.* Entities within the City that wish to host an event using an alcoholic beverage caterer from another jurisdiction shall obtain an event application from the city clerk. The application for the event permit shall include:

(1) The name of the nonresident alcoholic beverage caterer desired;

(2) A copy of the alcoholic beverage license and catering license issued by the jurisdiction in which the business is located;

(3) The quantity of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event(s) or functions(s).

(4) The original event permit shall be kept in the vehicle transporting the alcoholic beverages to the catered event(s) or function(s).

(5) It shall be unlawful for a licensed alcoholic beverage caterer to distribute or sell alcoholic beverages off-premises except as authorized by the event permit.

(6) Each event permit as authorized herein shall be valid only for the event for which the permit is issued. The fee for such permit shall be \$50.00.

(c) *Limitation of License.* A licensed alcoholic beverage caterer may sell only that which is authorized by his alcoholic beverage license. For example, if the alcoholic beverage caterer possesses a valid license to sell malt beverages, he may sell only malt beverages at the authorized catered event or function.

ARTICLE XII. FARM WINERIES

Sec. 6-277. Definitions

The following words, terms, and phrases when used in this article, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning.

Commissioner shall have the meaning set forth and further defined in O.C.G.A. §3-1-2(5)

Farm Winery shall have the meaning set forth and further defined in O.C.G.A. §3-6-21.1(a)(1).

Tasting Room means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for the retail sale of such wine for consumption on the premises and for the retail sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.

Sec. 6-278. License Requirements

There is hereby created a license for the business of operating a state farm winery tasting room as set forth in O.C.G.A. §3-6-21.1 et. Seq. Said license shall be required to be presented to the City Clerk of Clarkesville Georgia prior to the issuance of a license to operate a farm winery tasting room.

Sec. 6-279. Fees

- (a) The annual fee for a farm winery tasting room license shall be \$1,000.
- (b) In the case of the revocation or surrender of the license before expiration of the calendar-year period, the holder shall not be entitled to receive any refund of any fees or taxes whatsoever.

Sec. 6-280. Compliance

Any person desiring a license to operate a state farm winery tasting room in the City of Clarkesville shall comply with the provisions of this Chapter of the City of Clarkesville Code of Ordinances and all City of Clarkesville Code of Ordinances as applicable.

Sec. 6-281. Retail sale of merchandise requirement, food sale requirement, and consumption sales only inapplicable

The requirements of Sec. 6-180, Sec. 6-203, and Sec. 6-206 of this Chapter of the City of Clarkesville Code of Ordinances shall not apply to farm winery tasting rooms.

Secs. 6-282 – 6-296 Reserved.

ARTICLE XIII. ART SHOP**Sec. 6-285. License Requirements**

- (a) Notwithstanding any other provisions of this chapter to the contrary, the City Clerk is authorized to issue an Art Shop license to businesses:
 - (1) Located in the Downtown Business District

- (2) Which meet all other license requirements set forth in this chapter; and
 - (3) Which operates as an Art Shop
- (b) An Art Shop established under this section may:
 - (1) Allow customers to bring in a bottle or bottles of wine to be consumed on the premises but may not charge a corkage fee
 - (2) Any wine served on the premises shall only be served by an employee of the Art Shop authorized to serve alcoholic beverages under this Chapter.
 - (3) The serving of wine in an Art Shop shall be subject to all of the provisions related to the service of other alcoholic beverages under this Chapter, including but not limited to the prohibition of serving wine or beer to anyone under 21 years of age or to anyone intoxicated.

ARTICLE XIV. EXCISE TAXES

Sec. 6-297. Levy and computation.

- (a) In addition to all other taxes or license fees imposed upon retailers selling malt beverages, wine or distilled spirits at retail or for consumption on the premises in the city, there is levied and imposed upon each such retailer the following excise taxes:
 - (1) Upon the sale of any malt beverages, there is imposed an excise tax of \$0.22 per liter and \$6.00 for each container of tap or draft beer of containing not more than 15 1/2 gallons.
 - (2) Upon the sale of wine, there is imposed an excise tax of \$0.22 per liter.
 - (3) Upon the sale of any distilled spirits or spirituous liquors, there is imposed an excise tax of \$0.22 per liter.
- (b) The taxes established in subsection (a) of this section shall be collected by the wholesaler at the time of sale to the retailer.

Sec. 6-298. Retailers dealing with wholesalers; registration of wholesalers.

- (a) No retailer of alcoholic beverages in the city shall purchase or otherwise receive alcoholic beverages from any wholesaler not registered under this section. Any retailer failing to comply with this requirement shall be subject to revocation of any and all city business licenses held by the retailer and any other penalty which may be imposed for violation of this Code.
- (b) Unless licensed by the city, no wholesaler in alcoholic beverages shall take orders from or make deliveries to any retailer in alcoholic beverages within the city unless and until the wholesaler registers with the city clerk on a form provided by the city and otherwise satisfies the requirements of this article placed on such wholesalers.

Sec. 6-299. Wholesaler's reports; tax collection; payment; records.

- (a) Each wholesaler registered under this article or licensed by the city shall file a report with the City Council by the tenth day of each month, itemizing for the preceding calendar month the exact quantities of all alcoholic beverages, by size and type of container, sold within the city. The report shall show the name and address of each retailer with which such wholesaler did business in the city and any other information as may be required by the City Council.

(b) Each wholesaler reporting under this section shall collect from each retailer with whom the wholesaler did business the amount of tax due the city under this article and shall hold the same in trust for the city.

(c) Each wholesaler's monthly report shall be accompanied by remittance to the city of all taxes due the city under this article for the preceding month from each retailer.

(d) Each wholesaler hereunder shall keep true and correct records, including invoices of all sales, shipments or deliveries of beverages to retailers in this city. These records shall be preserved for at least one year and shall be made available on request for inspection by any authorized representative of the city.

Sec. 6-300. Wholesaler's deposit.

Each new wholesaler licensed by the city or registered with the city, whether located outside or within the city limits, shall be required to place three months of the tax required by this article on deposit with the city. This deposit shall be an amount equal to the amount of tax paid by the wholesaler during the first month of operation in the city, and shall be deposited at the same time as the first payment of taxes. This deposit shall be retained by the city to be applied to make up for any default on the part of the wholesaler and shall be refunded to the wholesaler upon its ceasing to do business in the city, provided that the wholesaler is current in its remission of taxes. This deposit shall be adjusted each year to be an average of one-twelfth of the previous year's tax collections. A surety bond payable to the city may be posted in lieu of this deposit if such bond is in an amount equal to twice the deposit required. The deposit or bond required by this section shall be waived by the City Council upon a showing by the wholesaler that it has paid the tax levied by section 6-297 in a timely manner for a period of two consecutive years; provided, however, that if such deposit or bond is so waived, the City Council shall have the right to reinstitute the requirement of making such deposit or posting such bond if the wholesaler thereafter fails to make timely payment of the tax levied by section 6-297 with respect to any month.

Sec. 6-301. Unlawful retail sales.

It is unlawful for any retailer within the city to sell any alcoholic beverages on which the taxes under this article have not been paid by the retailer.

Sec. 6-302. Penalty; revocation of license.

(a) The failure to make a timely report or remittance shall render a wholesaler, under this article, liable for a penalty equal to ten percent of the total amount due and a further penalty of ten percent of the amount of the remittance for each successive month or any portion thereof during which the report and remittance are not filed. The filing of a false or fraudulent report shall render the wholesaler making the report liable for a penalty equal to ten percent of the amount of the remittance which would be required under an accurate and truthful report.

(b) Any failure to make a timely report or remittance or the filing of a false or fraudulent report shall also constitute grounds for the revocation of the business license or registration issued by the city to the wholesaler.

(c) The penalties in this section shall be in addition to any other penalty which may be imposed for violation of this Code.

Sec. 6-303. Sale of distilled spirits by the drink.

(a) Pursuant to the authority contained in O.C.G.A. § 3-4-130, there is imposed and levied a tax on the sale of distilled spirits by the drink, which shall be equal to three percent of the charge to the public for such drink.

(b) The tax imposed by this section shall be paid monthly, with payment due to the city clerk on the 20th day of the month following the month for which such tax is to be paid.

(c) Any taxes imposed by this section which are not paid in a timely manner shall incur a penalty of ten percent of the amount of such taxes and bear interest at the rate of one percent per month, or any fraction thereof.

(d) Retailers and retail dealers collecting the tax for the sale of distilled spirits by the drink shall be reimbursed in the form of a deduction in submitting, reporting and payment of the amount due, if such amount is not delinquent at the time of payment. The rate of deduction shall be three percent of the gross tax or \$25.00, whichever is less.

(e) The City Council shall annually designate this tax, as budgeted, for one or more specific department uses for that budget year.

Secs. 6-304-- 6-315 reserved

ARTICLE XV – SEVERABILITY

If any section, provision or clause of any part of this article shall be declared invalid or unconstitutional, or if the provisions of any part of this article as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this article not so held to be invalid, or the application of this article to other circumstances not so held to be invalid. It is hereby declared as the intent that this article would have been adopted had such invalid portion not been included herein.

ARTICLE XVI – REPEALER

The provisions of any ordinances or resolutions or parts of ordinances or resolutions in conflict herewith are repealed.

Amended and ordained this _____ day of _____, 2014.

Mayor

Attest: City Clerk
Seal