

Chapter 21 - ALCOHOLIC BEVERAGES

State Law reference— Use of proceeds of alcoholic beverage tax for prevention, education and treatment, Ga. Const. art. III, § IX, ¶ VI(e); Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.; furnishing to, purchase of or possession by persons under 21 years of age, use of false identification, O.C.G.A. § 3-3-23; public drunkenness, O.C.G.A. § 16-11-41; furnishing alcoholic beverages to persons under 21 years of age, jurisdiction of municipal courts, O.C.G.A. § 36-32-10; driving under the influence of alcohol or drugs, O.C.G.A. § 40-6-391; local regulation of alcoholic beverage manufacture, distribution, and sales, O.C.G.A. § 3-4-40 et seq.; signs advertising alcoholic beverages, O.C.G.A. § 3-4-3.

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ARTICLE I. - IN GENERAL

Sec. 21-1. - Purposes.

(a) The purposes of this chapter shall include, without necessarily being limited to, the following:

- (1) Compliance with and effectuation of the general state law;
- (2) Prevention and control of the sale of alcoholic beverages by unfit persons;
- (3) Promotion of appropriate land use and zoning and the effectuation of the city's land use and zoning policies;
- (4) Protection of the public health, safety, and welfare.
- (5) Establishing reasonable and ascertainable standards for the regulation and control of the licensing and sale of alcoholic beverages.

(b) To the maximum extent possible under state and federal law, the business of selling alcoholic beverages shall under this chapter be considered to be a privilege to be accorded in conformity with the foregoing and other public policies of the city, rather than a right.

Sec. 21-2. - Definitions.

Unless a contrary intention is clearly apparent from the context, any term used in this chapter shall have the same meaning as when used in a comparable provision of the Georgia Alcohol Beverage Code, O.C.G.A. §§ 3-1-1 through 3-12-3. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them 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.

Alcoholic beverage caterer means any retail dealer licensed pursuant to the alcoholic beverage ordinance of the City of Pendergrass who provides alcohol at authorized events or functions, special events, or special events facilities.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar 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 term does not include sake, known as Japanese rice wine.

Barrel means 31 gallons when applied to brewers and 53 gallons when applied to distillers.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Brewer means a manufacturer of malt beverages.

Brewery means a facility involved in the creation of malt beverages that produces 15,000 barrels or more (or the equivalent) per year of malt beverages.

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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 solely in draft form. In calculating the total annual gross food and beverage sales for any such establishment for the purpose of determining whether the establishment constitutes an eating establishment as defined herein, barrels of malt beverages sold to licensed wholesale dealers, as authorized pursuant to subparagraph (D) of paragraph (2) of *O.C.G.A. § 3-5-36*, or to the public for consumption off the premises in accordance with subparagraph (A) and (D) of paragraph (2), paragraph (3) and paragraph (4) of *O.C.G.A. § 3-5-36*, shall not be used.

Chief of police means the chief of police of the City of Pendergrass, or his or her designate.

Church means any permanent place of public religious worship.

City Manager means city manager or administrator as employed by the city government.

Distance means the measurement in horizontal lineal feet.

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.

Distiller means a manufacturer. In the case of distilled spirits, "manufacturer" means any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.

Eating establishment/ restaurant means an establishment which is licensed to sell or otherwise dispense distilled spirits, malt beverages, or wines and which derives at least 30 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Food caterer means any person who prepares food for consumption off the premises.

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 includes, but is not limited to, brandy.

Full-service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the city manager or his designee.

Growler means a container made of a material customary to the industry provided that the container is capable of being sealed with a tamper-proof cap, top or other seal for the purpose of complying with open container laws, and further provided that the container may hold less than 12 ounces, but not to exceed 68 ounces, and is filled with malt beverage drawn from a barrel, cask, tank, or keg by a

licensee, or an employee of a licensee, holding a package malt beverage license issued by the City of Pendergrass.

Immediate family of a person means all persons related to such person by consanguinity or affinity within the first degree, as computed according to state law.

Interest includes any pecuniary interest and any ownership interest, whether present or future, whole or partial, legal or beneficial, contingent or vested, direct or indirect, and any right, power, or authority of control.

Licensee means the individual to whom a license is issued or, in the case of a partnership, corporation, or company, all partners, officers, members, managers, and directors of the partnership, corporation, or company.

Manufacturer means any maker, producer, or bottler of an alcoholic beverage. The term also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;
- (2) In the case of malt beverages, any brewer; and
- (3) In the case of wine, any vintner.

Microbrewery means a facility involved in the creation of malt beverages that produces fewer than 15,000 barrels per year.

Package means a bottle, can, keg, barrel, or other original consumer container.

Premises means a definite closed or partitioned establishment, whether a room, shop or building, wherein alcoholic beverages are sold or consumed. The term "premises" also includes any privately owned or leased courtyard or patio which is architecturally visibly defined.

Registered agent means that individual who is a resident of the county and at least 21 years of age, required to be designated by a licensee to receive any process, notice, or demand required or permitted by law or under this chapter to be served upon a licensee or owner.

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

To-Go Cocktails means up to two cocktails per takeout "entrée ordered" in approved, sealed containers. Patrons picking up to-go cocktails by vehicle must then place these drinks in the glove box, locked trunk, or in the last seat in the back of a vehicle without a trunk. *O.C.G.A. §3-3-11.*

Wine means any alcoholic beverage containing not more than 21 percent alcohol 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 the definition of wine contained in this section.

Wine specialty shop means a retail establishment which has both package sales of wine and limited consumption on the premises of wine and draft craft beer.

ARTICLE II. - LICENSING

State Law reference— Declaration of business of manufacturing, selling and other dealings in alcoholic beverages as privilege subject to regulatory requirements, O.C.G.A. § 3-3-1; powers of local authorities as to granting, refusal, suspension or revocation of licenses generally, O.C.G.A. § 3-3-2; allowing or permitting of breaking of packages or drinking of contents thereof on premises prohibited, exception for sales pursuant to a license for consumption on the premises, O.C.G.A. § 3-3-26.

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Sec. 21-23. - License required.

(a) It shall be unlawful for any person to sell, offer for sale, or otherwise dispense any alcoholic beverages within the city except under a valid license issued under this chapter and in compliance with the provisions of this chapter.

(b) All licenses issued pursuant to this chapter shall have printed on the front:
"This license is a mere privilege subject to being revoked and annulled and is subject to the laws of Georgia and the existing and any further ordinances of the City of Pendergrass."

(c) The applicant for a license or permit, for which provision is made in this chapter, shall be subject to all state laws and regulations and to all city ordinances and regulations dealing with general licensing and consumption on the premises of alcoholic beverages, except as may be otherwise specifically provided in this chapter.

(d) The grant and issuance of an alcoholic beverage license to an applicant shall be conditioned upon:

- (1) Payment of all fees, charges and taxes applicable thereto;
- (2) Obtaining and maintenance of a license issued by the state department of revenue to the applicant for the location listed in the application for the same type activity which is authorized in the alcoholic beverage license issued by the city;
- (3) Obtaining and maintaining a business license issued by the city with respect to the business in which such alcoholic beverage license is to be utilized;
- (4) All statements, representations and information contained in the application for such license and all renewal and amended applications relative thereto continuing to remain materially unchanged except to the extent contained in amended application which have been granted pursuant to the provisions of this ordinance; and
- (5) Compliance with all requirements and provisions of this chapter and all laws, rules and regulations of the state relative to the sale, distribution and possession of alcoholic beverages.

Sec. 21-24. - Retail package licenses.

(a) Applicants may apply for one or more of the following types of **Retail licenses**:

- (1) Package malt beverage license: Retail sale of malt beverages in the original package and retail sale of growlers as authorized herein.

(2) Package wine license: Retail sale of wine in the original package.

(3) Package distilled spirits license: Retail sale of distilled spirits in the original package.

(4) Ancillary distilled spirit, wine, or malt beverage tasting license (see section 21-147, Ancillary tasting permitted.)

(b) Upon filing an application and payment of a filing fee and a license fee and after a fingerprint-based background check in accordance with Section 21-49 of this Code and review by the City Manager, a license may be issued to a licensed retail package wine or malt beverage dealer or licensed wine or malt beverage wholesaler to hold a wine or malt beverage tasting, respectively. The license shall allow the applicant to provide samples of wine and/or malt beverage to the public for consumption at a location which meets legal requirements for on-premises consumption, with the exception of a full-service kitchen requirement, under the following conditions:

(1) The applicant for a wine and/or malt beverage tasting license must hold any and all applicable licenses and permits required by the state and the city, including, but not limited to, those named above.

(2) All federal, state, and local laws and restrictions that apply to wine tastings shall also apply to malt beverage tastings.

(3) The application shall be accompanied by the requisite fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolutions adopted by the city council. The fee shall be the same for both wine and malt beverage tasting licenses.

Sec. 21-25. - Retail consumption on the premises licenses.

(a) Five classes of retail consumption on the premises licenses are available. Unless otherwise specifically provided below or in this chapter, retail consumption on the premises licenses are available only to establishments having a full-service kitchen prepared to serve food every hour they are open.

(1) Full pouring license: Retail sale of distilled spirits, wine, and beer by the drink.

(2) Limited pouring license: Retail sale of wine or malt beverages by the drink.

(3) Limited pouring license: Retail sale of wine and malt beverages by the drink.

(4) Brewpub: See definition in Section 21-2.

(5) Limited pouring license: Bring your own beverage at certain retail establishments.

(b) The application shall be accompanied by the requisite fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council. Sunday sales may be made, upon payment of an additional fee, as set by resolution of the city council, provided the licensee otherwise meets the qualifying requirements for Sunday sales. Service from more than one bar at a licensed location may be made upon payment of an additional fee per bar, as set by resolution of the city council.

(c) Any establishment that has over 75 percent of its total gross sales from the sale of malt beverages or wine is exempt from the requirement in this section of having a full-service kitchen in order to obtain a limited pouring license. This exemption does not apply if a licensee sells distilled spirits or has a full pouring license.

(d) The definition of a Restaurant or Eating Establishment above requiring that any restaurant or eating establishment with an alcohol consumption license derive at least 30 percent of its annual gross food and beverage sales from the sale of prepared meals or foods shall be suspended for those alcoholic beverage establishments (to include taprooms, breweries, microbreweries and brewpubs) located within the Town Center Entertainment District electing to use specialty cups for off premises consumption within the boundaries of the Town Center Entertainment District.

(e) Restaurants and eating establishments within the Town Center Entertainment District may serve To-Go Cocktails, meaning up to two cocktails per takeout "entrée ordered" in approved, sealed containers. Patrons picking up to-go cocktails by vehicle must then place these drinks in the glove box, locked trunk, or in the last seat in the back of a vehicle without a trunk. *O.C.G.A. §3-3-11*. Cocktails **must** be in a sealed, tamper evident container with no openings or straw holes with a label that identifies the business that made the cocktail. Cocktails or "mixed drinks" is combining distilled spirits with non-alcoholic liquid that **must** be prepared the same day by an employee of the licensee and has no more than 3 ounces of distilled spirits. No shots, packages of distilled spirits, pre-mixed cocktails in a can, etc. can be sold for off-premise consumption by restaurants under this law. These cocktails must be sold with an accompanying food order. No more than 2 mixed drinks per entrée ordered can be sold to a person over 21 years of age. All orders **must** include a receipt/timestamp that includes the date and the time of purchase. Any such cocktails **Must** be sold for personal use and picked up by the same person who purchased the order. Only restaurant personnel can deliver Beer and Wine. Deliveries can not leave the boundaries of the City of Pendergrass. No deliveries are allowed to schools, dormitories, mailboxes or package shipping locations or storage facility businesses. Beer and Wine can be delivered at any time the sale of package beer and wine is permitted by the Ordinance. All deliveries must be completed on the same day of the sale and the same day the alcoholic beverages leave the licensed premises of the retailer. Alcoholic beverages must be delivered to a *person* at the address specified in the order and cannot be left curbside. Alcoholic beverages may only be delivered to a person who:

- Is 21 or older.
- Presents proper ID verifying age.
- Provides a signature that matches the identification.
- The person cannot be noticeably intoxicated.
- Delivery drivers should not receive direct compensation (tips) for delivery of alcohol.
- Delivery drivers must allow the purchaser to inspect the delivered alcoholic beverages at the time of delivery. All sales of alcoholic beverages are final.
- Third-party service cannot upcharge alcoholic beverages.
- The licensee must appear as the merchant of record at all times, including at the time of purchase and at the time of receipt of the delivery.
- All payments for the sale and delivery of alcoholic beverage must be processed prior to the alcoholic beverages leaving the premises.

Record Keeping Requirements

- Criminal background investigation report.
- List of employees and contractual agreements of third-party services delivering alcoholic beverages.
- Employees' training course certifications.
- A record of the delivery recipient's name and date of birth for 3 years.

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Sec. 21-26. - Wholesale licenses.

(a) Any wholesale dealer in alcoholic beverages who is licensed by the State of Georgia and who does not have a place of business in the city shall be granted a license to distribute such beverages in the city upon application for such license to the city manager, submittal of an annual renewal affidavit, and a statement that he understands the alcoholic beverage rules and regulations of the city and the conditions under which retail licenses are issued. Distributors whose principal place of business is a location other than the city shall pay a registration fee of \$100.00 as authorized by *O.C.G.A. § 3-5-43* (or such fee as may be authorized by any future amendment or revision thereto).

(b) Any wholesale dealer in alcoholic beverages who is licensed by the state and who has a place of business in the city shall procure a license under the same provisions applicable to retail licensees. The application for a resident wholesale dealer's license shall be accompanied by the requisite fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

(c) Any broker in alcoholic beverages as defined by *O.C.G.A. § 3-1-2* who is licensed by the state and who has a place of business in the city shall procure a license under the same provisions applicable to retail licensees, however, such broker shall be exempt from the location requirements of Section 21-99(c). The application for a broker's license shall be accompanied by the requisite fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

(d) No retailer shall knowingly and intentionally purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall knowingly and intentionally sell any distilled spirits to any person other than a retailer licensed.

(e) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

Sec. 21-27. - Alcoholic beverage caterers.

(a) License requirements for resident caterers.

(1) Any resident caterer who possesses a valid license from the city to sell or otherwise dispense malt beverages, wine or distilled spirits by the drink at a fixed location within the city may apply for an off-premises license that permits sales at authorized catered events or functions.

(2) Each off-premises catering license, authorized herein, shall be valid only for the event for which the license is issued. The fee for each license shall be set by resolution of the city council, and this fee amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

(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 for nonresident caterers.

(1) A nonresident alcoholic beverage caterer shall submit an application for an off-premises event permit to the city administrator/manager. The fee for each such permit shall be \$50.00 as authorized by *O.C.G.A. § 3-11-3*, or such fee as may be authorized by any future amendment or revision thereto.

(2) An application for an event permit shall include the name of the caterer, the date, address, time, and name of the event and the quantity and type of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event or function.

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

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

(c) A licensed alcoholic beverage caterer may sell or otherwise dispense 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 or otherwise dispense only malt beverages at the authorized catered event or function.

(d) Sunday sales. An alcoholic beverage caterer wishing to cater an event or function on Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.

(e) Excise taxes are imposed upon the sale of alcoholic beverages by a resident caterer as provided in article 8 of this chapter.

(f) Excise taxes are imposed upon the total of individual alcoholic beverage drinks served by a nonresident caterer in the amounts set forth in article 8 of this chapter and shall be paid within 30 days after the conclusion of the catered event or function.

Sec. 21-28. - Nonprofit civic organization temporary permit.

(a) To be eligible to apply for a temporary permit to sell alcoholic beverages at an authorized event, a bona fide non-profit organization must be the applicant; a nonprofit authorization letter (Federal Form 501-C) must be produced; any required event permit must be obtained; and the

authorized event for which the event permit is issued must be associated with and benefit the cause of a charitable or civic organization.

(b) Pursuant to state law, a temporary permit shall authorize the organization to sell alcoholic beverages for consumption only on the premises for a period not to exceed one day, subject to all laws and ordinances regulating the time for selling such beverages; the temporary permit shall be valid only for the place specified in the permit; and no more than ten such permits may be issued to the applicant organization in any one calendar year.

(c) Each application for such a temporary permit shall be accompanied by a nonrefundable fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

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Sec. 21-29. - Special event temporary permit.

- (a) A retail consumption dealer may apply for an on-premises special event temporary permit.
- (b) No more than ten such permits may be issued to any location in any one calendar year.
- (c) Each application for such a temporary permit shall be accompanied by a nonrefundable fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

Sec. 21-30. - Duration of licenses.

All licenses, except as otherwise indicated, issued under this chapter shall be issued on a calendar year basis, and all licenses shall expire at midnight on December 31 of the year for which they are issued. License fees shall be prorated as follows: New applications received after January 1 shall be assessed a license fee based upon the number of months remaining in the calendar year and partial months shall count as a full month. In no case shall the fees be less than 50% of the full year fees.

Sec. 21-31. - Application.

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the City.
- (b) The application shall include but not be limited to the following:
 - (1) The name and address of the applicant;
 - (2) The proposed business to be carried on;
 - (3) If a partnership, the names and residence addresses of the partners;
 - (4) If a corporation, the names and addresses of the officers;
 - (5) The name and address of the agent for service of process;
 - (6) The name and address of the manager;
 - (7) The names and addresses of all stockholders holding more than ten or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
 - (8) Such other information as may be required by the City manager and/or the police department. If the manager changes, the applicant must furnish the finance department and the police department with the name and address of the new manager and other information as is requested within ten days of such change.

(c) All applications for a package liquor license must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses of lessor or sublessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the finance department to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the finance department and failure to so file within a period of ten days after this change is made shall be grounds for the city to cancel the license.

(d) All applicants shall furnish all data, information and records requested of them by the city manager or the police department and failure to furnish this data, information and records within 30 days from the date of the request shall automatically dismiss, with prejudice, the application. By filing an application, applicants agree to produce for oral interrogation any person requested by the finance department or the police department and considered as being important in the ascertainment of the facts relative to the license. The failure to produce the person within 30 days after being requested shall result in the automatic dismissal, with prejudice, of the application. An application shall not be considered complete until the applicant has furnished all data, information and records requested of them by the finance department or the police department.

(e) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.

(f) Each applicant and licensee shall submit to a fingerprint-based background check in accordance with Section 21-49 of this Code.

(g) The application form shall be accompanied by a copy of the lease to the premises, or proof of ownership of the premises, or proof of other authorization for use of the premises.

(h) In addition to the fingerprint-based background check, each applicant and licensee authorizes the city and its agents to secure from any legal source and by any legal means his/her civil history and to use such information in determining whether the license applied for shall be issued. Each applicant further authorizes the city and its agents to use such information in any public hearing with respect to the license applied for, either before or after the issuance of the license. Each applicant waives any right that he would otherwise have to preclude the city or its agents from obtaining and using such information, and each applicant further waives any liability of the city or its agents for obtaining and using such information.

(i) Separate applications must be made for each location, and separate licenses must be issued for each location.

(j) All applications for new licenses under this chapter shall be accompanied by a payment in cash or by certified check, for all minimum fees and occupational taxes provided for in this code for the classification into which the applicant falls.

- (k) All applicants for licenses under this chapter shall furnish plans and renderings of the proposed premises.

Sec. 21-32. - Joint responsibility.

If a partnership, each partner shall be responsible for the actions of the named licensee and the conduct of the licensed business. If a corporation, the corporation, its officers and directors shall be responsible for the actions of the named licensee and the conduct of the licensed business. If a nonprofit organization, its officers, directors, or governing authority shall be responsible for the actions of the named licensee and the conduct of the licensed business.

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Sec. 21-33. - Eligibility for license.

- (a) Every applicant shall, prior to applying for a license, read and familiarize himself with the provisions of this chapter, and the application shall constitute a certification that applicant has done so. Every licensee shall maintain a copy of this chapter on the licensed premises and shall instruct each employee engaged in the sale or handling of alcoholic beverages concerning the relevant provisions of this chapter.
- (b) An applicant shall be active in the operation of the licensed business and shall be personally present on the licensed premises sufficiently to ensure compliance with the provisions of this chapter. For purposes of this section, a licensee shall not be considered active unless he is an owner, stockholder, or fulltime employee of the licensed business and is present on the licensed premises a minimum of ten hours per week.
- (c) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individuals who are not citizens of the United States or aliens lawfully admitted for permanent residence. If, an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to ensure that a license is not granted to an ineligible person or entity.
- (d) No person, including members of a retail dealer licensee's immediate family, shall be issued, nor shall have a beneficial interest in, more than two package distilled spirits licenses issued in this state.
- (e) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any felony within the last ten years, has been on felony probation or parole within the last five years, or released from prison on felony charges within the last five years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.
- (f) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five years from a prior driving while intoxicated conviction.

(g) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of 18.

(h) A licensee shall have been, and continuously maintain, as a registered agent, a resident of the county upon whom may be served any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner.

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Sec. 21-34. - Application fee.

Each application for a license under this chapter shall be accompanied by a non-refundable application fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council. Application fees shall be paid at the time the application is filed and shall not be refunded under any circumstances.

Sec. 21-35. - Procedure for consideration of application; temporary licenses.

(a) The city manager or designee shall have the responsibility and authority to request additional information as may be determined to be necessary in order for the city manager or designee to accept the application as complete prior to its approval or denial pursuant to Section 21-36.

(b) A temporary license for a full pouring license, a limited pouring license, package malt beverage license, package wine license, and package distilled spirits license may be issued by the city administrator/manager or designee for a period of up to 60 days, provided the city manager or designee is satisfied that the applicant substantially complies with the provisions of the applicable ordinances and meets required qualifications, and the denial of a temporary license would create undue hardship upon the applicant, such as the closing of an existing business or delaying of the opening of a new business. No right or property shall vest in any applicant by virtue of the issuance of such permit. The applicant shall sign an acknowledgment that the temporary license is a mere accommodation and may be revoked, with or without cause, by the finance director at any time.

(c) The fee for issuance of a temporary license shall be set by resolution of the city council, and this fee amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

Sec. 21-36. - Denial of application.

(a) A license may be denied by the city for any violation of this chapter; for any violation of state laws and regulations relating to alcoholic beverages; for any material misrepresentation or omission in the application for the license; or if the licensee or the licensed business ceases to meet the eligibility requirements for licensure.

(b) A license may be denied by the city manager pursuant to subsection (a) of this section. The city manager shall notify the licensee of the denial in writing by certified letter detailing the effective date of the denial and the reason for said denial. The denial letter shall also give the licensee ten days in which to appeal the administrative decision to the city council. If the licensee desires to appeal the city manager's decision, the licensee shall notify the city manager of same in writing within ten days of receipt of the denial letter. The city manager shall set a date for hearing of the licensee's denial within 30 days of the licensee's written notice of appeal.

to the city manager, and the city manager shall notify the licensee in writing no later than ten days prior to such hearing of the date of such hearing pursuant to Section 21-70. Service of such notice shall be by personal service on the registered agent. If personal service fails, the notice shall be mailed by certified mail to the registered agent at the address provided and to the named licensee at the licensed premises. Delivery shall be deemed to take place on the third day following deposit in the United States mail. Pending the outcome of the complete appeal process pursuant to this subsection, the licensee may continue to operate his place of business that the license in question pertains to, assuming the licensee has a current valid occupation tax certificate and any other pertinent license.

(c) Any decision by the city manager denying an application shall be final unless the applicant applies to the county superior court by filing a petition for writ of certiorari within 30 days of the decision rendered by the city manager.

(d) In all instances in which an application is denied, the applicant may not reapply for a license for at least one year from the final date of the denial.

Sec. 21-36. A – Grounds for denial of application for renewal.

The city council shall be entitled to deny renewal of any alcoholic beverage license upon a finding by the city council, following the hearing prescribed in connection therewith, of the existence, in the opinion of the city council, of any of the following:

(1) Any violation by the holder of the alcoholic beverage license or by any other person required under this chapter in connection with such license to meet the qualifications required for the issuance of such license of any of the following:

- a. Any federal or state law, rule or regulation relative to the manufacture, distribution, sale or possession of alcoholic beverages;
- b. Any provision, condition, requirement or limitation contained in this chapter;
- c. Any criminal law which is classified as a felony; or
- d. Any criminal law involving moral turpitude;

(2) Any violation by the holder of the alcoholic beverage license or by any employee, agent, or servant of the holder of such license or the business in which such license is utilized, in connection with the maintenance or operation of any business in which an alcoholic beverage license issued by the city is utilized, of any of the following:

- a. Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
- b. Any provision, condition, requirement, or limitation contained in this chapter;
- c. Any other ordinance of the city; or
- d. Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such alcoholic beverage license is utilized;

(3) The initial application for issuance of such alcoholic beverage license, any application for renewal thereof, or any amended application relative thereto contained, as of the time made, material false or misleading statements or information or was otherwise misrepresentative or misleading;

(4) Failure of the applicant for renewal, or any other person required under this chapter in connection with such license to meet the qualifications required for the issuance of such license, to meet, as of the time of the application for renewal, the requirements established in this chapter for the initial issuance of such license;

(5) Suspension or revocation during the period of time that the alcoholic beverage license issued by the city has been issued for such location by the state department of revenue of any alcoholic beverage license issued for the location of the business in which alcoholic beverage license issued by the city is utilized;

(6) Failure of the holder of the license or any employee or agent of the business in which such license is utilized to promptly report to the police department of the city:

- a. Any violation of this chapter;
- b. Any other violation of law;
- c. Any violation of any other city ordinance; or
- d. Any breach of the peace, disturbance or alteration which occurs upon the premises of the business in which such alcoholic beverage license is utilized;

(7) Repeated failure of the holder of the license or the employees, agent and servants of the business in which such license is utilized to promptly control and prevent upon the premises of such business any of the following activities or conduct:

- a. Fighting;
- b. Disorderly conduct;
- c. Utilization of controlled substances;
- d. Gambling;
- e. Indecent conduct;
- f. Excessive noise; or

(8) Failure of the holder of the license or any other person required under this ordinance in connection with such license to meet the qualifications required for the issuance of such license to promptly pay and satisfy all taxes and other financial obligations due to the city which are not the subject of appeal or litigation.

(9) Failure of the holder of the license to comply with occupancy limits for the Premises

Sec. 21-36. B- Termination.

All rights and privileges of the holder of an alcoholic beverage license issued by the city shall terminate upon the first to occur of the following:

- (1) Death of the holder of such license;
- (2) Dissolution of a corporation, entity or partnership which are holder of such license;
- (3) The filing of any voluntary bankruptcy proceedings under the bankruptcy code by the holder of such license or the failure of the holder of such license to, within 60 days of the date of filing thereof, obtain dismissal of and involuntary proceeding filed under the bankruptcy code against the holder of such license;
- (4) Lapse of such license pursuant to the provisions of this chapter;
- (5) Denial by the city council of an application for renewal of such license;
- (6) Revocation thereof by the city council;
- (7) Surrender thereof by the licensee to the city;
- (8) Automatically without any action on the part of the city upon revocation by the state department of revenue of any alcoholic beverage license issued by the state department of revenue to the holder of the license in issue with respect to such location; or
- (9) The licensee ceases to be engaged in the sale of alcoholic beverages permitted with such license.

Sec. 21-37. - Transferability of license.

- (a) Except as provided in this section, no license shall be transferable to any other person or location. All applications seeking a transfer of a license in any respect shall be made upon application forms provided by the city manager and shall be accompanied by a non-refundable fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.
- (b) If a licensee seeks to move his place of business from the licensed premises to another place within the city, application shall be made as for an original license.
- (c) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 30 days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first; provided, however, that the city manager must be notified of the licensee's death within ten days of the death or the license shall automatically terminate on the 11th day following the death of the licensee.
- (d) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 30 days from the date of surrender, or from the date determined to be the date of severance; provided, however, that the city manager must be notified of the change within ten days of the

severance or the license shall automatically terminate on the 11th day following the date of the severance. 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.

(e) Nothing in this section shall prohibit one or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one 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 stock holdings to a total of ten or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.

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

(g) Violation of this section shall result in revocation of the license being used and a fine of \$1,000.00 each on the new ownership and the old ownership.

Sec. 21-38. - Sale or disposition of licensed business; temporary license.

(a) If any licensee withdraws from, sells, or otherwise transfers the licensee's interest in the licensed business, the licensee shall immediately notify the city manager.

(b) In the case of such a withdrawal, transfer, or sale, the city manager may issue a temporary license as provided in Section 21-35 to the successor in interest, if the successor in interest has properly completed an application and paid the appropriate fee. The temporary license shall be valid for up to 60 days or until the application for a permanent license is granted or denied by the city council, whichever first occurs.

Sec. 21-39. - Notice.

Except as may otherwise be specifically provided in this chapter, any required notice may be delivered by hand or posted by certified mail, in which event delivery shall be deemed to take place on the third day following the date of deposit in the United States mail.

Sec. 21-40. - Collection of sums due.

As to any failure to pay any sum due for fees or taxes under this chapter, the city may issue an execution against the licensee and his property for the amount of the delinquent fee or tax in addition to any other remedies the city may have.

Sec. 21-41. - License required to manufacture.

It shall be unlawful for any person to manufacture any alcoholic beverages within the city except under a license issued under this article and chapter.

Sec. 21-42. - Manufacturer defined.

As used herein, a "manufacturer" means any maker, producer, or bottler of an alcoholic beverage and:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; and
- (2) In the case of malt beverages, any brewer, excepting, however, licensed brewpub brewers;
- (3) In the case of wine, any vintner.

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Sec. 21-43. - Compliance with state law required.

The applicant for a manufacturer license shall be subject to and comply with all state laws and regulations.

Sec. 21-44. - Application for manufacturer license.

Application for a manufacturer license shall be made in the same manner and subject to the same rules and procedures as an application for any other license authorized under this chapter. The application shall be accompanied by the requisite fee in an amount as set by the resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the council.

Sec. 21-45. - Manufacturer licenses.

Manufacturer licenses which may be issued under the article shall be specific to the alcoholic beverages to be manufactured:

- (1) Manufacturer license for distilled spirits;
- (2) Manufacturer license for malt beverages;
- (3) Manufacturer license for wine.

Sec. 21-46. - Manufacturer of distilled spirits.

(a) *Barrel*, as used in this section, means 53 gallons.

(b) As provided by *O.C.G.A. § 3-4-24.2*, a limited exception to the three-tier system for the distribution and sale of distilled spirits shall include the right to sell up to 500 barrels of distilled spirits per year produced at the distiller's licensed premises to individuals who are on the premises for: (1) consumption on the premises, and (2) consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 2,250 milliliters of distilled spirits per consumer per day.

(c) A distiller may sell distilled spirits pursuant to subsection (a) of this section on all days and at all times that sales of distilled spirits by retailers and retail consumption dealers are lawful, including, but not limited to Sundays.

(d) A distiller shall not sell any distilled spirits for consumption off the premises pursuant to subsection (a) of this section at a price less than the price at which a person licensed to sell

distilled spirits by the package is permitted to sell distilled spirits pursuant to *O.C.G.A. § 3-4-26(b)*.

(e) Any distiller engaging in sales of distilled spirits pursuant to subsection (a) of this section shall remit all sales, use, and excise taxes to the proper tax collecting authority.

Sec. 21-47. - Manufacturer of malt beverages.

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(a) *Barrel*, as used in this section, means 31 gallons.

(b) As provided by *O.C.G.A. § 3-4-24.1*, a limited exception to the three-tier system for the distribution and sale of malt beverages shall include the right to sell up to 3,000 barrels of malt beverages per year produced at the brewer's licensed premises to individuals who are on the premises for: (1) consumption on the premises, and (2) consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 288 ounces of distilled spirits per consumer per day.

(c) A brewer may sell malt beverages pursuant to subsection (a) of this section on all days and at all times that sales of malt beverages by retailers are lawful, including, but not limited to Sundays.

(d) A brewer engaging in sales of malt beverages pursuant to subsection (a) of this section shall remit all sales, use, and excise taxes to the proper tax collecting authority.

Sec. 21-48. - Sale allowed only to wholesalers.

Distilled spirits, malt beverages, and wine manufactured pursuant to a manufacturer license issued hereunder shall be sold only to wholesalers and not directly to retailers or end consumers except as may otherwise be allowed by state law and city code.

Sec. 21-49. State and national criminal background checks.

(a) Wherever in this Code a requirement for obtaining any license or a permit from the city requires a fingerprint-based background check, the process of acquiring and utilizing same shall be in accordance with this section and all applicable Georgia Bureau of Investigation ("GBI") requirements in addition thereto.

(b) An applicant for any license or permit that is required under a provision of this Code to undergo a "fingerprint-based background check," shall submit two sets of his or her fingerprints taken by any law enforcement agency in the United States to the city manager or designee, along with appropriate fees for the fingerprint-based background check.

(c) Upon receipt of the fingerprints and the appropriate fees, the city manager or designee will transmit both sets of fingerprints and the appropriate fees to the Pendergrass Police Department, who will then submit them to the Georgia Bureau of Investigation, who will conduct a state-wide background check. The GBI will then transfer the same to the Federal Bureau of Investigation ("FBI") for a comparison with nationwide records. The results of the FBI check will be returned to the GBI, which will return the full search results to the City of Pendergrass Police Department. The Pendergrass Police Department shall then transmit to the city manager or designee any potentially disqualifying results received from the GBI

by writing same on the background check consent form. The Pendergrass Police Department shall retain until the conclusion of the licensing year for the license or permit applied for a copy of the fingerprint cards, results received from the GBI and the background check consent form.

(d) In rendering a fitness determination for approval or denial of a license or permit, the city manager or designee will determine, based on the results received from the GBI, whether the record subject has been convicted, plead guilty or nolo contendere, to the disqualifiers as stated in the applicable section of this Code governing the specific licensing or permitting process. The city shall keep a copy of the application and background check consent form as required by the city's document retention schedule.

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(e) A record subject may request and receive a copy of his/her criminal history record information from the Pendergrass Police Department. Should the record subject seek to amend or correct his/her record, he/she must contact the GBI for a State of Georgia record or the FBI for records from other jurisdictions maintained in its file.

Sec. 21-50. Eating and drinking establishments/ restaurants.

Eating and drinking establishments are defined as establishments that include provisions for prepared food and/or beverages for on- or off-premises consumption. Typical uses include ice cream shops, bakeries, coffee shops, cafes, restaurants and bars.

Secs. 21-51 - 21-68. - Reserved.

ARTICLE III. - SUSPENSION OR REVOCATION OF LICENSE; HEARING

Sec. 21-69. - Suspension or revocation of license.

(a) A license may be suspended or revoked by the city for any violation of this chapter; for any violation of state laws and regulations relating to alcoholic beverages; for any material misrepresentation or omission in the application for the license; or if the licensee or the licensed business ceases to meet the eligibility requirements for licensure.

(b) Whenever the state revokes any permit or license to sell alcoholic beverages, the city license shall thereupon be automatically revoked. The police department, upon notice of such revocation from the finance department, shall take the necessary steps to see that signs are removed and that all alcoholic beverage sales cease.

(c) When suspension of a license is permitted under this chapter, but no specific period of suspension is mandated, the following guidelines shall apply:

- (1) First suspension in a 24-month period of time shall not exceed 30 days.
- (2) Second suspension in a 24-month period of time shall not exceed 60 days.
- (3) Third suspension in a 24-month period of time shall cause revocation of the license.

(d) Upon a preliminary determination by the city manager that a ground or grounds exist for the suspension or revocation of an alcoholic beverage license pursuant to the provisions of this ordinance, the city manager shall give written notice to the licensee of the time, place, purpose of the hearing, and a statement of the charges upon which the hearing before the city council shall be

held in accordance with Section 21-70. Service of such notice shall be by personal service on the registered agent. If personal service fails, the notice shall be mailed by certified mail to the registered agent at the address provided and to the named licensee at the licensed premises. Delivery shall be deemed to take place on the third day following deposit in the United States mail.

Sec. 21-70. - License review hearings by the City Council.

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(a) The City Council shall serve as the license review board and shall have the following duties:

(1) To hear deferred applications or appeals from administrative decisions by the city manager with regard to issuance, suspensions, or revocation of licenses, transfers, renewals, change of ownership, or other matters affecting such licenses or decisions by the city manager pursuant to this chapter;

(2) To hear appeals with regard to issuance or renewal of employee work permits;

(3) To hear any matter involving revocation or suspension of a license or other disciplinary action against a licensee or employee under a work permit.

(b) Applicants or licensees shall be given written notice of the date, time and place when the City Council will consider the respective matter. The applicant and interested parties shall be afforded the opportunity to be heard by the council and present evidence to the council prior to making its decision. Except as may be otherwise specifically provided, no alcoholic beverage license having been issued shall be suspended or revoked except for due cause, as defined in this section, until after a hearing and upon written notice to the holder of such license of the time, place, purpose of the hearing, and a statement of the charge upon which the hearing shall be held. Ten days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the City Council may deem the circumstances to justify. Due cause for the suspension or revocation of license shall consist of the violation of any laws or ordinances regulating the business; the violation of any state or federal law; any reason which would authorize the city to refuse the issuance of a license; or any violation of this chapter. Further, the police department shall notify the city manager if the licensee or anyone in the employ of a licensee is:

(1) Being charged with or arrested for selling alcoholic beverages:

a. To an underage person;

b. On Sunday without necessary Sunday sales license; or

(2) Being convicted of selling alcoholic beverages to an intoxicated person pursuant to *O.C.G.A. § 3-3-22* during the current license year.

(c) Once the city manager becomes aware of such charge, charges, arrest, or conviction, he shall place the matter before the City Council for a hearing. The City Council, at said hearing and after receiving evidence, may order the license to sell or serve alcoholic beverages be suspended or revoked if the evidence so warrants. All decisions of the board shall be in writing, and a copy shall be furnished to the applicant or licensee.

(d) The City Council shall have the authority to hear or determine any matter set forth in this chapter unless specifically prohibited therefrom. The hearing provided for in subsection (a) of this

section, which need not be a regular meeting of the council, may be continued by announcement at such time and place due to the lack of a quorum of the city council or at the request of the license holder or for good cause shown for a period of not longer than ten days. At such hearing the holder of the license shall have the opportunity to show cause why the license should not be suspended or revoked and shall be entitled to the opportunity to present evidence, to present witnesses, to cross examine witnesses presenting evidence in favor of suspension or revocation, to be represented by an attorney, and to have the proceeding transcribed or recorded at the license holder's expense, all in accordance with such rules and procedures as may be adopted from time to time by the city council relative thereto.

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(e) Upon close of the public hearing, the City Council shall reach a decision on the matter before it, and the decision of the City Council shall be final. Following the conclusion of such hearing the city council shall, at a regular or called meeting thereof within 30 days of the date of such hearing, render its decision regarding whether the license in issue should be suspended or revoked and, if suspended, then the duration of such suspension and the amount of license reinstatement fee which amount shall not be in excess of \$500.00, if any, as the city council shall in its sole discretion determine to be appropriate under the circumstances, which license reinstatement fee shall be paid as a condition to reinstatement of the license following suspension.

(f) Upon the suspension or revocation of such license then the city manager shall cause the license holder to be notified in writing within ten days of such decision of the nature of such decision and the grounds therefore and thereupon the license shall immediately become suspended or terminated in accordance with such decision and the license holder shall immediately upon receipt of such notice cease and desist from all activity authorized under such alcoholic beverage license in accordance with such decision and physically surrender such license to the City Manager. If the city council determines that grounds do not exist to suspend or terminate such license or decides to not suspend or terminate such license notwithstanding the existence of grounds therefore then the city manager shall promptly notify the license holder thereof.

(g) The decision of the council as rendered on an appeal under this article shall be final unless the applicant, licensee or permit holder applies to the county superior court by filing a petition for writ of certiorari within 30 days of the decision rendered by the council.

(h) Minutes and records of all proceedings shall be kept and maintained in the office of the city manager.

Secs. 21-71—21-98. - Reserved.

ARTICLE IV. - LOCATION OF SALES

Sec. 21-99. - Distance from churches, schools, etc.

(a) No *package malt beverage license, package wine license, or consumption on the premises license* shall be issued for any place of business which is located within 100 yards of any school building, educational building, school grounds, college campus, or adult entertainment establishment. *O.C.G.A. §3-3-21*

(b) No *package distilled spirits license* shall be issued for any place of business which is located within 100 yards of any church building or alcohol treatment center, or which is located within

200 yards of a school building, educational building, school grounds, college campus, or adult entertainment establishment. *O.C.G.A. §3-3-21*

(c) Unless otherwise provided by law, all measurements to determine the distances referred to in this section shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:

(1) From the front door of the structure as determined by the city manager or his or her designee, from which alcoholic beverages are sold or proposed to be sold; and

(2) In a straight path to the front door of the building or to the nearest portion of the grounds, as determined by the city manager, or his or her designee whichever is applicable under this chapter.

(d) No license shall be revoked and no application for a license or renewal shall be denied by reason of the method of measurement set out in this subsection if such license or license application or renewal application is for premises for which a license was granted prior to the enactment of this chapter in reliance on another method of measurement.

(e) Unless otherwise on file with the city, no application for a license shall be approved which does not include, or have attached thereto, a certificate from a registered surveyor which shows a scale drawing of the premises and the location at which the applicant desires to operate an alcoholic beverage outlet and which shows, with linear foot measurements where appropriate, such location's compliance or noncompliance with the provisions of this section, or a certificate from a registered surveyor which states that the subject alcoholic beverage outlet meets all of the location and distance requirements of this section, and shows such location's compliance or noncompliance with linear foot measurements where appropriate or required.

(f) When a license application is for premises not yet constructed or not yet completed, a license may be issued if the application includes the plans for the premises and a surveyor's certificate, as required under subsection (e) of this section, clearly showing that the premises will, when completed, meet the requirements of this section.

(g) If the distance requirements of this section are met at the time a license is issued, the subsequent opening and operation of a church or school within the prohibited distance shall not prevent the continuance of an existing license or the issuance of a new license to a subsequent owner of the property; provided, however, that as to any new license, the prior license must have been lawful and validly issued at the location at any time during the 12 months immediately preceding the application for the new license.

(h) As used in this section, the term "school building" or "educational building" shall apply only to state, county, city or church school buildings and to such buildings at any other schools in which are taught subjects commonly taught in the schools and colleges of this state and which are public schools and private schools as defined in *O.C.G.A. § 20-2-690(b)*. The term "school building" includes only those structures in which instruction is offered. The term "church building" as used in this section means the main structure used by any religious organization for purposes of worship.

Sec. 21-100. - Sales and consumption on public property.

- (a) Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any person to sell, serve, or otherwise dispense any alcoholic beverage in a street, alley, or parking lot commonly used by the public or in any other public place or on public property.
- (b) Private parties and organizations may secure a permit from the city manager to serve, sell, or otherwise dispense alcoholic beverages on property owned or leased by the city.
- (c) An outdoor festival host holding a special event permit may allow or prohibit alcohol consumption at the outdoor festival and shall have the right to require that alcohol consumed at the outdoor festival be purchased or obtained from an official outdoor festival vendor. Such authorization and/or limitations shall be set forth on the application for the special event permit.

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Sec. 21-101. - Open area and patio sales.

- (a) Except as provided in subsections (b) and (d) of this section, it shall be unlawful for any person to sell, serve, or otherwise dispense alcoholic beverages outside the licensed premises structure.
- (b) No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the city. The city shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including but not limited to regulations pertaining to maximum capacity, ingress and egress.
- (c) Nothing contained in this section shall prohibit a hotel or motel with a consumption on the premises license from making sales and allowing consumption of alcoholic beverages in ballrooms, meeting rooms, reception rooms, or patio areas.
- (d) Restaurant and eating establishments located within the Town Center Entertainment District shall be allowed to serve, sell and otherwise dispense alcoholic beverages outside of their licensed premises structure on their patios and decks.

Sec. 21-102. - Exemptions.

The distance restrictions contained in Subsection 21-99(c) of this article shall not apply to a retail sales or food and beverage retail sales establishment, as defined in Section 21-50 a package malt beverage license or package wine license for off-site consumption, subject to meeting each of the following criteria:

- (1) The area dedicated to the display, storage and sale of the above products does not exceed 20 percent of the gross floor area of the business/facility; and
- (2) The business is located within an independent building site or shopping center.

Secs. 21-103—21-130. - Reserved.

ARTICLE V. - BUSINESS REGULATIONS

Sec. 21-131. - Display of license.

(a) Each license issued under this chapter shall at all times be kept in a public area plainly exposed to view upon the licensed premises.

(b) All retail consumption dealers and retail dealers who sell at retail any alcoholic beverages for consumption on the premises shall post, in a conspicuous place, a sign which clearly reads:

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

(c) Each retail business establishment which is licensed to sell alcoholic beverages of any kind shall post in a conspicuous place a notice which shall contain the provisions of the laws of this state which deal with the unlawful sale of such items to underage persons and the penalties for violating such laws.

Sec. 21-132. - Purchase and sales records.

(a) Every licensee shall keep and preserve records of all alcoholic beverages purchased and sold or otherwise dispensed by the licensee. All consumption on the premises licensees shall keep and preserve records of all food and nonalcoholic beverages purchased and sold or otherwise dispensed by them. Such records, more specifically described in subsection (c) of this section, shall at all times be open for inspection by the city manager or his designee. These records shall be maintained for a period of at least three years unless the city manager determines that no such records exist, and it is not financially practical, based on the net income of the licensee, to require the keeping of such records.

(b) If the city manager deems it advisable to conduct an audit of the records of a licensee, he shall notify the licensee of the date, time, and place of the audit. The city manager may designate the city's internal auditor or other person to perform the audit, and the licensee shall cooperate with the audit or be subject to having his license suspended or revoked.

(c) At the request of the city manager or his designee, the licensee shall make available the following records required to be kept for at least three years:

- (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; and
- (5) Federal income tax returns.

Sec. 21-133. - Sale to, purchase or possession by underage person.

(a) Except as otherwise provided in this section:

- (1) No person, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age.

- (2) No person under 21 years of age shall purchase or possess any alcoholic beverage.
 - (3) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining unlawfully any alcoholic beverage.
 - (4) No person shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age.
 - (5) No person under 21 years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (b) The prohibitions contained in subsections (a)(1), (2), and (4) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
- (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (2) At a religious ceremony.
- (c) The prohibitions contained in subsections (a)(1), (2), and (4) of this section shall not apply when the parent or guardian of the underage person gives the alcoholic beverage to the underage person and when possession is in the home of the parent or guardian and such parent or guardian is present.
- (d) The prohibition contained in subsection (a)(1) of this section shall not be violated when a person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, the person's photograph, and the person's date of birth. Proper identification includes, without being limited to, a passport, military identification, driver's license, or an identification card authorized under *O.C.G.A. §§ 40-5-100 through 40-5-104*. The term "proper identification" shall not include a birth certificate.
- (e) This section shall not prohibit employment of a person under 21 years of age in a licensed premises if such employment is lawful under this chapter.
- (f) In any case where a reasonable or prudent person could doubt whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is 21 years of age or older, the person selling or otherwise furnishing such alcoholic beverage shall request to see and be furnished with proper identification as provided in subsection (d) of this section. The failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so in violation of subsection (a)(1) of this section.
- (g) In any case where a person selling or otherwise furnishing alcoholic beverages checks for a proper identification, such person shall carefully inspect such identification. If a reasonably prudent person could determine that such identification has been altered and if such person sells or otherwise furnishes alcoholic beverages to the holder of such altered identification, then such may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so in violation of subsection (a)(1) of this section.