

ORDINANCE NO. 2022-1-4-1

AN ORDINANCE TO AMEND CHAPTER 4 – ALCOHOLIC BEVERAGES OF THE CODE OF ORDINANCES, CITY OF SUMMERVILLE, GEORGIA TO AUTHORIZE THE ISSUANCE OF RETAIL LIQUOR LICENSES, TO SET FORTH SPECIFIC CRITERIA AND PROVISION FOR APPLYING FOR SAID LICENSE, AND OTHERWISE PROVIDE FOR GOVERNANCE OF SAID LICENSE TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City of Summerville, Georgia is charged with providing for the health, safety and welfare of the citizens of the City; and

WHEREAS, the electors of the City of Summerville, through referendum, having authorized the City of Summerville to issue retail liquor license, and it being necessary for the City to establish the criteria that must be met in order to obtain a liquor license and to adopt provisions relative to the operation of a retail liquor store, and to make other and further revisions of said chapter which authorizes and governs said licenses and licensees;

THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF SUMMERVILLE, GEORGIA, HEREBY ORDAIN that Chapter 4 of The Code of the City of Summerville, Georgia, is hereby amended with the following additions and deletions as follows:

Sec. 4-1 - Definitions.

The following definitions are added:

Retailer or retail dealer means any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale.

Wholesaler or wholesale dealer means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers or to retail consumption dealers.

All other definitions set forth in Sec. 4-1 shall remain unchanged.

Sec. 4-52 – Retail package licenses.

Section (a) (3) is amended to remove the “Reserved” status creating a Package Distilled Spirits license.

All other portions shall remain unchanged.

Sec. 4-60. - Eligibility for license.

The provisions of Section 4-60 will be deleted in its entirety and replaced with the following:

- (a) No license defined herein shall be issued to a person:
 - (1) Who is not a citizen or legal resident of the United States;
 - (2) Who is not at least 21 years of age prior to the date of application;
 - (3) Who owes any debt or obligation to the City of Summerville, including but not limited to excise taxes, occupational taxes, property taxes, utility fees or other fees or fines, or who is in violation of any City ordinances related to the maintenance of the property for which the license is applied for; or
 - (4) To an applicant who leases premises under a variable rent system whereby the landlord shares in the profits from the business.
 - (5) Who is not a legal resident of Chattooga County, Georgia.

- (b) When contrary to the public interest and welfare, no alcoholic beverage license shall be issued by the City to:
 - (1) Any person who has been convicted within fifteen (15) years immediately prior to the filing of the alcoholic beverage application with the City of any felony or for whom outstanding indictments, accusations or criminal charges exist charging such individual with any of such offenses and for which no final disposition has occurred. If at the time of application, the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal;
 - (2) Any person who has been convicted within five (5) years immediately prior to the filing of the alcoholic beverage application with the City of the violation of any state, federal or local ordinance pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof;
 - (3) Any person who has been convicted under any federal, state or local law of any felony involving moral turpitude.
 - (4) Any person who has been convicted of a crime involving soliciting for prostitution, pandering, gambling, letting premises for prostitution, keeping a disorderly place, the traffic offense of hit and run or leaving the scene of an accident, or any misdemeanor serious traffic offense as defined in O.C.G.A. § 40-6-390 et seq., but excluding any first or second conviction for driving under the influence of alcohol or drugs, or for whom outstanding indictments, accusations or criminal charges exist charging such individual with any of such offenses and for which no final disposition has occurred. If at the time of application, the applicant is charged with any of the offenses prescribed in this subsection,

consideration of the application shall be suspended until entry of a plea or verdict or dismissal; or

- (5) Any person who has been convicted of three (3) violations of this Code governing alcoholic beverages licensed hereunder within the last five (5) years immediately prior to the filing of the licensee's application with the City, except that no application will be accepted for twenty-four (24) consecutive months immediately following the revocation of an alcohol license.
- (c) No retail license required by this division shall be granted to any person if such person retains for the operation of the license establishment an employee who has been convicted of a felony.
- (d) A license application may be denied to any applicant for any alcoholic beverage license where it appears that the application is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license for any reason whatsoever.
- (e) No license for the sale of alcoholic beverages shall be granted to any person when the location for which the license is sought has had a license revoked within the last twelve (12) months unless there is a one hundred (100) percent change in ownership and control between the previous licensee and the new application. For purposes of this subparagraph, one hundred (100) percent change in ownership and control shall mean a one hundred (100) percent change in all individuals, partners, officers, directors, shareholders, members, managers and/or all persons having any whole, partial, beneficial, or other interest in the business where the alcoholic beverage license is located. One hundred (100) percent change in ownership and control shall not include a transfer in ownership and control to any person in the immediate family of any individuals, partners, officers, directors, shareholders, members, managers and/or any persons having any interest in the business where the alcoholic beverage license is located. The application for the alcoholic beverage license must be applied for and approved prior to the sale of the business. An alcoholic beverage license may not be issued until the new owner has established that the sale of the business is bona fide. The applicant for the new license must provide documentation concerning the sale, including but not limited to documentation concerning ownership of and all business interests in the old license in addition to documentation concerning the ownership of and all business interests in the new license.
- (g) The application for a license of consumption-off-the-premises at catered functions shall include photostatic, digitals, or other copies of all state and local licenses allowing for the operation of the applicant's business or relating to the sale of alcoholic beverages.
- (h) The application shall be made on a form provided by the City of Summerville and shall be accompanied by the following:
 - (1) Proof of planning and zoning compliance;
 - (2) A copy of the business information records for the entity or entities that have an ownership interest in the entity applying for the license, as is maintained by the

Georgia Secretary of State's Corporations Division, which is no more than ten (10) days old, showing that the applicant is registered and authorized to transact business in the State of Georgia, and that such registration is current and in good standing; or, an affidavit identifying the type of business entity applying for a license under this Chapter and certifying that the entity is of a type that is not required to register with the Georgia Secretary of State in order to transact business in the State of Georgia;

- (3) Documentation showing that the applicant is the owner of the business premises or that he/she has a valid lease or other document demonstrating a right of possession to the property upon which the premises are located. In the event the applicant will be operating the business under a lease agreement, said lease shall provide the applicant sufficient control over the property upon which the premises are located to allow him/her to comply with the provisions of this chapter. Further, if the applicant will be operating the business under a lease agreement, the applicant must disclose the name of all persons owning a beneficial interest in the premises, state the amount of rent to be paid, the manner in which the rent is to be determined, and to whom and at what intervals the rent is to be paid. Additionally, the applicant shall attach a copy of the lease agreement, together with a verified statement that the lease agreement is the entire agreement between the parties;
- (4) An unexpired identification card issued by any U.S. state or the United States government, bearing a current photograph of the applicant; and
- (5) A current lease or property deed demonstrating a right of possession to the property upon which the premises are located.

Sec. 4-62. - Distance from schools, family dwellings etc.

- (a) No package distilled spirits, malt beverage or 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, church building or place of worship.
- (b) No distilled spirits, wine or malt beverages license shall be issued for any business which is located within 100 yards of any school building, school grounds, college campus, church building or place of worship. This shall not apply to any location for which a license has been issued prior to July 1, 1981, or to the renewal of such license. Nor shall this apply at any location for which a new license is applied for if the sale of wine and beer was lawful at such location at any time during the 12 months immediately preceding such application.

All other portions shall remain unchanged.

Sec. 4-65 - Procedure for consideration of application; temporary licenses.

The following section is added:

- (c) All holders of licenses issued hereunder must, within forty-five (45) days after the issuance of such license, open for business the establishment referred to in the license. Failure to open the licensed establishment as referred to within such period shall serve as an automatic forfeiture and cancellation of the unused license and no refund of the license fee shall be made to the license holder.

All other portions shall remain unchanged.

Sec. 4-73 – Security cameras required for certain establishment selling alcoholic beverages.

Section 4-73 shall no longer be reserved but shall be caption and read as follows:

- (a) Any licensee for the sale of any alcoholic beverages not consumed on the premises is hereby required to install a continuous video recording system dedicated to each register area and at each entrance and exit with cameras and lens of a type, number and location approved by the Chief of Police or his or her designee. Such camera must be capable of producing a retrievable and identifiable image on electronic media such as CD, DVD, flash drive or other electronic media acceptable to the Chief of Police that can be made a permanent record and that can be enlarged through projection or other means.
- (b) Cameras meeting the requirements of this section shall be maintained in proper working order at all times and shall be in operation at all hours in which such establishment is open for business. The camera shall be subject to periodic inspection by the Chief of Police or his designee along with the person on duty at the time of the inspection and in the event the primary system becomes inoperable, the licensee must have the camera repaired or have availability of a backup camera system within a ten-day period of time. In addition, in the event the camera becomes inoperable, the licensee must immediately notify the police chief or his designee. If a crime occurs or an employee believes a crime has occurred, the police department shall be contacted immediately, and the film retrieved by a designated police officer.
- (c) Violation of any provisions under this section shall constitute an offense hereunder and shall be punishable as follows:
 - a. On a first offense, there shall be a minimum fine of two hundred fifty dollars (\$250.00). In addition to said fine, the judge of the municipal court may impose,

at their discretion, a suspension of all City alcoholic beverage licenses at the establishment for a period of time not to exceed thirty (30) days.

- b. On the second offense, if within twelve (12) months of the first, there shall be a minimum fine of Five hundred dollars (\$500.00). In addition to said fine, the judge of the municipal court may impose a suspension of all alcoholic beverage licenses at the establishment for a minimum of sixty (60) days.

- (d) It shall be the responsibility of the licensee or licensee's representative to adequately and properly train any and all employees to determine if the camera system is working correctly each day at the beginning and end of their shift, and said employees shall be given instructions as to what steps are to be taken if the system is not working correctly, to specifically including without limitation, the identity of and contact information for the person to whom an any operational issues are to be reported. If there is an alleged felony committed against the owner or any employee which occurs on the premises, a person who can operate the camera system must be available within thirty (30) minutes of law enforcement's arrival on the scene following the alleged crime so that camera footage can be shown and/or provided to law enforcement.

- (e) In the event any current licensee renews his/her alcohol license, he/she shall have or six (6) months to bring the property into compliance with these security camera provisions.

Sec. 4-74 – Retail Distilled Spirits Licenses.

Section 4-74 shall no longer be reserved but shall be caption and read as follows:

In addition to the regulations previously provided in this chapter, Retail Distilled Spirits Licenses shall comply with the following regulations:

(a) *Number of Licenses Permitted:*

The City of Summerville shall issue a maximum of two (2) retail distilled spirits licenses. No additional licenses shall be authorized or issued unless and until the population within the corporate limits of the City increases to 15,000, and at that time one (1) additional license may be permitted. Thereafter, as the population within the corporate limits of the City increases in increments of 5,000, an additional retail distilled spirits license may be permitted. Said determination shall be within the discretion of the Mayor and Council based upon the population figures published either by the Northwest Georgia Regional Commission or the most recent U.S. Census.

(b) *License:*

A retail distilled spirits license shall entitle the licensee to sell distilled spirits, wine and beer.

(c) *Limitation of License:*

No person, or members of their immediate family, shall be issued, or have a beneficial interest in, more than one (1) retail distilled spirits licenses. "Person" shall include all members of a retail dealer licensee's family; and the term "family" shall include any person related to the holder of the license within the first degree of consanguinity and affinity as computed according to the canon law. These provisions shall not prohibit the reissuance of a valid retail distilled spirits license if the license was held prior to the creation of the above relationships by marriage. Additionally, no person shall have an ownership interest in two (2) entities that hold a package distilled spirits' license.

(d) *Applications for first licenses after initial enactment; selection process:*

- (1) Upon enactment of this ordinance, the City Clerk shall post, within ~~23~~25 days, a notice that applications will be accepted. Said notice shall state the place at which an application can be obtained, the earliest date on which applications will be accepted, and the date and time by which applications must be received.
- (2) Applications, together with the required information and documentation, shall be accepted no earlier than 35 days from the date notice is published, and the period of acceptance of applications shall close fourteen days thereafter, at 4:00 p.m. It shall be the responsibility of the applicant to ensure that all information and documentation is submitted and correct.
- (3) All applications submitted will be examined by the Mayor, or his designee. The City reserves the right and discretion to waive any minor deficiency which, in the opinion of the Mayor (or designee), does not substantially impact the completion of the application, but under no circumstances shall the City be required to waive any deficiency. If it is determined that any portion of an application is deficient, and the deficiency is not a minor deficiency but instead substantially impacts the completion of the application, including the failure to provide any required documentation, the application will be deemed incomplete. Any incomplete application will not be considered and will not be included in the drawing.
- (4) All required investigations by City staff shall be completed no later than 30 days after the close of the application period described in (d)(2).
- (5) The Mayor, or his designee shall collect all applications meeting the criteria for issuance of licenses and draw from those collected one (1) application for each available license.
- (6) The time for the drawing and selection, as set forth herein, shall be established by the Mayor, or his designee, posted at City Hall, and each

applicant shall be notified not less than five (5) days in advance. Applicants and the public may be present and observe the drawing process.

- (7) The Mayor, or his designee, shall ensure that the drawing is completely random, with the method of drawing being determined by the Mayor, or his designee. Each application, as it is drawn, shall be numbered by the Mayor, or his designee, consecutively, lowest number to highest.
- (8) The first license available shall be offered to the applicant with the lowest number and the second to the second lowest number.
- (9) In the event two (2) or more applicants for licenses under this section are both located less than the minimum distance required by state law (500 yards) from each other, that fact shall not disqualify either from the random drawing described hereinabove; If the second applicant's location is less than 500 yards from the first applicant's location, the second applicant shall have sixty (60) days from the date of the drawing to find an alternate location that is 500 yards or greater from the first applicant's location. If either applicant that is eligible for issuance of a license does not meet all the requirements or fails to pay the license fee when due then, the license shall be deemed forfeited, and the forfeited license shall be offered to the applicant with the next lowest number. (For example, Applicant A and Applicant B are drawn, but they are located less than the minimum distances required by state law from each other. Applicant A and B will be offered a license. Applicant B shall have sixty (60) days to find another location that meets the distance requirements. If Applicant B is unable to find another location within that time frame, Applicant B will be deemed to have forfeited the license and the license will be offered to Applicant C. If the location for Applicant A or B meet the distance requirements, but either fails to pay the license fee within the required time, then that applicant's application will be deemed forfeited and at that time it will be offered to Applicant C.
- (10) The applicants with the lowest and second lowest number shall pay the license fee to the City on or about 3:00 p.m. on the seventh day following the lottery drawing. Should either applicant with the two lowest numbers fail to pay the license by 3:00 p.m. on the seventh day, the license shall be deemed forfeited and offered to the applicant with the next lowest number. That applicant shall pay the license fee to the City on or about 3:00 p.m. on the seventh day after a license is offered, and failure to do so shall result in forfeit thereof. This process shall continue until two (2) license fees are received by the City. The license fee shall be non-refundable.

- (11) Upon payment of the license fee, a license which permits the sale of distilled spirits by the package will be issued conditioned upon the licensee obtaining a certificate of occupancy for the location at which the business will be operated. No sales shall be allowed in the building or establishment that is incomplete in accordance with the plans submitted and approved by the City or which has not been inspected by City staff to ensure compliance with City Codes. If on December 31, 2022, no certificate of occupancy has been obtained, the license may be renewed for one (1) additional year, and if the license is not renewed on or by December 31, 2022, it shall be deemed forfeited, thereby creating a vacancy as set forth in (i) of this section. If the license is renewed and the licensee fails to obtain a certificate of occupancy by December 31, 2023, the license shall be deemed forfeited, thereby creating a vacancy as set forth in (f) of this section.
 - (12) For purposes of the application and selection process contained in this section, if a date specified for action by the City or the applicant falls on a weekend, holiday, or other day that City Hall is closed, the date due for such action shall extend to the next regular business day.
- (e) Application and selection for licenses after issuance of initial licenses. In the event that less than the maximum number of licenses permitted under this section have been issued, and there is a vacancy, the following procedure shall be utilized for the application and selection process.
- (1) Within 25 days of a vacancy occurring, or the adoption of an ordinance increasing the number of licenses permitted, the clerk shall post in the legal organ a notice of said vacancy and the time applications will be accepted.
 - (2) Applications, together with the required information and documentation, shall be accepted no earlier than 35 days from the date notice is published or such other period that council determines, and the period of acceptance of applications shall close fourteen days thereafter, at 4:00 p.m. It shall be the responsibility of the applicant to ensure that all information and documentation is submitted.
 - (3) All applications submitted will be examined by the City Manager, or his designee, and applications with any deficiency shall be returned to the applicant within ten (10) days. Any application submitted for a proposed location that would violate the minimum distance required by state law from an existing establishment selling retail distilled spirits by the package, will be returned.
 - (4) All required investigations by City staff shall be completed no later than 30 days after the close of the application period described in (e)(2).

- (5) The City Manager, or his designee shall collect all applications meeting the criteria for issuance of a license and draw from those collected for each available license.
 - (6) The time for the drawing and selection, as set forth herein, shall be established by the City Manager, or his designee, posted at City Hall, and each applicant shall be notified not less than five (5) days in advance. Applicants and the public may be present and observe the drawing process.
 - (7) The City Manager, or his designee, shall ensure that the drawing is completely random, with the method of drawing being determined by City Manager, or his designee. Each application, as it is drawn, shall be numbered by the City Manager, or his designee, consecutively, lowest number to highest.
 - (8) The first license available shall be offered to the applicant with the lowest number, and if there is more than one (1) license available, then the second to the second lowest number.
 - (9) The applicant with the lowest number shall pay the license fee to the City on or by 3:00 p.m. on the seventh day following the lottery drawing. Should said applicant fail to pay the license by 3:00 p.m. on the seventh day, the license shall be deemed forfeited and offered to the applicant with the next lowest number. That applicant shall pay the license fee to the City on or by 3:00 p.m. on the seventh day after a license is offered, and failure to do so shall result in forfeit thereof. This process shall continue until two (2) license fees are received by the City. The license fee shall be non-refundable.
 - (10) Upon payment of the license fee, a license which permits the sale of distilled spirits by the package will be issued conditioned upon the licensee obtaining a certificate of occupancy for the location at which the business will be operated. No sales shall be allowed in any building or establishment that is incomplete in accordance with the plans submitted and approved by the city or which has not been inspected by city staff to ensure compliance with city codes. The license will expire on December 31st of the year that it is issued.
 - (11) For purposes of the application and selection process contained in this section, if a date specified for action by the city or the applicant falls on a weekend, holiday, or other day that city hall is closed, the date due for such action shall extend to the next regular business day.
- (f) *Premises generally:*
- (1) The premises at which distilled spirits are sold by the package must be within C-1 or C-2 General Commercial District and must not be less than

3,000 square feet of combined showroom and storage space. The building in which distilled spirits are sold by the package must be a standalone building. A retail package store cannot be located in a strip mall, nor can it be adjoined to a building in which other businesses are established or operated. Additionally, the building in which distilled spirits are sold by the package shall not contain any other business establishments or entities.

- (2) The front entrance of the premises at which distilled spirits are sold by the package must be clearly visible from the public street.
- (3) The premises must be kept in a safe and sanitary condition in compliance with other ordinances of the City and the laws of the State of Georgia.
- (4) Other products that may be sold on the premises are beer or wine, with proper license, tobacco products and products generally associated with, mixed with or used in connection with the consumption of distilled spirits.
- (5) The following are strictly prohibited on the premises:
 - a. Sell or offer for sale of lottery tickets for Georgia Lottery;
 - b. Gambling and betting, including slot machines, electronic machines, or any other game or machine of chance; and
 - c. Opening or consuming any alcoholic beverage.
- (6) The licensee's place of business may have unilluminated signs, using letters not larger than eight inches in height, flat against the outside of the building, below the roof line, bearing the words "liquor," "beer," "wine," "champagne," or any combination thereof, and "package store" or "liquor store," together with the trade name of the retail dealer. In addition to such signs flat against the outside of the building, the retail dealer may display at a location on the tract of property upon which the business is located, but not affixed to the building, one unilluminated sign using letters not larger than eight inches in height bearing the words "package store" or "liquor store" and the trade name of the retail dealer. The maximum area of signs shall not exceed those limits set forth in zoning procedures and applicable building regulations, including sign ordinances, currently or as established in the future.

- (7) No form of advertising shall be permitted on the exterior of any licensed premises which provide or suggest the brand or price of any alcoholic beverages. Any advertising of brand or pricing within the interior of the structure shall not be visible from the exterior of the structure.
- (e) *Inventory:* Retail distilled spirits licensees shall maintain a minimum of at least \$350,000 inventory in distilled spirits, beer, wine, or any combination thereof.
- (f) *Vacancy.*

For the purposes of this subsection, a vacancy shall not be considered to exist until one of the following have occurred:

- a. A license has been surrendered, except in connection with the sale of a retail package liquor store establishment;
 - b. A license has expired without renewal;
 - c. A license has been revoked pursuant to Section 4-71 or any other lawful authority. Such vacancy shall not have occurred until the review of said revocation is complete.
- (g) *Application and selection for licenses after issuance of initial licenses.* In the event that less than the maximum number of licenses permitted under this section have been issued, and there is a vacancy, the following procedure shall be utilized for the application and selection process.
- (1) Within 15 days of a vacancy occurring, the City Clerk shall post in the legal organ a notice of said vacancy and the time applications will be accepted.
 - (3) Applications shall be accepted for a period of 15 days or such other period that Council determines.
 - (4) All applications accepted during this period shall be examined by the Mayor, or his designee, as described above for completeness and all required investigations be completed no later than 30 days after the close of the application period.
 - (5) The Mayor, or his designee, shall examine each application for completeness and, any application that is not complete, shall be returned to the applicant within ten days, with an explanation of the incomplete items.
 - (6) The Mayor, or his designee, shall collect all applications meeting the criteria for issuance of licenses and draw from that collection two applications for each available license. The Mayor, or his designee, shall ensure that the drawing is completely at random, according to methods determined by the Mayor, or his designee. The Mayor, or his designee, shall, upon drawing each application, number them consecutively. The

first license issued shall go to the lowest number, the second to the second lowest number. That process shall be followed until each license is issued.

- (7) In the event an application being selected for issuance of a license is not issued a license pursuant to this enactment within 20 days of selection, the application with the next lowest number shall be issued a license.
- (8) The time for each drawing and selection as set out above shall be established by the Mayor, or his designee, posted at City Hall, and each applicant shall be notified not less than five days in advance. Applicants and the public may be present and observe the drawing process.

APPROVED AND ADOPTED this _____ day of _____, 2022.

Harry Harvey, Mayor

Attest:

Angela White, City Clerk