

## **CHAPTER 4 – ALCOHOLIC BEVERAGES**

### **ARTICLE I. - IN GENERAL**

#### **Sec. 4-1. - Definitions.**

- (a) 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 Alcoholic Beverage Code (O.C.G.A. § 3-1-1 et seq.).
- (b) 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:

*Alcoholic beverage caterer* means any retail dealer licensed pursuant to this chapter who provides alcohol at authorized events or functions, special events, or special events facilities.

*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.

*Church* means any permanent place of public religious worship.

*Eating establishment* means an establishment which is licensed to sell or otherwise dispense distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

*Farm winery* means a domestic winery that is licensed as a farm winery by the state.

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

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

*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.

*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.

State law reference— Definitions generally, O.C.G.A. § 3-1-1.

#### **Sec. 4-2. - Penalties for violation.**

Except as may otherwise be provided in this chapter, any person who violates this chapter may, upon conviction, be punished by a fine of not less than \$500.00 for each offense and/or up to six months incarceration. Should the violation and conviction be of a state law, the punishment shall be by a fine of not less than \$1,000.00 and/or up to 12 months incarceration.

#### **Sec. 4-3 – Purposes of chapter.**

- (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) The protection of schools, homes, churches, parks, and other institutions;
  - (4) Promotion of appropriate land use and zoning and the effectuation of the city's land use and zoning policies;
  - (5) Protection of the public health, safety, and welfare.

- (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. 4-4. - 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. 4-5. - 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. 4-6. - Sale to or 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), (a)(2), and (a)(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 the state; or
  - (2) At a religious ceremony.
- (c) The prohibitions contained in subsections (a)(1), (a)(2), and (a)(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—40-5-104. "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 section 6-162.
- (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.
- (h) For purposes of the prohibitions set forth in this section, a plea of nolo contendere or the forfeiture of bond shall constitute a conviction.
- (i) With reference to the prohibitions set forth in this section, if there is a change in a majority of a licensee's owners, partners, or shareholders, the offenses under the old ownership shall not count against the new owners; provided, however, a different corporation, partnership, or other association shall be charged with the offenses of the predecessor if a majority of the owners, partners, or shareholders are the same.

State law reference— Similar provisions, O.C.G.A. § 3-3-23.

**Sec. 4-7. - Carry-out of alcoholic beverage unlawful.**

- (a) All alcoholic beverages sold or otherwise dispensed for consumption on the premises licensees shall be consumed only on the licensed premises. It shall be unlawful for any person to remove from the licensed premises any alcoholic beverages sold for consumption on the premises, and it shall be unlawful for the licensee to permit any person to remove from the licensed premises any alcoholic beverages sold for consumption on the premises. The licensee shall be responsible for ensuring that no person so removes any alcoholic beverages from the premises in any type of container. Each consumption on the premises licensee shall post in a prominent place at each exit from the licensed premises a sign in substantially the following form:

"It is a violation of the Code of Ordinances of the City of Summerville to take any type alcoholic beverage out of this establishment." Such sign shall be in uniform letters not less than one inch in height.

- (b) It shall be unlawful for any person purchasing alcoholic beverages for consumption on the premises to leave the premises without paying for such alcoholic beverages.
- (c) It shall be unlawful for customers to gather outside the establishment of a consumption on the premises licensee and consume alcoholic beverages.
- (d) It shall be unlawful for the manager or any employee of consumption on the premises licensee to allow persons to gather outside the establishment and consume alcoholic beverages.

**Sec. 4-8. - Brownbagging, BYOB prohibited.**

It is prohibited for any person to bring in his own alcoholic beverage in any retail establishment without regard to whether such establishment is licensed. For purposes of this section, the term retail establishment shall not include a private hotel room or other similar guest room or a private club.

**Secs. 4-9—4-30. - Reserved.**

**ARTICLE II – VENDORS**

**DIVISION 1. – GENERALLY**

**Sec. 4-31. - 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 the required special event permit may allow or prohibit alcohol consumption at the outdoor festival in a city park 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.

**Sec. 4-32. - Open area and patio sales.**

- (a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to sell, serve, or otherwise dispense alcoholic beverages outside the licensed premises structure.
- (b) A consumption licensee may sell, serve, or otherwise dispense alcoholic beverages in a patio/open area type environment if approved by the city manager to do so. To be approved the following requirements must be met:
  - (1) The patio/open area must be enclosed by some structure providing for public ingress/egress only through the licensed premises main structure, in order to prevent a customer from leaving the outside area with an alcoholic beverage without the licensee's knowledge.
  - (2) The height of such structure shall be a minimum of three feet above ground level, although it does not have to be solid or restrict visibility into or out of the patio/open area. The structure must be approved by the city's building inspection department and fire department.
  - (3) The only exits from the patio/open area are to be through the licensee's main premises and through an approved fire exit, not for general public use unless an emergency exists. The fire exit should sound an alarm when used in order that any unauthorized use shall be known.
- (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, provided such functions are catered in connection with a meeting, conference, convention, or similar type gathering at such hotel or motel.

**Secs. 4-33—4-50. - Reserved.**

**DIVISION 2. - LICENSE**

**Sec. 4-51. - 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 Summerville."
- (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.

**Sec. 4-52. - Retail package licenses.**

- (a) Applicants may apply for one or more of the following type retail licenses:
  - (1) *Package malt beverage license.* Retail sale of malt beverages in the original package.
  - (2) *Package wine license.* Retail sale of wine in the original package.
  - (3) *Package distilled spirits license-* Reserved.
- (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. State law reference- Maximum license fee for package sales of distilled spirits, O.C.G.A. § 3-4-50.

**Sec. 4-53. - Retail consumption on the premises licenses.**

- (a) Five classes of retail consumption on the premises licenses are available. Unless otherwise specifically provided in this chapter, retail consumption on the premises licenses are available only to eating establishments.

- (1) Full pouring license. Retail sale of distilled spirits, wine, and/or malt beverages by the drink.
  - (2) Limited pouring license. Retail sale of wine and/or malt beverages by the drink.
  - (3) Limited pouring license. Retail sale of distilled spirits by the drink.
  - (4) Brewpub. See section 4-1(b).
  - (5) Farm winery tasting room. See section 4-108.
- (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. 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.

*(Amended 5-13-2013)*

**Sec. 4-54. - Wholesale licenses.**

- (a) Any wholesale dealer in alcoholic beverages who is licensed by the state 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.
- (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.

*(Amended 5-13-2013)*

**Sec. 4-55. - Alcoholic beverage caterers.**

- (a) *License requirements for resident caterers.*
  - (1) Any 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 event or function.
  - (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 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 functions.
  - (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) *Limitation on license.* 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) *Tax on sales by resident caterers.* Excise taxes are imposed upon the sale of alcoholic beverages by a resident caterer as provided in article III of this chapter.
- (e) *Tax on drinks served by nonresident caterers.* Excise taxes are imposed upon the total of individual alcoholic beverage drinks served by a nonresident caterer in the amounts set forth in article III of this chapter and shall be paid within 30 days after the conclusion of the catered event or function.

(Amended 5-13-2013)

**Sec. 4-56. - 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 nonprofit 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 two 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.

**Sec. 4-57. - 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 on and between January 1 and June 30 shall be assessed the full license fee. New applications received on and between July 1 and December 31 shall be assessed one-half of the license fee.

**Sec. 4-58. - Individual, business or association entities; named licensee.**

- (a) A license issued to an individual shall be issued in the name of the individual. A license issued to a partnership shall be issued in the name of the partnership and in the name of the partner or employee primarily responsible for the operation of the licensed premises, who shall be the named licensee. A license issued to a corporation shall be issued in the name of the corporation and in the name of the stockholder, officer of the corporation, or employee primarily responsible for the operation of the licensed premises, who shall be the named licensee. A license issued to a purely nonprofit civic, fraternal, patriotic, private, or social club or corporation which is organized and conducted in the city solely as a mutual benefit membership group shall be issued in the name of the club or corporation and in the name of the individual primarily responsible for the club or corporation's compliance with this chapter, and the named individual shall be named licensee.
- (b) The individual completing and presenting an application for a license, whether for himself, a partnership, a corporation, or a nonprofit organization, shall meet the requirements of this chapter so as to be the named licensee.

**Sec. 4-59. - 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.

**Sec. 4-60. - 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 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 assure 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) A licensee must be of good moral character and a citizen of the United States or an alien lawfully admitted for permanent residence. Any such alien shall have been lawfully admitted for permanent residence for at least one year prior to application.
- (d) A licensee shall not have been convicted within the ten years preceding his application of any felony, any misdemeanor involving moral turpitude, any sexual-related crime, or any criminal offense relating to alcoholic beverages, taxes, or gambling. This subsection shall apply with respect to the laws of this state, other states, the United States, and other countries. A plea of nolo contendere or the forfeiture of a bond shall be considered a conviction for purposes of this subsection. Sentencing as first offender status shall not be considered as a conviction if the sentence was successfully completed without any violation of probation and with no adjudication of guilt ever being entered.
- (e) A licensee shall not have had revoked, within the five years preceding his application, any license to sell alcoholic beverages issued by any governmental entity.
- (f) A licensee shall have, 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. The registered agent must be a resident of at least 21 years of age.

*(Amended 5-13-2013).*

**Sec. 4-61. - Alcohol awareness training certification required.**

- (a) The applicant for a license under this article shall present to the city manager current certification of attendance at an approved alcohol awareness training program. Such certification or approved alternative program shall be verified and signed off by the chief of police.
- (b) If the applicant lacks such training and certification, the applicant shall have 30 days from the date of the granting of the license to complete the training and submit certification to the city manager. Upon due cause being shown, the city manager may grant an extension of time, not to exceed 60 days, to complete said training. Failure to timely obtain such certification shall be grounds for revocation of the alcoholic beverage license.
- (c) Every applicant to whom a pouring permit is issued and all managerial staff of a licensee shall also complete an approved alcohol awareness training program within 30 days of being issued a pouring permit, being employed as a part of any managerial staff, or being issued a license in the case of the named individual licensee.

*(Amended 5-13-2013).*

**Sec. 4-62. - Distance from churches, schools, etc.**

- (a) o distilled spirits 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 church building or within 200 yards of any school building, educational building, school grounds, or college campus.
- (b) No wine or malt beverages license shall be issued for any business which is located within 100 yards of any school building, school grounds, or college campus. This shall not apply to any location for which a license has been issued prior to July 1, 1981, nor 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 month immediately preceding such application.
- (c) No package license shall be issued for any place of business which is located within 200 feet of a private single-family or two-family dwelling in a zoning district that permits single-family and/or two-family dwellings; provided, however, this prohibition shall not apply with respect to a private dwelling located in a zoning district in which alcoholic beverage

outlets are authorized and which dwelling is on the same street as the premises for which a package license is applied.

- (d) 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 director of community development, from which alcoholic beverages are sold or proposed to be sold; and
  - (2) In a straight path of travel by the nearest public sidewalk, street, road, or highway;
  - (3) To the front door of the building or to the nearest portion of the grounds, as determined by the director of community development, whichever is applicable under this chapter.

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) No application for a license shall be approved which does not include, or have attached thereto, a current 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 chapter, 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 shall mean the main structure used by any religious organization for purposes of worship.
- (i) 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 an alcoholic treatment center owned and operated by the State of Georgia, Chattooga County or the City of Summerville

State law reference— Sales near churches or schools, O.C.G.A. § 3-3-21.

*(Amended 1-13-2014).*

#### **Sec. 4-63. - Application fee.**

Each application for a license under this chapter shall be accompanied by a nonrefundable 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. 4-64. - Application; investigation consent.**

- (a) All applications for licenses shall be made upon application forms provided by the city. All applications shall contain a full and complete sworn and notarized statement by each applicant of all material facts as determined by the city manager to be relevant to the requirements of this chapter and further shall include, but not be limited to:
  - (1) If a partnership, the names and residence addresses of the partners and a copy of the partnership agreement;
  - (2) If a corporation, the names of the officers, the name of the manager, and the names of all shareholders holding more than 20 percent of any class of corporate stock and a copy of the articles of incorporation; and
  - (3) The name of any other entity having a financial interest in the establishment for which a license is sought.
- (b) Each applicant and licensee shall consent to and authorize a fingerprint analysis and investigation.
- (c) 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.
- (d) Each applicant and licensee authorizes the city and its agents to secure from any court, law enforcement agency, or other public agency his criminal and 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.
- (e) Separate applications must be made for each location, and separate licenses must be issued for each location.

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

- (a) The city manager shall promptly refer a copy of each application to the chief of police or his designee for a thorough investigation. The chief of police or his designee shall report his findings to the city manager. Such finding shall include a recommendation as to the qualifications of the applicant. The city manager shall further have the responsibility and authority to request additional information as may be determined to be necessary in order for the city manager to accept the application as complete prior to its submission to the city council.
- (b) A temporary license for a full pouring license, a limited pouring license, package malt beverage license, and package wine license may be issued by the city manager for a period of up to 60 days provided the city manager 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. The applicant shall sign an acknowledgment that the temporary license is a mere accommodation and may be revoked, with or without cause, by the city manager 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. 4-66. - Denial of application.**

- (a) After a hearing, should the city council deny an application, written notice of the denial shall be provided to the applicant by the city manager, shall set forth the reason for the denial, and advise the applicant of the right to appeal.
- (b) Any decision by the city council denying an application shall be final unless the applicant applies to the Superior Court of Chattooga County by filing a petition for writ of certiorari within 30 days of the decision rendered by the city council.
- (c) 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. 4-67. - 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 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.

- (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 the case of death of an owner of a license, no sale of alcoholic beverages shall be allowed until such time as a personal representative of the estate, appointed by a probate court of competent jurisdiction, shall apply to the city manager for authorization. The establishment shall then be allowed to continue to operate for a period of 60 days from the date of death, until expiration of the license, or until the approval of a new license, whichever shall first occur.
- (d) A change in ownership status of the licensed establishment that does not change the actual ownership interest shall be eligible to apply for a transfer of license as provided herein. By way of example, a sole proprietor who decides to incorporate and be the sole shareholder of the new corporation, although in such circumstances information required from a corporation in an original application shall be provided.
- (e) Nothing in this section shall prohibit one or more partners in a partnership from retiring therefrom in favor of one or more of the other partners; provided, such withdrawal shall not introduce any new partner or result in any new person acquiring an interest in the licensed business without application for and issuance of a new license.
- (f) Where a license is issued to a corporation having as its principal business an activity other than the sale of alcoholic beverages, a change in the named individual licensee may be permitted by the city manager if the new named licensee meets the requirements of new license applicants.
- (g) In the circumstances described in subsections (d) and (e) of this section, the license may be revoked if the city manager determines that the change results in a failure to meet requirements of this chapter.

**Sec. 4-68. - 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 4-65 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. 4-69. - License renewal.**

- (a) An application for renewal shall be in the form of a sworn and notarized statement by the named licensee, on a form provided by the city manager, stating that there have been no changes in any of the information contained in the original application. If there have been any substantive changes, the application for renewal shall be in the same form as an original application.
- (b) An application for renewal shall be filed no later than November 15 and shall be accompanied by the requisite fee in the 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) Renewal applications and payments not received by November 15 shall incur a late fee. Renewal applications and payments received between November 16 and December 15 are subject to a ten percent late fee. Businesses failing to apply for renewal of their licenses prior to December 15 must reapply for a license.
- (d) Businesses required to reapply for a license, as provided in subsection (c), and filing this application for a new license after January 1 shall pay at the time of filing the required application fee, the annual fee, and the ten percent late fee.

**Sec. 4-70. - Display of license.**

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

**Sec. 4-71. - Suspension or revocation.**

*Grounds.*

- (a) A license may be suspended or revoked by the city council 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) 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 12-month period of time shall not exceed 30 days.
  - 2. Second suspension in a 12-month period of time shall not exceed 60 days.
  - 3. Third suspension in a 12-month period of time shall cause revocation of the license and result in the inability of the licensee to obtain a license from the city for a term of three years from the date of revocation.
- (c) Prior to the suspension or revocation of a license by the city council, 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 subsection (b) of this section. 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. 4-72. - Hearings.**

- (a) The city council shall hear applications for licenses, as well as all matters relating to such licenses or otherwise under this chapter, including, but not being limited to, suspensions, revocations, transfers, renewals, changes of ownership, and any other matters affecting such licenses. All applications, whether for an original license, renewal license, or otherwise, must be complete in all requirements of law to be scheduled and heard by the city council.
- (b) The city council shall have the authority to defer a decision and continue hearings to the next regularly scheduled council meeting, when necessary.
- (c) Applicants and licensees shall be given written notice of the date, time, place, and purpose when the matter at issue will be heard. The applicant or licensee shall be afforded the opportunity to be heard and present evidence. Ten days' notice shall be deemed reasonable, but a shorter or longer period of notice shall be authorized as the city manager deems the circumstances to justify; provided, however, that the initial hearing is scheduled to take place not later than 45 days from the date the matter comes before the city manager for scheduling. Service of notice shall be in accordance with section 4-71(a) (3).
- (d) Upon close of the public hearing, the city council shall reach a decision on the matter before it. The decision of the city council shall be spread upon and entered in the city council minutes and shall be final unless the applicant or licensee applies to the Superior Court of Chattooga County by filing a petition for writ of certiorari within 30 days of the decision rendered by the city council.

**Secs. 4-73—4-100. - Reserved.**

**DIVISION 3. - REQUIREMENTS FOR CONSUMPTION ON-PREMISES LICENSES AND LICENSEES**

**Sec. 4-101. - Eligibility for license.**

- (a) A consumption on the premises license may be granted only to the establishments described in this article and subject to the specified conditions.
- (b) Full-service kitchen as used in this article shall mean a kitchen with a three- compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the county health department, building inspector, State Fire Marshal or city fire department, and comply with this ordinance and otherwise comply with local and state law.

**Sec. 4-102. - Hotel and hotel room service.**

- (a) In order to be eligible for a consumption on the premises license, a hotel must:

- (1) Be used and held out to the public as a place where food is served and consumed and sleeping accommodations are offered to guests for adequate pay;
  - (2) Contain 50 or more rooms used for the sleeping accommodations of guests; and
  - (3) Contain one or more public dining rooms, with adequate and sanitary full-service kitchen facilities.
- (b) A hotel may consist of a single building or may consist of two or more buildings located on the same premises and used in connection with the hotel operation.
- (c) A facility which is styled as a motel, motor lodge, inn, or other similar appellation may be licensed as a hotel if it meets the requirements of this section.
- (d) A hotel may grant permission for the operation of a lounge, restaurant, or supper club on its premises; such an operation may be granted a consumption on the premises license if it meets the other applicable requirements of this chapter.
- (e) Notwithstanding any other provisions of this chapter to the contrary, any hotel (as the term "hotel" is commonly used and without regard to the requirements of this section), inn, or other establishment which offers overnight accommodations to the public for hire, may provide in-room service of alcoholic beverages if such establishment:
- (1) Holds a valid city package license or a valid city consumption on the premises license or both; and
  - (2) Has been authorized to provide in-room service by the state revenue commissioner.
- (f) For purposes of this section, "in-room service" consists of:
- (1) The delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room when such alcoholic beverages have been ordered by the guest and when the guest shall be billed for the cost of such alcoholic beverages at the time of delivery and when the sale of such alcoholic beverages is completed at the time of delivery; and
  - (2) The provision of a cabinet or other facility located in a hotel's guest room which contains alcoholic beverages and which is provided upon request of the guest and which is accessible by lock and key only to the guest and for which the sale of alcoholic beverages contained therein is final at the time requested except for a credit which may be given to the guest for any unused portion.
- (g) Except as otherwise provided in this section, in-room service of alcoholic beverages shall be subject to all restrictions and limitations in this chapter relative to the sale of alcoholic beverages. In-room service sales shall be authorized only on such days and only during such hours as the sale of alcoholic beverages is otherwise authorized.
- (h) Distilled spirits sold pursuant to this section shall not be sold in packages containing less than 50 milliliters each.
- (i) All alcoholic beverages sold pursuant to this section shall be purchased from a licensed wholesale dealer and shall be subject to all taxes imposed under this chapter, including the excise tax on the retail sale by the drink of alcoholic beverages containing distilled spirits.

**Sec. 4-103. - Restaurants.**

- (a) In order to be eligible for a consumption on the premises license, a restaurant must:
- (1) Be used and held out to the public as a place where meals are regularly served to the public for adequate pay;
  - (2) Contain one or more public dining rooms, with adequate and sanitary full-service kitchen facilities and staff to prepare, cook, and serve suitable food for its guests;
  - (3) Serve at least one meal per day at least five days per week, with the exception of holidays, vacations, and periods of redecoration; and

- (4) Have at least 50 percent of its total sales be the sale of food and nonalcoholic beverages consumed on the premises, exclusive of sales from vending machines. For this purpose, if a restaurant makes a minimum charge or cover charge, the amount so charged shall not be counted in computing total sales and shall not be counted as a food or beverage sale.

- (b) Brewpubs, as defined in section 4-1(b) and O.C.G.A. § 3-1-2(3), shall be allowed in eating establishments.

**Sec. 4-104. - Lounges.**

- (a) A lounge is a separate room that has a seating capacity, at tables of at least 50 persons and which is:
  - (1) Connected with, a part of, and adjacent to a restaurant; or
  - (2) Located in a hotel.
- (b) In order to be eligible for a consumption on the premises license, a lounge must be arranged and maintained such that all booths, stools, and tables are open and unobstructed to the view of other customers in the lounge.
- (c) A lounge which is operated on a different floor, or in a separate building, from, or which is not connected or adjacent to, another licensed facility shall be considered a separate establishment from such other licensed facility and shall pay a separate annual license fee.

**Sec. 4-105. – RESERVED.**

**Sec. 4-106. – RESERVED.**

**Sec. 4-107. - Special events facility.**

In order to be eligible for a consumption on the premises license, a special events facility must:

- (a) Be available to public or private groups of persons;
- (b) For monetary consideration on a rental, fee, percentage, or similar basis, be used primarily for special occasions, including but not limited to, receptions, meetings, banquets, conventions, parties, catered events, or similar gatherings; and
- (c) Be open to or attended by invited or selected guests or paying patrons; or
- (d) Be a multisport complex situated on at least 20 acres and in conformance with the city's zoning ordinances.

**Sec. 4-108. - Farm winery tasting room.**

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

*Farm winery* means a domestic winery that is licensed as a farm winery by the state.

*Special entertainment district* means a certain area within the city designated by the council pursuant to O.C.G.A. § 3-6-21.2 solely for the purpose of allowing Sunday sales in a farm winery tasting room.

*Tasting room* means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for retail sale of such wine as provided by law. Samples of wine can be given complimentary or for a fee.

- (b) There is hereby created a license for the business of operating a Georgia farm winery tasting room in conformance with the laws of the state and the city.
- (c) Under this section, the licensee shall be authorized to carry on the business of operating a farm winery tasting room in the licensed premises. For the purposes of this chapter, upon application, a certain location may be designated by the council as a special entertainment district pursuant to O.C.G.A. § 3-6-21.2. Such designation is made solely for the purpose of allowing Sunday sales in a farm winery tasting room.

- (d) The farm winery tasting room created by this section is limited to farm wineries licensed by the state and allows the licensee to deal in its farm winery products pursuant to state law. No license is created by this section authorizing any other person to deal in any other alcoholic beverage.

**Sec. 4-109. - Physical requirements of premises.**

All lounge and restaurant areas, including all tables, booths, and other areas where customers are served and including all passageways for customers, shall be sufficiently well illuminated so that they may be viewed by those inside the premises. The sale or dispensing of alcoholic beverages in any back room or side room that is not open to the general public is prohibited, except that this prohibition shall not apply with respect to:

- (1) Private parties which have been scheduled in advance;
- (2) Sales to hotel guests in their hotel rooms;
- (3) Private clubs; or
- (4) Special events facilities.

**Sec. 4-110. – RESERVED**

**Sec. 4-111. - Live music and dancing.**

Bands or orchestras and patron dancing shall be permitted at facilities licensed for consumption on the premises sales only where:

- (1) Adequate space exists;
- (2) All fire and safety regulations are met;
- (3) Prior approval of the chief of police and the fire chief has been obtained.

**Sec. 4-112. – RESERVED**

**Sec. 4-113. - Package sales prohibited.**

It shall be unlawful for any alcoholic beverages to be sold by the package from premises licensed for consumption on the premises.

**Sec. 4-114. - Ancillary wine tasting license.**

- (a) The holder of a wine license shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions set forth in this section.
- (b) Wine sampling shall be on limited occasions when a customer requests a sample of a wine offered for sale within the premises, or in conjunction with wine education classes and sampling designed to promote wine appreciation and education.
- (c) Wine tasting for customers shall only be conducted at a wine counter area constituting no more than ten percent of the entire floor area of the premises.
- (d) Wine sampling for customers shall be limited to no more than one time per day for a period of not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.
- (e) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.
- (f) No open containers of wine shall be removed from the licensed premises.
- (g) Not more than two times per week for a period of not to exceed two consecutive hours, the holder of an ancillary wine tasting license may conduct educational classes and sampling for classes. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
- (h) Holders of an ancillary wine tasting permit shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.

- (i) Wine sampling and tasting is only permitted within the enclosed portion of the premises.
- (j) The annual fee for an ancillary wine tasting license shall be set and may be revised by resolution of the mayor and council.

**Secs. 4-115—4-130. - Reserved.**

**DIVISION 4 – CONDUCT OF BUSINESS**

**Sec. 4-131. - Rent based on sales volume prohibited; exceptions.**

- (a) Except as otherwise provided in this section, it shall be unlawful for a licensee to enter into any agreement whereby the rental paid for licensed premises is based in whole or in part on the volume of sales of alcoholic beverages by the licensed business or whereby the lessor otherwise shares in the profits or receipts from the sale of alcoholic beverages by the licensed business.
- (b) Subsection (a) of this section shall not apply where the primary business of a package licensee is an activity other than the package sale of alcoholic beverages, for example, a grocery store selling package beer and wine.
- (c) The city manager may, for good cause being shown, grant a licensee an exemption from the provisions of subsection (a) of this section.

**Sec. 4-132. - 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 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 with all form 1099s.

**Sec. 4-133. - Days when sales unlawful.**

- (a) No licensee shall permit the sale of alcoholic beverages on any day or during any time of day when such sales are prohibited by state law. For example, the sale of alcoholic beverages on any election day, holidays, and Sundays is limited as provided by O.C.G.A. § 3-3-7 and § 3-3-20.
- (b) No licensee shall permit the sale of alcoholic beverages on Sunday.

**Sec. 4-134. - Hours of operation.**

- (a) Package licensees shall not engage in the sale of alcoholic beverages except between the hours of 7:00 a.m. and 12:00 midnight Monday through Saturday. Package licensees shall not permit their places of business to be open except between the hours of 7:00 a.m. and 12:00 midnight Monday through Saturday, except that where the primary business of a malt beverage package licensee or wine package licensee is other than the sale of alcoholic beverages, such restrictive hours shall apply only with respect to the sale of malt beverages or wine.
- (b) Consumption on the premises licensees shall engage in the sale of alcoholic beverages only between the hours of 9:00 a.m. and 2:00 a.m., Monday through Friday, and at any time from 9:00 a.m. to 11:55 p.m. on Saturdays.
- (c) The business hours of wholesale dealers shall be between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. There shall be no sales on Sunday.

**Sec. 4-135. - Prohibited acts; sexual display on licensed premises.**

- (a) No licensee shall permit the sale of alcoholic beverages to any person who is in a state of noticeable intoxication or allow persons who are noticeably intoxicated to congregate on the licensed premises.
- (b) No licensee shall permit any gambling, betting, lottery, or other device for the hazarding of any money or other thing of value on the licensed premises, except that this prohibition shall not apply with respect to a properly licensed bingo game.
- (c) No licensee shall permit on the licensed premises any disorderly conduct; breach of the peace; lewd, immoral, or improper entertainment, conduct, or practices; or noise which is disturbing to the surrounding neighborhood.
- (d) No licensee shall suffer or permit any person to engage in live conduct exposing to public view the person's genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks, or any portion of the female breast below the top of the areola on the licensed premises.
- (e) No licensee shall allow any person to engage in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual act prohibited by law, on the licensed premises.

**Sec. 4-136. - Delivery and storage.**

- (a) Alcoholic beverages shall be delivered to and received at licensed premises in the original container and in a conveyance owned and operated by a licensed wholesale dealer (or a licensed common carrier acting for a wholesaler) with a permit from the city to make deliveries in the city. Alcoholic beverages shall be sold at retail only on the licensed premises.
- (b) A retail licensee shall store alcoholic beverages only on the licensed premises and at no other place. All stock shall be available at all times for inspection by any authorized agent of the city. Any alcoholic beverages found in any retail licensee's stock which were not received from a wholesaler licensed to make deliveries in the city shall be subject to immediate confiscation.

**Sec. 4-137. - On-premises consumption unlawful.**

It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises.

**Sec. 4-138. - Regulation of signs and lighting.**

The exterior of each building in which alcoholic beverages are sold for consumption on the premises shall contain sufficient lighting so that all sides of the building and all entrances thereto are clearly visible at all times when the premises are open for business.

**Sec. 4-139. - Condition of premises requirements.**

All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with all regulations governing the condition of premises used for the storage and sale of food for human consumption. All licensed premises shall be open at all times for inspection by the chief of police, the fire chief, and other authorized agents of the city and the county health department.

**Sec. 4-140. - Change of ownership, profit distribution report required.**

A licensee shall file with the city manager a written, sworn report of any of the following changes:

- (a) Any change in any legal relationship between any parties named in the application for the license;
- (b) Any change in the payment of rent for leased premises or any change in the ownership of the licensed premises;
- (c) Any loss or damage to goods or premises of the licensee which results in a claim against an insurance policy;
- (d) Any change for any purpose in division of net or gross sales of the licensed business; and
- (e) Any change in any material facts contained in the application for the license.
- (f) Such report shall be filed within five days after the date the change occurs.

**Secs. 4-141—4-160. - Reserved.**

**DIVISION 5 - EMPLOYEES**

**Sec. 4-161. - "Handling" not to include bagging and carrying out.**

For the purposes of this division, the bagging or carrying out of wine or malt beverages in the original package in the course of employment by a grocery store, convenience store, or similar establishment shall not constitute the handling of alcoholic beverages.

**Sec. 4-162. - Age requirements.**

- (a) Except as provided in subsection (d) of this section, no wholesale dealer or package licensee shall allow any employee under the age of 18 years to dispense, sell, serve, take orders for, or handle alcoholic beverages.

- (b) No consumption on the premises licensee shall allow any employee under the age of 18 years to dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (c) A licensed alcoholic beverage caterer shall not employ any person under 21 years of age who, in the course of such employment would dispense, serve, sell, or handle alcoholic beverages.
- (d) This section shall not prohibit the employment of persons under the above ages on licensed premises where such persons do not dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (e) This section shall not prohibit persons 16 years of age or older from selling or handling alcoholic beverages in grocery stores or supermarkets. For purposes of this subsection, the term grocery stores or supermarkets shall not include convenience stores.

**Sec. 4-163. - Pouring permit required.**

- (a) An employee pouring permit shall be required for:
  - (1) Any employee of a consumption on the premises licensee who dispenses, sells, serves, takes orders, mixes beverages, or serves in any managerial position; and
  - (2) Any employee of an alcoholic beverage caterer who is engaged in handling, selling, or serving alcoholic beverages; provided, however, employees whose duties are limited solely to those of busboy or cook or dishwasher shall be excluded.
- (b) No licensee shall employ any person required to have a pouring permit until such person has procured such permit.
- (c) Any person required to obtain a pouring permit shall apply to the city police department for such permit. Only one pouring permit per individual will be issued for employment at any and all establishments within the city. The permit will be valid for a period of one year and shall be renewed on or before its expiration. Persons applying for the permit or renewal shall make themselves available for photographing, fingerprinting, and such other investigation as may be required by the police department. The fee for a pouring permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council.
- (d) Any person required to obtain or renew a pouring permit shall complete and file with the city police department the provided application, which shall include, but not be limited to, name; residence address; date of birth; prior arrest record, if any, which shall be used for investigative purposes only; the name of the employer; and the address of the licensed establishment employment location for which the permit is sought.
- (e) When a person applies for a pouring permit, the chief of police or his designee shall have a complete and extensive search made to determine if there is a police record of such person. If there is a record of conduct prohibited by this chapter, issuance of a permit shall be denied.
- (f) A new search may be conducted on any person issued an employee pouring permit if the chief of police receives information which warrants such a new search. If the new search reveals evidence that warrants revocation of the card, the card may be revoked.
- (g) Should any of the information provided by the individual on the original application, or any renewal, change during the one-year term of an issued pouring permit, including, by way of example only, employer, licensed establishment employment address, or residence address, the individual shall promptly notify the city police department of the change and provide the new information. The city police department shall then issue, at no charge to the individual, a new pouring permit for the remainder of the one-year term. The chief of police or his designee is authorized to conduct a concurrent criminal history check at no charge to the individual.
- (h) A pouring permit shall not be issued if it appears that within a period of five years of the application date, the applicant has been convicted, pled guilty or entered a plea of nolo contendere to any felony, any misdemeanor involving moral turpitude, any sexual-related crime, or any criminal offense relating to alcoholic beverages, controlled substances, taxes, or gambling. A pouring permit shall not be issued if the applicant has not been released from any parole or probation prior to the filing of the application. This subsection shall apply with respect to the laws of this state, other states, the United States, and other countries. Sentencing as first offender status shall not be considered as a conviction if the sentence was successfully completed without any violation of probation and with no adjudication of guilt ever being entered.

- (i) A pouring permit shall not be issued if it is determined that the person falsified, concealed, or covered up any information requested by the police department in the application process.
- (j) A pouring permit issued through administrative error may be revoked by the chief of police.
- (k) The chief of police may revoke an employee's pouring permit and demand its return where the employee violates any of the provisions of this chapter.
- (l) Any conviction for violation of the provisions of this chapter or of the state's Alcoholic Beverage Code shall result in the automatic suspension of the pouring permit.
- (m) It shall be unlawful for an employee whose pouring permit has been revoked and upon whom demand for return of the card has been made to refuse to return the card or to alter, conceal, deface, or destroy the card.
- (n) When any employee's pouring permit is denied or revoked, the chief of police shall issue to the applicant or permit holder a letter stating that the person does not meet the requirements of this chapter and the reason for the denial or revocation. Upon written request made by the employee within 30 days of the date of denial or revocation, the chief of police will refer the matter and any evidence the person cares to submit in his behalf to the city manager for consideration. If the person requests consideration by the city manager, the entire record will be sent. The city manager shall consider all matters presented and within 30 days of his receipt of the record, make a decision as to whether the person qualifies for a pouring permit under this chapter. In the event the city manager denies or revokes the permit, he shall provide written notice of the denial or revocation to the applicant or employee, which shall set forth the reason for the denial or revocation. The applicant shall have a right of review of the denial or revocation by filing a petition for writ of certiorari to the Superior Court of Chattooga County, Georgia, within 30 days of the denial or revocation.

*(Amended 5-13-2013).*

**Sec. 4-164. - Licensee to report disciplinary action.**

Any licensee who has any disciplinary action taken against him or any of his employees who sell, take orders for, deliver, or handle alcoholic beverages by any governmental authority (municipal, county, state, or federal) shall notify the chief of police and the city manager of such action within five days of such action. The following shall be considered to be disciplinary action: any arrest; the issuance of any citation; any indictment, presentment, or accusation; any conviction, including the acceptance of a plea of nolo contendere; any penalty imposed by any regulatory agency; and any other written charge or reprimand against the licensee or any of his employees. The provisions of this section shall not apply with respect to citations for traffic offenses.

**Sec. 4-165. – Reserved.**

*(Repealed Happ Happy-hour discounts; other unlawful practices 12-9-13).*

**Secs. 4-166—4-180. - Reserved.**

**ARTICLE III. - EXCISE TAXES**

**Sec. 4-181. - Sale of Drinks containing distilled spirits.**

- (a) Imposed. There is imposed upon the retail sale of drinks containing distilled spirits in the city a tax in the amount of three percent of the purchase price of the drink to the consumer. A record of each sale shall be made in writing and maintained for inspection by any authorized agent of the city.
- (b) Licensee to collect and remit. Every consumption on the premises licensee shall collect the tax imposed by this section from purchasers of drinks containing distilled spirits. The licensee shall furnish such information as may be required by the revenue division of the city to facilitate the collection of the tax.
- (c) Customer receipts; credit sales. If requested by the purchaser, a consumption on the premises licensee shall give to the purchaser a receipt on which the purchase price and the tax imposed by this section shall be itemized separately. In all cases where the purchase is by deferred payment or credit, the licensee becomes liable for the collection and payment of the tax at the time of delivery of the drink to the purchaser.

- (d) Payment and returns by licensee.
- (1) Each licensee shall pay over the amount of taxes collected and coming due under this article in any calendar month to the city not later than the 20th day of the following calendar month.
  - (2) On or before the 20th day of each month, a return for the preceding month shall be filed with the revenue division of the city by each licensee liable for the payment of tax under this article. Returns shall be in such form as the city may specify and shall show the licensee's gross receipts from the sale of drinks containing distilled spirits and the amount of taxes collected or coming due thereon. Any amounts collected in excess of three percent of the taxable sales shall be reported and paid to the city.
  - (3) Licensees shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if said amount is not delinquent at the time of payment. The rate of deduction shall be the same rate authorized for deductions from state sales and use tax under O.C.G.A. § 48-8-50.

State law reference— Excise tax on sales of distilled spirits by the drink, O.C.G.A. § 3-4-130 et seq.

*(Amended 5-13-2013).*

**Sec. 4-182. - Wholesale taxes.**

- (a) There is imposed by the city an excise tax on the first sale or use of malt beverages in the city, as follows:
  - (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container containing not more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons;
  - (2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.
- (b) There is imposed by the city an excise tax on the first sale or use of wine in the city at a rate of \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (c) There is imposed by the city an excise tax on the first sale or use of distilled spirits in the city at the rate of \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (d) The excise taxes provided for in this section shall be imposed upon and paid by the licensed wholesale dealer. Such taxes shall be paid on or before the 15th day of the month following the month in which the alcoholic beverages are sold or disposed of by the wholesaler within the city. Remittances shall be accompanied by completed forms as prescribed or authorized by the revenue division of the city.

State law reference— local excise tax on sale of malt beverages, O.C.G.A. § 3-5-80 et seq.; local excise tax on wine, O.C.G.A. § 3-6-60 et seq. ; local excise tax on distilled spirits, O.C.G.A. §3-4-130 et seq.

*(Amended 1-13-14).*

**Sec. 4-183. - Deficiency assessment.**

- (a) If the city has cause to believe that a return or the amount of tax paid to the city by a licensee is not proper, the city may compute and determine the amount due on the basis of any information available. One or more deficiency determinations may be made of the amount due for any month.
- (b) The amount of a deficiency determination shall bear interest at the rate of one percent per month, or fraction thereof, from the due date of the taxes until paid, in addition to any other penalties which may be imposed.
- (c) The city shall give notice of a deficiency determination to the licensee. The notice may be served personally or by mail. Service by mail shall be addressed to the named licensee at the licensed premises, shall be made by certified mail, and is complete when delivered with a receipt signed by the addressee or by the receipt of mailing from the United States Postal Service.

- (d) Except in the case of fraud, intent to evade this chapter, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the month following the month for which the amount is proposed to be determined or within three years after the return is filed, whichever is later.

**Sec. 4-184. - Failure to file return.**

- (a) If a licensee fails to make a return, the city shall make an estimate of the amount of the tax due for the period or periods for which a return was not filed. Such estimate may be based on any information available to the city. Written notice of the estimate shall be given to the licensee in the manner specified by subsection 4-183(c).
- (b) If the failure to file a return is due to fraud or an intent to evade this chapter, a penalty of 25 percent of the amount required to be paid by the licensee shall be added to the estimate of the amount due in addition to any other penalties which may be imposed.

**Sec. 4-185. - Interest.**

Any licensee who fails to pay to the city within the time required any amount required to be paid under this article shall pay in addition to the principal unpaid amount, interest at the rate of one percent per month or fraction thereof from the date the tax payment was last due until payment.

**Sec. 4-186. - Actions for collection; overpayment.**

- (a) At any time within three years after the delinquency of any amount due under this article, the city may bring an action in the courts of this state, any other state, or the United States in the name of the city to collect the amount delinquent, together with penalties, interest, court fees, filing fees, attorneys' fees, and other legal fees incident thereto.
- (b) Whenever any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be offset against any future liability for the tax.
- (c) If the licensee determines that he has overpaid or paid more than once and such fact has not yet been determined by the city, the licensee shall have three years from the date of payment to file a claim with respect to such overpayment or double payment. Such claim shall be in writing and shall state the specific grounds upon which it is based. The claim shall be audited. If the city approves the claim, the excess amount paid may be credited against any other amounts due from the licensee or refunded.

**Sec. 4-187. - Administration and enforcement of article.**

- (a) The revenue division of the city shall administer and enforce the provisions of this article.
- (b) The city manager or his designee may promulgate rules and regulations for the enforcement of this article.
- (c) Every licensee engaging in the sale of mixed drinks shall keep such records, receipts, invoices, and other pertinent papers in such form as may be required by the city.
- (d) The revenue division of the city may examine the books, papers, records, financial reports, equipment, and facilities of any licensee engaging in the sale of any alcoholic beverage, retail or wholesale, in order to verify the accuracy of any return, or if no return is made to ascertain the amount of tax due.
- (e) In the administration of the provisions of this article, the revenue division of the city may require the filing of reports by any person or class of persons having in their possession or custody any information relating to purchases subject to taxation under this article.