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Chapter 4 - ALCOHOLIC BEVERAGES

Article I. - In General, Sec. 4-100. - Title of article.

This article shall be known and may be cited as “The Alcoholic Beverage Ordinance of 2017.”

Sec. 4-101. - Privilege.

Nothing in this article shall be construed as giving a person a right to sell or otherwise deal in alcohol beverages. Manufacture, distribution, and sale of alcoholic beverages are declared to be privileges in the City of Brookhaven, not rights.

Sec. 4-102. – Purpose; intent.

This article is enacted for purposes of establishing reasonable and ascertainable standards for the regulation and control of alcoholic beverages in a manner designed to promote the health, safety, morality, and general welfare of the community, while giving effect to zoning and land use plans, preserving residential areas with reasonable consideration for their character, and with the general intent of promoting desirable living conditions and sustaining the stability of neighborhoods and property values.

Sec. 4-103. - Definitions.

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

Alcoholic beverage caterer means a person or entity possessing a valid off-premises alcoholic beverage catering license from the city or another local political subdivision.

Ancillary retail package store means a Class E license holder and refers to an establishment that:

- (1) Engages in the retail sale of malt beverages or wine in unbroken packages, not for consumption on the premises; and
- (2) Derives from such retail sale of malt beverages or wine in unbroken packages less than 75 percent of its total annual gross sales.

An ancillary retail package store is prohibited from distributing, dispensing, or selling bottled distilled spirits.

Beer or *malt beverage* means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "beer" or "malt beverage" does not include sake, also known as Japanese rice wine.

Change of Ownership shall mean a change in the ownership entity, a change in the majority shareholder(s) of any corporate entity, a change in partners in any partnership (including the

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addition or deletion of any partnership interest), or any change in the party responsible for the occupancy, leasehold, or lease payments, including any sub-lease or assignment of any responsibilities for any lease or other right to occupy a particular premises.

Complimentary service means a Class G license holder and refers to the gratis provision of malt beverages or wine to patrons upon the premises pursuant to such license. No other alcoholic beverages may be provided gratis. Complimentary service of malt beverages shall be limited to individual pours of no greater than eight fluid ounces. Complimentary service of wine shall be limited to individual pours of no greater than six fluid ounces. Complimentary service may not be provided on Sunday between 2:00 a.m. and 11:59 a.m.

Craft beer market means a retail package store for malt beverages to be consumed off-premises, where the primary means of delivery of the package is in growlers as defined by this Code.

Disciplinary action means any citation or arrest arising out of the violation of any law, rule, regulation, resolution, or ordinance of a governmental entity relating to the manufacture, distribution, sale, or possession of alcoholic beverages against a licensee, an employee of a licensee, or any person holding a financial interest in the license of the licensee on the premises or place of business of any licensee.

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

Employee means any person who regularly performs any service on the alcoholic beverage licensed premises on a full-time, part-time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, lessee, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Entertainment venue means a place of business that is licensed to serve alcoholic beverages for on-premises consumption and meets at least one of the following characteristics: (1) has a disc jockey; (2) has a stage; or (3) has a dance floor.

Event venue means a location that is only open to the public for artistic presentations, live or recorded musical presentation, theatrical performances, films or other similar expressive events of a limited duration. An event venue shall not be open daily for events, shall not have a permanent bar, and shall only be authorized to sell alcoholic beverages beginning one hour before the scheduled event and no later than one hour after the conclusion of the event. Event venue may not sell, serve, or dispense alcohol on Sunday between 2:00 a.m. and 11:59 a.m.

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

Full service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the fire marshal, police department and county health department.

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Grocery store means a retail establishment which has at least 85 percent of its total retail floor space reserved for the sale of food and other nonalcoholic items, conducts all its sales inside the building containing its retail floor space, and otherwise meets the criteria for obtaining an alcoholic beverage license.

Growler means a professionally sanitized reusable glass container not exceeding 64 ounces in volume used to transport draft beer for off-premises consumption.

Home brew means a malt beverage produced by a person in their private residence pursuant to O.C.G.A. § 3-5-4, as amended.

License means a fiscal-year license for the manufacturing, distributing, selling, offering to sell, or dispensing of an alcoholic beverage. A license confers no other rights or permissions than those explicitly identified in the license (e.g., a Class C license does not confer an employee permit on the licensee.)

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

Live entertainment means a vocal or instrumental performance by a natural person or persons physically present in the establishment while delivering the performance. Live entertainment specifically excludes disc jockeys, dance floors, and karaoke performances.

Manager means a natural person, over the age of 21, who has responsibility for day-to-day management of the operations, including sale of alcoholic beverages, at the location to be licensed or supervision of management of the operations, including sale of alcoholic beverages, at the location to be licensed and who is the owner or a full-time employee of the corporation, partnership, proprietor, or other ownership entity. Such person shall actively operate the licensee's business on a day-to-day basis.

Manufacturer means any maker, producer or bottler of an alcoholic beverage and:

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

Occupant load means the maximum number of people allowed in an establishment pursuant to the life safety code or any other fire prevention based-code as may, from time to time, be amended and adopted by city council.

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

Permit means a temporary permit not to exceed fourteen (14) consecutive days for the distributing, selling, offering to sell, or dispensing of an alcoholic beverage.

Person means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, receiver, fiduciary, or other group or combination.

Premises includes the entire space or area owned, leased, or exclusively controlled by a licensee and used for the purpose of operating under the license, including but not limited to all rooms wherein alcoholic beverages are sold, furnished, served, or consumed, except when such

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room is located in a hotel, motel, inn, or similar facility. Premises may include adjoining patios, decks, and porches, or, where applicable, permitted sidewalk cafes. A floor plan for each licensed premises must be submitted with each application for a license under this article.

Private club means any nonprofit association organized under the laws of this state that meets all the following criteria:

- (1) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter.
- (2) Has at least 75 regular dues-paying members.
- (3) Owns, hires or leases a building space within a building for the reasonable use of its members with all the following:
 - a. Full service kitchen and dining room space and equipment.
 - b. A sufficient number of employees for cooking, preparing and serving meals for its members and guests.
- (4) Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

Restaurant means any business whose primary function or operation is the preparation of food and/or drink for consumption on-premises, and who derives at least 60 percent of gross profits from the sale of food, and only provides live entertainment as defined in this section if entertainment is provided.

Retail dealer means a class C license holder and refers to any person or other legal entity selling alcoholic beverages for consumption on the premises, at retail only to consumers and not for resale.

Retail package store means a Class D license holder and refers to a retail establishment:

- (1) Primarily engaged in the retail sale of distilled spirits, malt beverages, or wine in unbroken packages, not for consumption on the premises, except as authorized by Title 3 of the Official Code of Georgia Annotated (O.C.G.A.), as amended; and
- (2) Which derives from such retail sale of alcoholic beverages in unbroken packages at least 75 percent of its total annual gross sales.

Sale of food means the sale of food or drink. For purposes of calculating gross profits derived as a percentage of sale of food, food items such as garnish, mixers, and other ingredients that are sold in combination with alcoholic beverages are not considered the sale of food.

Sample means the gratis provision by a retail package store or ancillary retail package store of a one-ounce or less portion of wine or malt beverage to a person over the age of 21.

Scanner means a properly functioning age verification device that reads government-issued identification cards and saves the information derived therefrom.

Specialty Shop means any business whose primary function or operation is the sale of alcoholic beverages, and who derives no more than 25 percent of gross profit from the sale of food, and only provides live entertainment as defined in this section if entertainment is provided.

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Tavern/Pub means any business whose primary function or operation is the preparation of food or drink or both for consumption on-premises, and who derives at least 25 percent but not more than 75 percent of gross profit from the sale of food, and only provides live entertainment as defined in this section if entertainment is provided.

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Underage Permit means a Class J license which may be issued for a retail dealer with less than 50 percent of its gross annual sales derived from the sale of prepared food and which enables such retail dealer to allow persons between the ages of 18 and 21 to enter the premises to attend live entertainment performances. Class J license holders shall utilize a scanner at all points of entry to screen patrons in order to distinguish between those patrons above and below the age of 21.

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

Secs. 4-104—4-199. - Reserved. ▲

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Article II. – Alcoholic Beverage Licensing.

Division I. – License Required; License and Permit Classes; Application for License.

Sec. 4-200. – License required.

- (a) It is unlawful for any person to sell or possess for the purpose of sale or distribution any alcoholic beverage without a license from the city to sell or possess for sale alcoholic beverages, or to sell or make deliveries of alcoholic beverages beyond the boundaries of the premises covered by the license.
- (b) The city license shall not be valid without current state licenses.
- (c) A retail establishment shall not have alcoholic beverages on the sales floor, in the cooler, or otherwise on display unless the establishment has a current city alcoholic beverage license.
- (d) In the event of a Change of Ownership, as defined in this Chapter, the licensee shall be required to notify the City of the change, and comply with all provisions of this Article to obtain a license for the new ownership person or entity. The failure of the licensee or the new operator to comply with this section shall be a sufficient reason to revoke all licenses held by the licensee, the operator, or any person identified in any application for the license pursuant to Section 4-203, and shall further disqualify all such persons from being granted a license under this Chapter for a period of 18 months from the date revocation by the City.

The requirements of this article shall be in addition to any other requirements for business tax certificates under this Code. If other provisions of this Code conflict with this article, then this article shall control.

Sec. 4-201. – License and Permit classes.

- (a) The following licenses and permits, or any combination thereof, may be issued pursuant to this article; provided, however, that such combination is not prohibited by Title 3 of the O.C.G.A., the regulation issued pursuant thereto, as amended, or any other applicable law to which this article is subject.
- (b) Sexually-oriented businesses are specifically prohibited from receiving any license or permit under this section.
- (c) The annual fee for all licenses and permits under this section will be determined pursuant to a fee schedule set pursuant to Section 2-177 through 2-179 of the City of Brookhaven Code of Ordinances.

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Table 4-201(1). License classes.

License Class	Applicant Class	Examples	Distilled Spirits	Malt Beverage	Wine
<u>A</u>	Licensed alcohol caterer	Catering business	<u>1</u> (A1 is incompatible with Class E, F, and G uses)	<u>2</u> (A2 is incompatible with Class E, F, and G uses)	<u>3</u> (A3 is incompatible with Class E, F, and G uses)
<u>B</u>	Manufacturer	Distillery; Brewery; Winery	<u>1</u>	<u>2</u>	<u>3</u>
<u>C</u>	Retail dealer (on-premises consumption)	Tavern/Pub; Restaurant; Event or Entertainment Venue; Grocery Store; Cigar Bar	<u>1</u>	<u>2</u>	<u>3</u>
<u>D</u>	Retail package store (off-premises consumption)	Package store; Grocery store	<u>1</u> (B1, C1, and D1 are incompatible uses)	<u>2</u> (C2 and D2 are incompatible uses)	<u>3</u>
<u>E</u>	Ancillary retail package store	Tastings	(ineligible use)	<u>2</u>	<u>3</u>
<u>F</u>	Wholesaler	Business to Business supplier of alcoholic beverages	<u>1</u>	<u>2</u>	<u>3</u>
<u>G</u>	Complimentary service	Barbershops/salons	(ineligible use)	<u>2</u>	<u>3</u>
<u>H</u>	Samples	Tastings	(ineligible use)	<u>2</u>	<u>3</u>
<u>I</u>	Mobile Food/Beverage Service Unit	Food truck	(ineligible use)	<u>2</u>	<u>3</u>

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Table 4-201(2). Permit classes.

<u>Permit Class</u>	<u>Applicant Class</u>	<u>Examples</u>	<u>Distilled Spirits</u>	<u>Malt Beverage</u>	<u>Wine</u>
<u>J</u>	<u>Underage Presence Permit</u>	<u>Event venue</u>	<u>--</u>	<u>--</u>	<u>--</u>
<u>K</u>	<u>Temporary Permit</u>	<u>Pop-up restaurant</u>	<u>1</u>	<u>2</u>	<u>3</u>
<u>L</u>	<u>Alcohol Caterer Event Permit</u>	<u>Temporary or infrequent catering</u>	<u>1</u>	<u>2</u>	<u>3</u>
<u>M</u>	<u>Special Event Alcohol Permit</u>	<u>Festival</u>	<u>1</u>	<u>2</u>	<u>3</u>

(a) Class A – Licensed alcohol caterer.

- (1) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages or wine by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages or wine by the glass at an authorized catering function, using the form prescribed by the finance department.
- (2) Any person or entity that possesses a valid license from the city to sell or otherwise dispense malt beverages, wine, or distilled spirits by the glass may apply for an off-premises alcoholic beverage catering license to sell or otherwise dispense malt beverages, wine, or distilled spirits, using the form prescribed by the finance department.

(b) Class B – Manufacturer

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

(c) Class C – Retailer dealer (on-premises consumption).

- (1) Retail dealer license – restaurant.
- (2) Retail dealer license – tavern/pub.
- (3) Retail dealer license – event venue.
- (4) Retail dealer license – grocery store. A grocery store having greater than 20,000 square feet that is licensed as a retail package store shall be eligible for C2 and C3 retail dealer licenses (as described in Table 4-201(1)), provided that the grocery store meets all other applicable requirements in this chapter.
- (5) Retail dealer license – hotel/motel. Any business subject to the Article VI of Chapter 24 of the City of Brookhaven Code of Ordinances that is licensed as a retail package store shall

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be eligible for C1, C2, and C3 retail dealer licenses (as described in Table 4-201(1)), provided that the licensed business meets all other applicable requirements in this chapter.

(6) *Retail dealer license – entertainment venue.*

(7) *Retail dealer license – specialty shop.*

(d) *Class D – Retail package store (off-premises consumption),*

(e) *Class E – Ancillary retail package store.*

(1) *Ancillary retail package license - wine.* The holder of a package wine license, with or without a package malt beverage license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 200 square feet of floor space dedicated to the display of wine offered for sale, shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions in this section.

(2) *Ancillary retail package license – beer.* The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale or which is authorized pursuant to section 4-503, to sell growlers, shall be eligible for an ancillary malt beverage tasting license to provide samples of malt beverages offered for sale to customers under the conditions set forth in this section.

(3) *Conditions applicable to ancillary retail package licenses.*

- i. Wine or malt beverage sampling shall be on limited occasions when a customer requests a sample of a wine or malt beverage offered for sale within the premises, or in conjunction with wine or malt beverage education classes and sampling designed to promote wine or malt beverage appreciation and education.
- ii. Wine or malt beverage tasting for customers shall only be conducted at a counter area constituting no more than ten percent of the entire floor area of the premises.
- iii. Wine or malt beverage sampling for customers shall be limited to no more than one time per day per customer for a period 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.
- iv. Only the licensee or an employee shall open and handle unpackaged wine or malt beverages, and samples shall only be poured by the licensee and/or an employee.
- v. No open containers shall be removed from the licensed premises.
- vi. Not more than three times per week for a period not to exceed two consecutive hours, the holder of an ancillary retail package license may conduct educational classes and sampling for class participants. All conditions of sampling set forth in this section shall apply to such classes,

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except for the limitation on floor areas where the classes can be conducted.

vii. Holders of an ancillary retail package license shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.

viii. Wine and malt beverage sampling and tasting is only permitted within the designated interior portion of the premises.

~~(f) Class F – Wholesaler,~~

~~(g) Class G – Complimentary Service,~~

(1) Businesses that derive zero percent of their gross revenue from the sale of alcoholic beverages may apply to the city finance department for a complimentary service license.

(2) Holders of a complimentary service license may provide limited amounts of malt beverages or wine to patrons upon the licensed premises. Holders of a complimentary service license may not provide any amount of distilled spirits.

(3) Holders of a complimentary service license may not receive present or future consideration for the provision of an alcoholic beverage; alcoholic beverages may only be provided *gratis*.

(4) Complimentary service of wine to an individual shall be limited to no more than six (6) fluid ounces in a 24-hour period.

(5) Complimentary service of malt beverages to an individual shall be limited to no more than twelve (12) fluid ounces in a 24-hour period.

(6) Only the licensee or an employee shall open and handle unpackaged malt beverages or wine, and samples shall only be poured by the licensee or an employee.

(7) No open containers shall be removed from the licensed premises.

~~(h) Class H – Samples.~~

~~(i) Class I – Mobile Food/Beverage Service Unit.~~

(1) All food and beverage mobile service units, including but not limited to “food trucks,” operating in the City of Brookhaven that dispense, sell, or otherwise distribute alcoholic beverages shall possess a valid alcoholic beverage license issued by the City of Brookhaven.

~~(j) Class J – Underage Presence Permit.~~

~~(k) Class K – Temporary Permit. Any nonprofit civic organization may be issued temporary alcoholic beverage permits for events. Such permits shall have the effect of a license issued pursuant to the provisions of this article and shall authorize sale by the drink of such alcoholic beverages as are specified in the permit. The nonprofit civic organization must make application and pay a fee in the amount established by action of the city council, a copy of which is on file with the clerk of the city. Such civic organizations shall comply with all the general ordinances and the licensing and regulations for a~~

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consumption-on-the-premises establishment, with the exception of having a full-service kitchen requirement.

(l) Class L – Alcohol Caterer Event Permit.

(1) The finance department shall be responsible for issuing off-premises alcohol catering event permits and shall develop rules and regulations governing all off-premises alcoholic beverage catering events.

(2) *Resident alcoholic beverage caterers.* In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by the city must apply for an event permit on the form prescribed by the finance department. The application must include the name of the caterer, the date, address, and time of the event, and the licensed alcoholic beverage caterer's license number.

(3) *Non-resident alcoholic beverage caterers.* In order to sell or otherwise distribute distilled spirits, malt beverages, or wine at an authorized catering function within the corporate limits of the city, an alcoholic beverage caterer licensed by another local political subdivision must apply for an event permit on the form prescribed by the finance department. The application must include the name of the caterer, the date, address, and time of the event, the alcoholic beverage caterer's license from another jurisdiction, and an event permit fee in the amount established by action of the city council.

(4) An alcoholic beverage caterer must maintain the original event permit in the vehicle transporting the alcoholic beverages to the event at all times.

(5) Excise taxes are imposed upon the sale of alcoholic beverages by an alcoholic beverage caterer licensed by the city as provided in section 4-215.

(6) Excise taxes are imposed upon the total of quantity of individual alcoholic beverage drinks brought into the corporate limits of the city by an alcoholic beverage caterer licensed by another local political subdivision in the amount provided in section 4-215 and shall be paid within 30 days of the conclusion of the event.

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

(8) It is unlawful for a licensed alcoholic beverage caterer to employ any person under 21 years of age who, in the course of such employment, would dispense, serve, sell or handle alcoholic beverages.

(9) The alcohol beverage caterer shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment during the permitted event, except for the full-service kitchen requirement and the employee alcoholic beverage permit and non-alcoholic beverage permit requirement.

(m) Class M – Special Event Alcohol Permit.

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- (1) No alcohol may be served or sold at any outdoor event unless the host receives a Special Event Alcohol Permit. Where the outdoor event occurs in a park, the only type of outdoor event eligible for a Special Event Alcohol Permit is an outdoor festival.
- (2) If the outdoor event is utilizing an alcohol pourer that has already obtained a city-issued liquor license from the city's finance department, the applicant shall complete and submit a Special Event Alcohol Permit application to the finance department with the outdoor event application. Where the outdoor event application is due less than 30 days prior to the outdoor event, the Special Event Alcohol Permit application must none-the-less be submitted to the finance department no later than 30 days before the outdoor event.
 - i. The applicant must obtain a license to serve alcohol at the outdoor event from the State of Georgia, and must supply the city with a copy of said license no later than three business days prior to the outdoor event.
- (3) If the outdoor event is utilizing an alcohol pourer that has not already obtained a city-issued liquor license, the applicant must obtain an alcohol pourer license utilizing the standard procedures established by the city. Once the applicant receives the alcohol pourer license, it shall then proceed with the procedure set forth in subsection (b) above to receive a Special Event Alcohol Permit for the outdoor event.

Sec. 4-202. – Sale in incorporated area of city; scope of license.

- (a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the city council upon the terms and conditions provided.
- (b) All licenses herein shall be a mere grant or privilege to carry on the business during the term of the license subject to all terms and conditions imposed by this Code and state law.
- (c) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

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Sec. 4-203. – Application for license; applicant; contents of application.

- (a) *Application for license.* It shall be unlawful to manufacture, distribute, sell, dispense, or offer to sell any alcoholic beverage without first applying for and obtaining a license to do so from the city. A person applying for a license to manufacture, distribute, sell, dispense, or offer alcoholic beverages shall obtain separate licenses, consistent with the provisions of section 4-200, for each premises. No license may be transferred without the approval of the city.
- (b) *The applicant.* An applicant for a license to manufacture, distribute, dispense, or sell alcoholic beverages within the corporate limits of the city shall be a citizen or resident alien of the United States that has attained the age of eighteen (18) years. If the applicant is an entity, the majority of stock or partnership interests must be controlled by

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individuals who are citizens of the United States or aliens lawfully admitted for permanent residence. If an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to ensure that a license is not granted to an ineligible person or entity. **Each person apply for a license under this article shall designate a manager in compliance with the requirements set forth in section 4-103.**

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- (1) No license for the sale of alcoholic beverages shall be granted to any person for alcoholic beverage sales at a “sexually oriented business” as defined in section 15-497.
- (2) If the applicant is a corporation or partnership, the provisions of this section shall apply to all stockholders with ownership of ten or more percent, corporate officers and all partners. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and local manager of the business or to the registered agent designated pursuant to section 4-203. In the case of a partnership, the license shall be issued to the partners with the highest ownership percentage. In the case of a sole proprietorship, the sole proprietor shall be the applicant and the licensee.
- (3) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any felony within the last ten years, has been on felony probation or parole within the last five years, or released from prison on felony charges within the last five years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (4) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within five years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five years from a prior driving while intoxicated conviction, and sale of alcohol **except for** any violations of section 4-134 or 4-136. This subsection shall apply to any corporation or partnership where any stockholder with ownership of ten percent or more, all corporate officers, and all partners fails to meet these requirements.
- (5) It is unlawful for any city employee of a department regulating alcoholic beverages, or the employee's spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (6) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued by the city revoked within two years prior to the filing of the application.

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(c) *Contents of the application; contents to be furnished under oath.* An application containing information as specified by the city shall be completed and filed with the finance department by each applicant for a license, or any combination of licenses, to conduct any business involving the manufacture, distribution, dispensation, or sale of alcoholic beverages within the city. All applications for an alcoholic beverage license shall be given under oath and in the presence of an attesting officer, duly authorized by law to administer oaths. The contents of such form shall include:

- (1) The intended license class/applicant classification code;
- (2) The name, mailing address, and written proof of age (in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency) of the applicant;
- (3) The proposed business to be carried on;
- (4) If a partnership, the names and addresses of the partners;
- (5) If a corporation, the names and addresses of the officers;
- (6) The name and address of the agent for service of process;
- (7) The name and address of the manager;
- (8) The names and addresses of all stockholders holding ten or more percent of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
- (9) If the manager changes, the applicant must furnish the finance department and the police department with the name and address of the new manager and other information as is requested within ten days of such change.
- (10) All establishments licensed under this article must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city in such form as the city prescribes.

(d) Additional material that must accompany an application.

- (1) An application for alcoholic beverage license shall include payment of all applicable licensing fees as set forth in the annual revenue ordinance.
- (2) All applications for a package liquor license, both original and renewals, must be accompanied by a full and complete statement relative to all interests in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in

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which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sublessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the finance department to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the finance department and failure to so file within a period of ten days after this change is made shall be grounds for the city to cancel the license.

(3) *Proof of financial responsibility – Dram shop insurance.* Applicants seeking a Class A or C alcohol beverage license shall file with their application a certificate of liquor liability insurance (dram shop), in effect for the license period and issued by an insurer required to be licensed pursuant to state law, providing an annual aggregate policy limit for dram shop insurance of not less than \$1,000,000.00 per policy year. A 30-day notice of cancellation in favor of the city must be endorsed to the policy and attached to the certificate.

(4) *Proof of financial responsibility – General liability insurance.* Applicants seeking a Class A, B (to the extent the applicant offers or intends to offer tastings as defined in this article), C, D, E, G, or H alcoholic beverage license shall file with their application a certificate of liability insurance, in effect for the license period and issued by an insurer required to be licensed pursuant to state law, providing at least \$1,000,000.00 in commercial general liability insurance coverage. A 30-day notice of cancellation in favor of the city must be endorsed to the policy and attached to the certificate.

(5) *Public safety plan.* Class C licensees that operate or intend to operate establishments where persons under the age of 21 are not permitted and Class J licensees shall prepare and submit with their application a written public safety plan which shall be subject to the approval of the chief of the City of Brookhaven Police Department or their designee prior to the issuance of any alcoholic beverage license. A public safety plan shall include the following:

- a. Identification of the days and hours of operation;
- b. Specific measures and procedures to address crowd management, both within and outside the premises;
- c. Identification of any parking areas either owned or controlled by the licensee;
- d. Means of controlling access to the premises and parking areas;
- e. Security staffing;
- f. Specific measures and procedures to combat underage consumption of alcoholic beverages;
- g. Specific measures and procedures to combat the risk of fire; and
- h. Discussion of matters related to managing emergencies, including fire, evacuation tactics, assignment of specific emergency management duties to particular personnel, coordination with public safety officers and emergency medical matters.

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i. Where applicable, discussion of measure the licensee will undertake to visibly distinguish between patrons under and over the age of 21.

A licensee may be required to revise and resubmit its public safety plan to include implementation of additional public safety measures, which may include, without limitation, the installation of security cameras with technical capabilities as specified by the police chief, where it appears that the operation of the licensee's business has resulted in an extraordinary expenditure of public safety resources. The failure of a licensee or its employees, agents, and servants to adhere to the terms and conditions of an approved public safety plan shall constitute a violation of this article, in addition to any other applicable statute, ordinance, or regulation, and subject the licensee to the penalty provisions set forth in Section 4-1000, as amended.

(e) Upon receipt of the application, it shall be forwarded to the police chief, or his designee, for a background investigation of the applicant, and all other persons identified in the application as required by subsection (b) of this section. The investigation may include a check of any criminal history anywhere in the United States, a check of any other jurisdiction identified by the applicant where he has previously held an alcohol license of any kind, and any other factor deemed relevant by the chief of police, or his designee. Any investigation conducted under this subsection shall be completed within 45 days of the receipt of the application by the chief of police.

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

(g) An alcoholic beverage license shall be granted unless an applicant fails to meet the qualifications for an alcoholic beverage license under this chapter. The finance department shall provide written notice to any applicant whose application is denied under the provisions of this chapter within 30 days of filing a properly completed application. An application for an alcoholic beverage license is complete when it contains the information required by this chapter and is accompanied by the license fee in the amount established by action of the city council. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal to the alcohol beverage review board under the provisions of this division within 15 days from date of notice. If a license is not issued or denied within the time frame specified herein, the license shall be automatically approved.

(h) Nothing contained in this article shall prohibit the sale of alcoholic beverages by a grocery store licensed for the retail sale of only wine and malt beverages for consumption off premises within 100 yards of a college campus.

Sec. 4-204. – Fee deposit; investigative and administrative costs.

(a) Each application for any alcoholic beverage license in the City of Brookhaven shall be accompanied by a certified check for the full amount of the license fee, together with a separate applicable means of payment in the amount established by the city council, a copy of which is on file in the office of the clerk of the city, to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant is

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denied a state license, the deposit representing the license fee shall be refunded, but the sum paid for investigation and administrative costs shall be retained.

Sec. 4-205 – Alcoholic beverage license determinations.

(a) The City Manager or their designee, in determining whether to grant, renew, transfer or issue a license, may, in the interest of public safety and welfare, and in addition to all other provisions of this article, consider the following:

- (1) Whether the applicant previously held or currently holds a license under this article or any previous related ordinance, or the designated manager previously managed a licensed establishment, and, if so, the experience of the city, including city council, with such licensee or manager, including but not limited to their compliance with applicable laws and regulations;
- (2) If the owner, the applicant, the designated manager or any other person associated with the business has conducted previous business activities, the manner that previous business activities were conducted regarding considerations of public safety, fire safety and compliance with the fire code;
- (3) The location for which the license is sought, as to traffic congestion, general character of the neighborhood, and the effect such an establishment would have on the adjacent and surrounding property values;
- (4) The number of licenses already granted for similar businesses in the trading area of the place for which the license is sought;
- (5) If the applicant is a person whose license issued under the police powers of any governing authority was previously suspended or revoked;
- (6) The denial of an application or the revocation of a license which was based on the qualifications of the proposed location;
- (7) Evidence that a substantial number of incidents requiring police intervention have occurred within an area reasonably attributable to the premises during the 12 months immediately preceding the date of the application;
- (8) The applicant or licensee is not compliant with all matters bearing upon the conduct of any business ventures within the city, including, but not limited to, permitting, taxes, licenses and fees; or
- (9) Evidence that the type and number of schools, religious institutions, libraries, public recreation areas or other circumstances near the premises cause minors to frequent the immediate area, even though there is compliance with the minimum distances as provided by state law.

(b) The City may consider in denying, suspending, revoking or refusing to renew any alcoholic beverage license one or more of the following:

- (1) The violation by the applicant, manager, licensee or licensee's employees of any state or federal law or regulation or any provision of this code or other municipal ordinance, at any time adopted, relating to the sale, use, possession or distribution of drugs or alcoholic beverages while on or about the licensed premises;

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- (2) The failure of the applicant or licensee to pay required fees and taxes;
 - (3) The failure of the applicant or licensee to provide required valid information, documents and the like, including but not limited to proof of insurance;
 - (4) The submission of false or misleading information or the omission of required information in the application or attached documents;
 - (5) Residency of the manager beyond the 50-mile radius surrounding the concerned establishment;
 - (6) A prior conviction or plea of nolo contendere of the owner, applicant or designated manager of any felony during the ten years immediately prior to the filing of the application or a prior conviction or plea of nolo contendere of the applicant or designated manager of two or more misdemeanors or any state or of the United States or any municipal ordinance, except traffic violations, within the two years immediately prior to the filing of the application;
 - (7) The failure of the licensee or its employees promptly to report any violation of law or this article, or other applicable law, including any breach of the peace or altercation occurring in or adjacent to the licensee's premises;
 - (8) The failure of the licensee or its employees to cooperate with law enforcement personnel, as provided in this article;
 - (9) The operation of the licensee's business in such a manner as to constitute a threat to public safety, welfare or health or in such a manner as to constitute a public nuisance or the operation of a licensed business where violation of federal, state or local laws frequently or regularly occur; or
 - (10) The revocation or suspension by the State of Georgia of any state license to sell any alcoholic beverage shall result in the automatic revocation of the license issued under this article without any action by the city, including any bureau or employee thereof.
- (c) No license shall be issued under this article to a person where the premises for which a license is sought does not meet the requirements of all state, county and city laws, ordinances and regulations which apply to said premises, including, but not limited to building, zoning fire and sanitation codes.
- (d) *Notice and hearing; due process.* No alcoholic beverage license may be revoked, suspended, subject to refusal of renewal, or prohibited from transfer without notice and an opportunity for a hearing. Such hearing shall only occur following written notice to and advising the applicant or the license holder of the grounds therefor; the date, time and place of the hearing; and advising the applicant of the opportunity to appear, to present evidence, and be represented by counsel.
- (e) *Waiting periods.* When any license is revoked as provided under this article, no further license shall be issued to such license holder for a period of six months from the date of revocation; and if there has been a prior revocation at the location within the preceding 24 months, no further license shall be issued to any person, firm or corporation at such location for a period of six months from the date of revocation.

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(2) . Notwithstanding the foregoing, the city manager, whether personally or by designee, may temporarily suspend any license provided for in this article, including but not limited to underage permits and server permits (see section 6-1215), for any reasons stated in this section pending a hearing and action by the city council.

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(f) *Reporting disciplinary action to Georgia Department of Revenue.* Pursuant to O.C.G.A. § 3-3-2.1(c), as amended, the city shall report to the Georgia Department of Revenue any disciplinary action taken against a licensee. Such action shall be reported within 45 days of any officer, department, agency or instrumentality of the city taking such action. All notification and reporting of disciplinary actions shall be made by utilizing the reporting method implemented by the rules and regulations of the Georgia Department of Revenue.

Sec. 4-206 - Advertisement of license application; erection of sign.

(a) *Advertisement of license application required.* Upon applying to the city for a license to manufacture, distribute, dispense or sell alcoholic beverages, the applicant must post an advertisement of license application on the premises for which the license is sought. The applicant must pay a fee to the City of Brookhaven at the time of the license application to obtain the required advertisement sign.

(b) *Sign requirements.* The sign shall have a minimum size of 93 square inches and shall specify the nature of the license being requested, that the application applies to the premises on which it is posted and any other information specified by the city. The sign shall be posted on the premises in a conspicuous place which is observable by pedestrian and vehicle traffic passing such location for at least 14 days. The sign shall not be removed until the applicant receives or is denied a license to manufacture, distribute, dispense or sell alcoholic beverages within the corporate limits of the City of Brookhaven.

(c) *Change of Ownership.* If a licensed location or premises under this Article has a change of ownership, which shall include any sale, assignment, or other alteration or amendment to the principal operator or responsible party under any lease, purchase, or other occupancy agreement of the licensed premises, the licensee shall be required to advertise such change of ownership as required in this section.

Sec. 4-207 - Licensing and Taxation of Retail Sales.

(a) *Collection of delinquent sums.* If any person fails to pay a sum due under this chapter, the finance department shall issue an execution against the person so delinquent and such person's property for the amount of the delinquent fee or tax.

(b) *Audits.* If the finance department deems it necessary to conduct an audit of the records and books of a licensee under the provisions of this chapter, it shall so notify the licensee of the date, time, and place of the audit.

Sec. 4-208 - Expiration; renewal.

(a) All licenses granted under this division shall expire on December 31 of each year. A licensee who desires to renew the license shall file application, with the requisite fee heretofore provided, with the finance department on the form provided for renewal of the license for the ensuing year. All applications for renewal will be reviewed by the finance department. Licensees do not have a right to automatic renewal and must comply with all rules and regulations for the granting of licenses. Applications for renewal must be filed before November 30 of each year; otherwise penalties and interest will be assessed. No renewal license shall be granted after December 31, but such application shall be treated

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as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.

- (b) All licenses granted under this division shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this division who pays the required fee or any portion thereof after the date set by law for such payment shall pay, in addition to the annual fee, a late-payment penalty in addition to an assessment of interest at the rate specified by section 2-176*.
- (d) Failure to fully complete the renewal application, as required by the finance department will delay the renewal. The failure to furnish complete information within 30 days after being requested shall result in automatic denial of the renewal.

Sec. 4-209 – Transferability.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.
- (b) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 30 days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first, provided, however, that the finance department must be notified of the licensee's death within ten days of the death or the license shall automatically terminate on the 11th day following the death of the licensee.
- (c) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 30 days from the date of surrender, or from the date determined to be the date of severance, provided, however, that the finance department must be notified of the change within ten days of the severance or the license shall automatically terminate on the 11th day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.

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

(g) Violation of this section shall result in revocation of the license being used and a fine of \$1,000.00 each on the new ownership and the old ownership. No license will be issued to the old or the new owner in the city for one year from the date of the violation.

Sec. 4-210. – Display.

The city alcoholic beverage license shall be kept plainly exposed to view at the place of business of the licensee. The finance director or designee shall ensure that all licenses for on-premises consumption of alcoholic beverages show:

- (1) Any special land use permit conditions imposed by the city council for the establishment;
- (2) The allowed hours of operation for the location; and
- (3) Written notice to the licensee that the license with the hours of operation must be posted in a public and conspicuous place within the licensee's establishment.

Division II. – Suspension or Revocation of License; Appeal Procedure.

Sec. 4-211. – Suspension or revocation.

(a) The finance department is entitled, in its sole discretion, to either suspend or revoke any license upon a finding by the finance department, of any violation by the licensee, of any other person required under this division to meet the qualifications required for the issuance of the license, or by any majority stockholder, general or managing partner, or employee, agent, or servant of the licensee or the business in which such license is utilized, of any of the following:

- (1) Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
- (2) Any provision, condition, requirement, or limitation contained in this division;
- (3) Any other ordinance of the city;
- (4) Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such license is utilized;
- (5) Any criminal law which is classified as a felony;
- (6) Any criminal law involving moral turpitude;
- (7) Any documented negative impact to adjacent property owners for which the owner or tenant has failed to remedy through good faith efforts;
- (8) Failure to maintain parking lot of property in such a manner as to prevent littering, loitering, acts of disorderly conduct, excessive demand for public safety resources, and ongoing disturbance of adjacent property owners;

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- (9) If the licensee furnishes fraudulent or untruthful information in the original, renewal or transfer application for a license or omits information required in the original, renewal or transfer application for a license;
- (10) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license, to meet, as of the time of the notice of hearing relative thereto, the requirements established in this division for the initial issuance of such license;
- (11) Failure of the licensee or any employee or agent of the business in which the license is utilized to promptly report to the city police department:
 - a. Any violation of this division;
 - b. Any other violation of law;
 - c. Any other violation of any other city ordinance; or
 - d. Any breach of the peace, disturbance or altercation which occurs within or upon the premises of the business in which such license is utilized;
- (12) Repeated failure of the licensee or the employees, agent and servants of the business in which the license is utilized to promptly control and prevent within or upon the premises of such business any of the following activities or conduct:
 - a. Fighting;
 - b. Disorderly conduct;
 - c. Utilization of controlled substances;
 - d. Gambling;
 - e. Indecent conduct;
 - f. Excessive noise; or
- (13) Failure of the licensee or any other person required under this division to meet the qualifications required for the issuance of the license to promptly pay and satisfy all taxes and other financial obligations due the city which are not the subject of appeal or litigation; or
- (14) Failure to allow unrestricted access to the city police department for inspections.

(b) In the case of the violation of an employee, the licensee may submit evidence to the finance department for its consideration that the acts were not known to or under reasonable circumstances should not have been known to the licensee, were not condoned by the licensee, and that the licensee has established practices or procedures to prevent the violation from occurring, and that the licensee has not failed to properly train or supervise the employees to prevent the violation from occurring.

(c) Whenever the state revokes any permit or license to sell alcoholic beverages, the city license shall thereupon be automatically revoked. The police department, upon notice of such

revocation from the finance department, shall take the necessary steps to see that signs are removed and that all alcoholic beverages sales cease.

(d) Any licensed establishment that is found to be in violation of section 4-132 shall be subject to full revocation of its license and not be eligible for a temporary suspension of same.

(e) Subject to the provisions of this division and subsection (d) of this section, and without limiting the finance department's revocation power, temporary suspensions of a license for a violation of this division shall be governed as follows:

- (1) The first violation shall result in license suspension for a period of not less than two days, which shall be scheduled to include a Friday and Saturday and a reinstatement penalty of \$500.00.
- (2) The second violation within a consecutive 24-month period shall result in license suspension for a period of not less than ten days which shall be scheduled to begin on a Friday; and a reinstatement penalty of \$1,000.00.
- (3) The third violation within a consecutive 24-month period shall result in license revocation.

(f) Any suspension or revocation pursuant to this division will be subject to the notice and hearing requirements of section 4-212, and shall not take effect until the appeal period provided for in the section has elapsed.

Sec. 4-212 – Alcoholic Beverage Appeals Board

(a) Alcoholic beverage appeals shall be heard by the Alcoholic Beverage Appeals Board, a quasi-judicial body of the City of Brookhaven. The Alcoholic Beverage Appeals Board shall have the following duties:

- (1) To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city;
- (2) To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;
- (3) To hear appeals from the decisions of the police department denying the issuance of permits pertaining to employment in a licensed establishment;
- (4) To hear appeals from the decisions of the police department revoking or suspending an employee permit to an employee of a licensed establishment.

(b) The Board shall be appointed by the mayor and approved by the city council.

Sec. 4-213 – Hearings.

(a) No license or permit under this division shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

(b) The finance department shall provide written notice to the applicant or licensee of the decision to deny, suspend or revoke the license or permit. Such written notification shall notify the applicant or licensee of the right of appeal. Any applicant or licensee who is

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aggrieved or adversely affected by a final action of the finance department may have a review thereof by appeal to the alcoholic beverage hearing board. Such appeal shall be by written petition filed with the city clerk within 15 days from the date of the notice.

- (c) A hearing shall be conducted on each appeal within 30 days of the date of filing of the appeal, unless a continuance of such date is agreed to by the appellant and the city. The appellant at such hearing shall have the right to be represented by an attorney at the expense of the appellant, to present evidence, cross-examine witnesses and have the hearing transcribed.
- (d) The findings of the Alcoholic Beverage Appeals Board shall be forwarded to the finance department and the appellant within 15 days of the conclusion of the hearing.
- (e) The findings of the Alcoholic Beverage Appeals Board shall be final unless appealed within 30 days of the date of the findings by certiorari to the superior court of the county.

Sec. 4-214 - Service of notices.

For the purpose of this section, notice shall be deemed delivered when personally served or, when served by mail, within three days after the date of deposit in the United States mail.

Division III. - Tax on Sales by the Drink.

Sec. 4-215. - Definitions.

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

Distilled alcoholic beverage means any beverage containing alcohol obtained by distillation including rum, whiskey, gin and other spirituous liquors by whatever name called; but not including malt beverages, fermented wines or fortified wines.

Drink means any distilled alcoholic beverage served for consumption on the premises which may or may not be diluted by any other liquid.

Monthly period means the calendar month of the year.

Purchase price means the consideration received for the sale of distilled alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

Purchaser means any person who orders and gives present or future consideration for any distilled alcoholic beverage by the drink.

Sec. 4-216. - Imposed; rate.

There is imposed and levied upon every sale of a distilled alcoholic beverage purchased by the drink in the city a tax of three percent of the purchase price of such beverage.

Sec. 4-217. - Purchaser's receipt; credit or deferred payment.

Every licensee for the sale of distilled alcoholic beverages by the drink operating a place of business in the city shall maintain detailed sales records indicating each transaction by beverage

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and food served, its price and total. Where the charges for food and drink are satisfied by credit or deferred payment, the payment of the tax to the licensee may be deferred in a like manner; however, the licensee shall be liable therefor at the time and to the extent that such credits are incurred.

Sec. 4-218. - Liability for tax; authority to collect.

Every licensee or the licensee's agent shall collect the tax herein imposed from purchasers of distilled alcoholic beverages by the drink sold within the licensee's licensed premises. Such licensee or agent shall furnish such information as may be requested by the finance department to facilitate the collection of the tax.

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Sec. 4-219. - Determinations, returns and payments.

- (a) *Due date of taxes.* All taxes collected by any licensee or agent under this division shall be due and payable to the finance department monthly on or before the 20th day of every month next succeeding each respective monthly period.
- (b) *Return; limit of filing; persons required to file; execution.* On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the finance department in such form as the finance department may prescribe by every licensee or agent liable for the payment of tax.
- (c) *Contents of return.* All returns shall show the gross receipts from the sale of alcoholic beverages by the drink, amount of tax collected or authorized due for the related period, and such other information as may be required by the finance department.
- (d) *Delivery of return and readmittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the finance department.
- (e) *Collection fee allowed operators.* Operators collecting the tax 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 such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. tit. 48, ch. 8, art. 1 (§ 48-8-1 et seq.).

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Sec. 4-220. - Deficiency determinations.

- (a) *Recomputation of tax.* If the finance department is not satisfied with the return or returns of the tax or the amount of the tax to be paid to the finance department by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One or more than one deficiency determination may be made of the amount due for one or more than one monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by section 2-176. Interest shall be assessed for each month or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the finance department may offset overpayments, for another period, against penalties, and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in section 4-103(c).

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- (d) *Penalty for negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, the penalty amount specified in section 2-176 shall be added to the amount of the deficiency.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this division or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto.
- (f) *Notice of determination.* The finance department shall give to the licensee written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be pursuant to O.C.G.A. § 9-11-4 and shall be addressed to the licensee at the licensee's address as it appears in the records of the city or county. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States Post Office.
- (g) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the twentieth day of every month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires last.

Sec. 4-221. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any licensee fails to make a return, the finance department shall make an estimate of the amount of the gross receipts of the licensee or of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is in or may come into the possession of the finance department. Upon the basis of this estimate, the finance department shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to ten percent thereof. One or more determinations may be made for one or for more than one period.
- (b) *Manner of computation; offsets; interest.* In making a determination, the finance department may offset overpayments for a period or penalties against penalties and/or interest on underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified in section 2-176. Interest shall be assessed for each month, or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure to file a return is due to fraud or an intent to evade this division or rules and regulations, penalties shall be assessed in accordance with section 2-176.
- (e) *Notice; manner of service.* Promptly after making a determination, the finance department shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

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Sec. 4-222. - Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty of ten percent of the tax, or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in section 4-103(c).

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Sec. 4-223. - Collection of tax; security deposit; refunds.

- (a) The finance department, whenever deemed necessary to ensure compliance with this division, may require any person subject hereto to deposit such security as the department may determine. The amount of the security shall be fixed by the department, shall be the greater of twice the person's estimated average liability for the period for which the return was filed, determined in such a manner as the department deems proper, or \$10,000.00. The amount of the security may be increased by the department subject to the limitations herein provided. The department may sell the security at public auction, with the approval of the city council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.
- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against the person which remains unpaid, the finance department may, not later than three years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the finance department consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall within five days after receipt of the notice advise the finance department of all these credits, other personal property, or debts in their possession, under their control or owing by them.
- (c) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the finance department may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this division sells out the business or quits the business, the successors or assigns shall withhold sufficient of the purchase price to cover the tax liability until the former owner produces a receipt from the finance department showing that same has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent

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of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the finance department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the finance department of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.

- (f) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be offset as provided in section 4-102(c), or it may be refunded, provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the finance department within three years from the date of payment. The claim may be audited and shall be made on forms provided by the finance department. If the claim is approved by the finance department and the city council, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid, and the balance may be refunded to this person, or such person's administrators or executors.

Sec. 4-224. - Administration.

- (a) The finance department shall administer and enforce the provisions of this division.
- (b) The finance department may make and publish reasonable rules and regulations not inconsistent with this division or other laws of the city, county and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of taxes hereunder.
- (c) Every licensee for the sale of distilled alcoholic beverages by the drink in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the finance department may require.
- (d) The finance department may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.
- (e) In administration of the provisions of this division, the finance department may require the filing of reports by any person or class of persons having possession or custody of information relating to sales of distilled alcoholic beverages which are subject to the tax. The reports shall be filed with the finance department when required by the department and shall set forth the price charged for each sale, the date of each sale and such other information as the department may require.
- (f) The finance department shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in the case of judicial proceedings

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or other proceedings necessary to collect the tax levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 4-225. - Revocation or suspension of license.

The failure to timely pay the tax imposed by this division for three consecutive months or four times in a 12-month period shall render the dealer or person liable therefor subject to suspension of the alcoholic beverage license for ten consecutive days beginning on a Friday. The failure to timely pay the tax imposed by this section six times within a 12-month period shall render the dealer or person liable therefor subject to revocation of the alcoholic beverage license.

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~~Sec. 4-226.~~—4-299. - Reserved.

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Article III. – Conditions of Operation Pursuant to Alcoholic Beverage License.

Sec. 4-300. - License conditions and restrictions.

- (a) No alcoholic beverage may be sold, bartered, exchanged, given, provided or furnished to any person who is in a state of noticeable intoxication.
- (b) No person may either in his own right or as an associate of or through any company or agency own at any time more than two Class D licenses.
- (c) It shall be unlawful for any person to sell, dispense, offer for sale or keep for sale in a place of business any alcoholic beverage when such person or establishment has not been licensed to manufacture, distribute or sell under this article.
- (d) Any person possessing a Class C license shall establish a procedure for monitoring the number of people in the establishment and shall be in continuous compliance with the occupancy limit as shown on the certificate of occupancy for the premises.
- (e) Any person possessing a Class C license shall ~~while open to the public, keep restrooms open~~ and operating in sufficient numbers to accommodate the needs of its customers. Such establishment shall be in continuous compliance with city building, plumbing and life safety code requirements regarding public restrooms.
- (f) It shall be the responsibility of a Class C licensee to employ crowd management techniques to assure that patrons are adequately disbursed throughout the establishment in compliance with the occupant load of the specific area or areas of the establishment.
- (g) It shall be the responsibility of all Class C licensees to see that the occupant load is not exceeded.
- (h) To the extent patrons may assemble outside licensed premises awaiting entry or upon exiting, it shall be the responsibility of the licensee to see that those patrons are not blocking the sidewalk, street, public ways or entrances to other establishments.
- (i) It shall be the responsibility of a licensee to routinely monitor all on-site and off-site areas associated with the licensed premises to prevent such areas from becoming outdoor gathering places. It shall be the responsibility of the licensee's personnel to clear all on and off-site areas associated with the licensed premises within 30 minutes of closing.
- (j) To the extent utilized by a licensee, all security personnel shall be readily and uniformly identifiable by such means as a badge or other form of identification to assist patrons and public safety officers. All security personnel shall review and have a firm working knowledge of the public safety plan pertaining to the applicable premises.
- (k) It shall be the responsibility of a licensee to assist persons in entering and leaving the establishment in an orderly manner. ~~If any person is disorderly or otherwise is engaged in illegal conduct, personnel shall contact law enforcement.~~
- (l) A licensee's premises, including the sidewalks and adjacent public ways, shall be kept clean and free of litter or trash, and such premises shall be and remain in full compliance with all requirements of the city inspections department.
- (m) Those establishments required to submit a public safety plan shall conduct business pursuant to the terms of the plan submitted to the city and shall timely furnish, in no event more than

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30 days thereafter, in writing, material changes to the plan to the revenue director with a contemporaneous copy to the chief of BPD or his/her designee.

(n) *Posting of licenses, occupant load certificate, etc., required.* Any person licensed to manufacture, distribute, dispense or sell alcoholic beverages within the City of Brookhaven shall post together, or as otherwise directed by a deputy city marshal, in a conspicuous place in clear public view:

- (1) The alcoholic beverage license issued for the premises by the City of Brookhaven, and all other related permits, if any;
- (2) All other licenses/business tax certificates required for the premises;
- (3) An alcoholic beverage license for the premises issued by the State of Georgia;
- (4) An occupant load certificate issued by Brookhaven Fire and Emergency Services showing the maximum number of persons who may occupy the premises at any one time;
- (5) Any certificate of inspection and approval as may be required by the DeKalb County Health Department; and
- (6) An approved sign setting forth or summarizing the laws of the city and state regarding the sale of alcoholic beverages to underage or intoxicated persons.

(o) Each licensee for the retail sale of liquors hereunder, except consumption-on-the-premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment together with the inscription "City Retail License No. _____" in uniform letters not less than four nor more than eight inches in height.

(p) Each retail licensee, except consumption-on-the-premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four copies of a printed price list of the liquors offered for sale or the licensee may have the price placed on the bottles or on the front of the shelf where liquors are exhibited for sale.

Sec. 4-301. - Open to inspection; cooperation with law enforcement.

(a) A licensee shall, during the period allowable by law for operation of the business, be open to inspection by any officer of the Brookhaven Police Department, Brookhaven Fire and Emergency Services, the community development department, licensing inspector of the city or any designee of the office of the director of revenue or city manager. Such inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law.

(b) No licensee, or employee, agent or servant of a licensee, shall refuse or fail to cooperate with any law enforcement officer in the performance of such officer's duties to enforce this article or any provision of federal, state or local law. The duty to cooperate shall include providing, without hindrance or delay, access to the licensed premises, access to its records and materials relating to the sale or purchase of alcoholic beverages and access to any other material that concerns or depicts conduct related to or emanating from the sale or dispensation of alcoholic beverages in and around the licensed premises. This paragraph shall be read to include, but

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not be limited to, furnishing law enforcement with audio/video footage generated by security cameras under the control of the licensee, its owners, employees and agents.

- (c) Every person possessing an alcoholic beverage license shall keep, during business hours, the ingress doors of the premises unlocked.

Sec. 4-302. - Hours of operation; Sunday sales.

(a) *Hours of sale and operation for on-premises consumption licenses.* Alcoholic beverages shall be sold and delivered to the customer for consumption on the premises only during the following hours:

- (1) Monday through Saturday hours are from 9:00 a.m. until 2:00 a.m. of the following day.
- (2) Sunday hours are from 12:30 p.m. until 11:59 p.m.
- (3) Sales and deliveries during all other hours are prohibited. There shall be no consumption on the premises after prohibited hours have been in effect for thirty (30) minutes. All licensed establishments must close their premises to the public and clear their premises of patrons by 3:00 a.m. Tuesday through Sunday and 12:30 a.m. Monday and shall not reopen to the public until 9:00 a.m. or thereafter.
- (4) Establishments that qualify for Sunday sales. Excluding entertainment venues and specialty shops, holders of a Class C License qualify for Sunday sales of alcoholic beverages.

(b) *Hours of sale and operation for off-premises consumption licenses.* Retailers shall engage in the sale of alcoholic beverages only during the following hours:

- (1) Monday through Saturday hours from 8:00 a.m. to 12:00 midnight.
- (2) Sunday hours are from 12:30 p.m. to 11:30 p.m.

- (c) Licensees may open their establishments for the sale of alcoholic beverages on any election day, except within 200 yards of any polling place.

Sec. 4-303. - Sale; consumption outside licensed premises.

No consumption or sale of alcoholic beverages shall be allowed in open areas and patios unless first permitted and approved by the finance department. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

Sec. 4-304. - Dispensing alcohol to or by persons in motor vehicles.

- (a) It shall be unlawful for any person to dispense, furnish, or permit to be furnished any alcoholic beverage to any person situated within a motor vehicle, when such vehicle is parked or otherwise occupies space on any city street, alley, lane, parking lot or other roadway, except to make a delivery for consumption subsequent thereto.
- (b) It shall be unlawful for any person situated within a motor vehicle, when such vehicle is parked or otherwise occupies space on any city street, alley, lane, parking lot or other roadway to dispense, furnish, or permit to be furnished any alcoholic beverage to any person.

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Sec. 4-305. - Consumption of alcohol on city streets.

It shall be unlawful for any person to possess an alcoholic beverage in an open container, either on their person, in a motor vehicle or otherwise on the streets, sidewalks, parks, squares or other public places within the City of Brookhaven.

Sec. 4-306. - Employee permits.

- (a) All employees of any licensed establishment must hold an employee permit. The conditions and procedures governing the issuance of alcohol permits for employees are set forth in this section.
- (b) An employee permit shall be issued unless the applicant fails to meet the qualifications for an employee permit under this chapter. Any employee permit identified in this chapter will be issued or the issuance of a permit will be denied by the police department within 30 days after submission of a properly completed application. An application for an employee permit is complete when it contains the information required by this chapter and is accompanied by the permit fee in the amount established by action of the city council. A permit shall be valid for 12 months from the date of issuance. If a permit is not issued or denied within the time frame specified herein, the permit shall be automatically approved.
- (c) No person requiring an employee permit may be employed by or work in an establishment as defined in this chapter until such person has filed an application, paid the fee for, and obtained a work permit from the police department. No person shall be issued an employee permit who has been convicted in this or any other city, county, state or in any federal court within five years immediately prior to the application for the employee permit of soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses or any charge relating to the manufacture or sale of intoxicating liquors or any felony or misdemeanor of moral turpitude.
- (d) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, mailing address, written proof of age (in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency), and a list of all prior criminal convictions. The police department shall make a complete search relative to any police record of the applicant.
- (e) Any permit for employment issued hereunder shall expire 12 months from the date of issuance unless earlier revoked or suspended. The police department may prescribe reasonable fees for certifying the eligibility for employment.
- (f) An employee holding a permit issued pursuant to this chapter shall during his working hours have the permit available for inspection at the premises.
- (g) An employee shall provide his employer with a legible copy of his permit which copy shall be maintained by the employer as part of its business records.
- (i) All licensees and all individuals holding employee permits shall report to the city finance department any citation, conviction or administrative sanction imposed upon them by any court or governmental agency within ten days of the permit-holder's receipt of notification regarding the adjudication of the occurrence, incident or event giving rise to a citation.

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(j) Any holder of an alcoholic beverage server permit who is cited for a violation of this chapter or any state law governing dispensation of alcohol and who either enters a plea of guilty or nolo contendere or is convicted of such violation shall be subject to sanction to include revocation or suspension of his/her permit.

(1) Permit holders cited for violations as described in this section shall be subject to the penalties of section [4-1000](#).

(2) Cause for suspension or revocation of a permit shall be as follows:

- a. Violation of any city ordinance or state law governing the dispensation of alcoholic beverages;
- b. Criminal offenses, arrests or convictions as described in [§§ 4-203 or 4-211](#);
- c. Any material false statement or omission relating to any alcoholic beverage manager or employee permit issued, including but not limited to any material false statement, omission or misrepresentation on any permit application.

Sec. 4-307. – Age restriction for employees in licensed establishments.

(a) No person under the age of 18 years shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail, nor shall any person under the age of 18 years sell, take orders for, or deliver alcoholic beverages.

(b) Subsection (a) of this section shall not be construed to apply to establishments licensed for retail sale of beer or wine by the package, where such sales constitute less than 50 percent of the gross revenue of the establishment, provided, however, it is unlawful for any person under the age of 18 years who is employed by such an establishment to sell or take orders for alcoholic beverages. Nothing in this subsection shall be construed to discriminate against or impede the employment of any person under 18 years of age.

Sec. 4-308. – Location restrictions.

(a) No person knowingly and intentionally may sell or offer to sell at retail, except as allowed under subsection (b) of this section:

- (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility or college campus [except as provided in Section 4-203\(h\)\(1\)](#);
- (2) Any distilled spirits in or within 200 yards of any church or within 200 yards of any school building, school grounds, educational facility or college campus;
- (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center.

(b) No person knowingly and intentionally may sell or offer to sell for consumption on the premises, except as allowed under subsection (f) of this section:

- (1) Any wine or malt beverages within 100 yards of any school, school grounds, educational facility or college campus;
- (2) Any distilled spirits in or within 200 yards of any church or within 200 yards of any school building, school grounds, educational facility or college campus;

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- (3) Any distilled spirits, wine or malt beverages within 200 yards of an alcoholic treatment center.
- (c) The school building, school grounds, college campus, educational facility or educational facility or educational building referred to in this section applies only to state, county, city, parochial school, day care, kindergarten or buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state; provided this shall not apply to private universities and colleges.
- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises, showing the distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.
- (e) Where an existing licensed location is interfered with by government action under the power of eminent domain, and not by a voluntary act of the licensee, the licensed use may relocate elsewhere on the property, and the new building site will be treated as an existing nonconforming use eligible for license renewal for purposes of the distance requirements of this section.
- (f) The distance restrictions contained in subsection (b) of this section do not apply to a restaurant as that term is defined in chapter 27, if the following conditions are satisfied:
- (1) The restaurant must be located on property bearing the zoning district classification pedestrian community 1 (PC-1), pedestrian community 2 (PC-2), pedestrian community 3 (PC-3), or office-commercial-residential (OCR), as those terms are defined in chapter 27;
 - (2) The restaurant must be located on property within an overlay district regulated in chapter 27, except restaurants, if any, located in residential infill overlay districts as defined in chapter 27;
 - (3) Restaurants located in zoning districts identified in subsections (f)(1) and (2) of this section that desire to offer alcoholic beverages for consumption on premises shall be situated at least 50 feet from any pre-existing single family detached dwelling as that term is defined in chapter 27. This 50-foot buffer shall be measured from the property line of the single-family detached dwelling to the side wall of the restaurant closes to that property line; and
 - (4) The distance restrictions contained in subsection (b) of this section shall continue to apply to nightclubs and late-night establishments as those terms are defined in chapter 27. The distance restrictions contained in subsection (b) of this section shall continue to apply to restaurants, if any, located in residential infill overlay districts as defined in chapter 27.

Sec. 4-309. – Prohibited conduct.

On-premises conduct. No licensee, as defined in this chapter, shall knowingly violate the following regulations or knowingly or recklessly allow an employee or any other person to violate the following regulations:

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Deleted: (e) No license in effect as of April 30, 1998, shall be revoked before its date of expiration or renewal or transfer denied by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license shall be denied by reason of the method of measurement set out in this section if a prior license for the same location was in effect on April 30, 1998. No application for a license or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on April 30, 1998. ¶

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(b) *Findings and rationale.* Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, the city council finds: ¶

(1) . Nudity, partial nudity, conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of (...)

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- (1) No person shall knowingly engage in masturbation, sexual intercourse, fellatio, cunnilingus, sodomy, bestiality, or flagellation on the licensed premises.
- (2) No employee shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering, on the licensed premises.
- (3) No patron shall knowingly touch, engage in physical contact with, caress, or fondle the breast, buttocks, lap, pubic region, or genitals of an employee, whether directly or through clothing or other covering, on the licensed premises.
- (4) No employee shall knowingly expose their genitals, pubic hair, buttocks, natal cleft, perineum, anus, vulva, or the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point (except that the exposure of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel is not prohibited) to a patron on the licensed premises. This subsection does not apply to conduct in theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception in the previous sentence shall not be construed to apply to any sexually oriented business as defined in this Code.

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Sec. 4-310. – Failure to require and properly check identification.

- (a) It is unlawful not to require and properly check identification to ensure an underage person is not sold, served or possesses alcoholic beverages while in a licensed establishment. In this section, "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, and giving such person's date of birth and includes, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.
- (b) Licensee must have written policies and procedures and must train, instruct and supervise employees to ensure compliance with this section.
- (c) Except as otherwise authorized by law, and in accordance with state law:
 - (1) No person knowingly, 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, attempt to purchase, or knowingly 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 illegally any alcoholic beverage;
 - (4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; and
 - (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.

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- (d) The prohibitions contained in subsections (c)(1), (2) and (4) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
 - (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (2) At a religious ceremony.
- (e) The prohibitions contained in subsections (c)(1), (2), and (4) of this section shall not apply when the person under the age of 21 is given the alcoholic beverage by his parent or guardian for consumption in the home and in the presence of the parent or guardian.
- (f) The prohibition contained in subsection (c)(1) of this section shall not apply with respect to sale of alcoholic beverages by a person when such 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, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate and shall not include any traffic citation and complaint form.
- (g) Nothing in this section shall be construed to conflict with O.C.G.A. § 3-3-23 or any other provision of state law. Any violations of this section shall be grounds for revocation of the license by the issuing body.

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Sec. 4-311. – Retailer to purchase from licensed wholesaler only.

No retailer shall purchase alcoholic beverages from any person other than a wholesaler licensed under this division. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this division.

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Sec. 4-312. – Retailer to use tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, the prices of all beer and wine exposed or offered for sale.

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Sec. 4-313. – Happy hour promotions.

(a) No licensee under this division or employee or agent of a licensee shall in connection with the sale or other disposition of alcoholic beverages for consumption on the premises engage in selling, offering to sell, or delivering to any person or persons any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided nothing contained herein shall be construed to prohibit reducing the price of a drink or drinks by up to one-half the price customarily charged.

(b) In this section, the term "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

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Sec. 4-314. – Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations and other nonprofit organizations currently having tax-exempt status under either the United States Internal Revenue Code or O.C.G.A. § 48-

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71-1 et seq. shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption-on-the-premises establishments.

Sec. 4-315. – Consumption of alcohol not purchased on the premises.

(a) *Brownbagging prohibited.* Except as provided in subsection (b), no owner, operator, or agent of any restaurant, music hall, theatre, or any other business licensee of the city shall knowingly allow patrons to bring in and consume any alcoholic beverage that is not purchased on the premises pursuant to a license under this chapter.

(b) *Corkage.* At the sole discretion of the licensee, establishments having both a full-service kitchen and a license for on-premises consumption of alcoholic beverages may allow patrons to carry or otherwise take wine onto the premises for consumption during the service of meals only subject to the following:

- (1) Only one bottle per patron of legal drinking age at a table or booth shall be allowed;
- (2) Before opening, the wine must have been sealed with the original seal;
- (3) The bottle must be commercially manufactured;
- (4) The bottle may not exceed 1000 mL in volume;
- (5) The bottle must be given to the licensee or its designee either before or as the patron is seated; and
- (6) A partially consumed bottle of wine may be returned to the patron after the licensee or its designee re-corks the bottle in a manner to make the cork flush with the top of the bottle. The licensee shall place the re-corked bottle in a bag or other container that is secured in such a manner that is visibly apparent if the container has been subsequently opened or tampered with.

A licensee who allows patrons to carry or otherwise take wine onto the premises for consumption in accordance with this section may charge a fee to patrons for this service, at the licensee's discretion.

Sec. 4-316. —4-399. - Reserved.

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Sec. 4-316. – Establishments licensed for on-premises consumption; types of establishment.¶

(a) No alcoholic beverages shall be sold at retail except in establishments licensed to sell alcoholic beverages in the original package, as applicable, which are located in zoning districts in which these establishments are permitted as a conforming use or when such establishment currently exists in the zoning district as a nonconforming use as defined in chapter 27. ¶

(b) . In cases where a hotel or motel is allowed to sell liquor by the package for purposes of room service, ...

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Article IV. – Specific Provisions Related to Wholesalers.

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Sec. 4-400. – License required; purchase and delivery limitations.

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- (a) Any person desiring to sell, at wholesale, any alcoholic beverage in the city shall make application to the finance department and obtain a license to do so, which application shall be in writing on the prescribed forms, and pay a fee in the amount established by action of the city council, a copy of which is on file in the office of the clerk of the city council.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (c) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (d) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

Sec. 4-401. – Excise tax imposed; bond required.

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- (a) There is imposed an excise tax upon all alcoholic beverages purchased in the city by persons holding a retail package license and/or a consumption-on-the-premises license at a rate established by action of the city council, a copy of which is on file in the office of the clerk of the city.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses and shall be paid by the wholesale dealers to the finance department of the city by the tenth of each month, based upon the units of alcohol sold during the previous month. The wholesale dealer shall keep true and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing, but not limited to, the type and volume sold to each retail licensee on a form or in a format as approved by the finance department.
- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the finance department equal to 1.5 times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers to secure the payments for the tax imposed herein. These bonds shall be secured by cash which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the finance department.
- (d) A wholesaler may be excused from posting the performance bond after demonstrating full and satisfactory compliance with the provisions required hereunder for a period of 12 months ~~after~~ the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums as required by the provisions of this section.
- (e) Any person who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city under this article within the time required shall pay a late payment penalty,

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in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as specified by section ~~2-176*~~.

Sec. 4-402. – Audit.

The city shall have the right to audit each wholesale dealer licensed to do business in the city.

Sec. 4-403. – Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 6:00 a.m. and 11:00 p.m., Monday through Saturday.

~~Sec. 4-404.~~—4-499. - Reserved.

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Article V. – Specific Provisions Related to Malt Beverages and Wine.

Sec. 4-500. - Home brew special events.

- (a) "Home brew special event" means an organized event that consists of a contest, tasting, judging or other similar such competitive event that is not open to the general public that occurs at locations which do not constitute premises under this article and where malt beverages that have been manufactured in a private residence are consumed only by participants in and individually designated judges of such events.
- (b) Malt beverages brewed in a person's private residence may be removed from such residence, in a quantity not to exceed 25 gallons and otherwise provided such removal complies with the provisions of Title 3 of the O.C.G.A., as amended, for purposes of home brew special events.
- (c) Prior to conducting a home brew special event, the sponsor shall apply for and obtain a home brew special event permit on a form provided by the office of the revenue director.
- (d) Home brew special events shall not be open to the general public and shall be limited to the event participants and/or individually designated judges.

Sec. 4-501. – Craft Beer Market.

- (a) No person shall be permitted to own or operate a craft beer market without obtaining from the finance director as provided in this Code for both a retail package sales of malt beverages license and an ancillary tasting license.
- (b) Notwithstanding any other provision of this Code or the Code of Ordinances for the city generally, a craft beer market shall be authorized to sell samples of draft beer and pints to patrons over the age of 21 years. Samples shall not exceed four ounces in volume, pints shall not exceed 16 ounces, and beers having an alcohol content ~~exceeding~~ six percent alcohol by volume shall not exceed ten ounces. One individual shall not be offered more than a total of 32 ounces within a 24-hour period.
- (c) A craft beer market or growler shop may, but is not required, to serve food, so long as the establishment complies with all other provisions of the city Code and such food service is properly permitted by the city. if food is served, the food must be provided by a licensed third party food server.
- (d) A craft beer market or growler shop that offers for sale samples or pints shall be exempt from the definitions of restaurants and entertainment venue in chapter 27.
- (e) Employees of a craft beer market that offers for sale samples or pints as defined in this section shall obtain and the licensee shall maintain on premises an employee license as required in section 4-185.

Sec. 4-502. – Establishments licensed for off-premises consumption; types of establishment.

- (a) Except as provided in section 4-501, no beer and/or wine shall be sold at retail except in establishments maintaining 80 percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use or in a facility duly licensed by the city to sell liquor by the package.

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(b) In cases where a hotel or motel may sell liquor by the package for purposes of room service, beer and wine sales by the package shall also be permitted for purposes of room service to guests of the hotel or motel.

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Sec. 4-503. – On-premises consumption unlawful; growlers.

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(a) Except as provided in section 4-501, 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 retail 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. This section shall not apply with respect to:

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(1) Tastings provided pursuant to an ancillary wine tasting license; or

(2) Tastings provided pursuant to an ancillary malt beverage tasting license.

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(3) Sales pursuant to a license for consumption on the premises

(b) Notwithstanding the foregoing prohibition, package malt beverage licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with draft beer at the licensee's licensed location from kegs lawfully procured by the licensee, subject to the following requirements:

(i) The filled growler must be securely sealed, on premises, with a tamper proof plastic cap;

(ii) Either at least 90 percent of the licensee's total gross sales are from the packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of 400 square feet of floor space dedicated to the display of malt beverages offered for sale; and

(iii) The licensee complies with all state, federal and local packaging and labeling laws regarding alcoholic beverages.

Each filled growler must be removed from the premises in its securely sealed condition. Except as provided in subsection (a) of this section, consumption on the premises shall be prohibited.

(c) Where multiple persons licensed for on-premises consumption or off-premises consumption operate in the same building or under the same roof, each separately licensed entity must have a separate and unique external ingress and egress.

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Secs. 4-504.—4-599. - Reserved.

Article VI. – Specific Provisions Related to Distilled Spirits.

Sec. 4-600. – Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle, except as provided in section 4-602.

Sec. 4-601. – On-premises consumption of distilled spirits; entrance to establishment.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen prepared to serve food every hour they are open. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

Sec. 4-602. – Establishments licensed for off-premises consumption; types of establishment.

- (a) No distilled spirits by the package shall be sold at retail except in the following:
 - (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package.
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sales of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection (3) of this section.
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway, or other interior portion of the primary use structure.
 - (4) In hotels and motels with a restaurant holding a consumption-on-the-premises license, as part of room service for guests of the hotel or motel.
- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

Sec. 4-603. – Coin-operated or amusement machines.

No Class D license holder or any license holder for off-premises consumption shall permit on the premises any slot machine of any kind or character or any coin-operated machine or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

Sec. 4-604. – Location of retail liquor package stores.

No new retail establishment selling distilled spirits by the package shall be located within 1,000 yards of an existing retail establishment selling distilled spirits by the package. This prohibition shall not apply to a hotel or a motel with a restaurant holding a consumption on the premises license which sells package distilled spirits, malt beverages, or wine to its guests as part of room service.

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Secs. 4-605.—4-699. – Reserved.

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Article VII. - Specific Provisions Related to Authorized Catered Event Functions

Sec. 4-700. - Licensed alcoholic beverage caterers.

Licensed alcoholic beverage caterers may operate in the City of Brookhaven only pursuant to a license issued by the revenue director and pursuant to the terms and conditions specified in this chapter.

Sec. 4-701. - Eligibility for alcoholic beverage caterer license; application.

- (a) Any Class C licensee in possession of a current city license may apply for an off premises license, to the extent of the holder's on-premises consumption alcoholic beverage license in effect at the time of application, to act as a licensed alcoholic beverage caterer whereby such licensee is permitted to sell or dispense alcoholic beverages, consistent with its on-premises consumption license, by the drink in connection with authorized catered functions of a limited duration, which shall be set forth in the licensing application.
- (b) Any Class D licensee in possession of a current city license may apply for an off-premises license, to the extent of the holder's package dealer alcoholic beverage license in effect at the time of application, to act as a licensed alcoholic beverage caterer whereby such licensee is permitted to sell or dispense alcoholic beverages, consistent with its retail package dealer license, by the drink in connection with authorized catered functions of a limited duration, which shall be set forth in the licensing application.
- (c) The application for each such authorized catered function license shall be made upon a form provided by the city, identifying the name of the caterer, the date, address and time of the event and the licensed alcoholic beverage caterer's license number. The application shall be submitted with payment of a license fee as set forth in the annual revenue ordinance.

Secs. 4-702—4-799. - Reserved.

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Article VIII. – Specific Provisions Related to Private Clubs

Sec. 4-800. ~~Private clubs authorized; requirements.~~

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

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Article IX - Persons Under the Age of 21

Sec. 4-900. - Lawful presence of persons under the age of 21 on licensed premises.

(a) Persons under the age of 21 are allowed upon licensed premises only as follows:

- (1) In restaurants as defined in Section 4-103; provided, however, that during the time the establishment is open to the public its mode of operation remains unchanged and full menu service is available, and further provided that persons under the age of 21 at no time shall be permitted at the bar unless accompanied by a parent or guardian.
- (2) In entertainment venues and taverns/pubs; provided, however, that persons above the age of 18 but under the age of 21 shall only be permitted on the premises during live performances, for which that person has paid an admission charge, and only following issuance of a Class J license to the entertainment venue or tavern/pub. In no event shall persons below the age of 18 be allowed in an entertainment venue or tavern/pub.
- (3) In event venues.
- (4) In establishments possessing a valid Class D, E, G, or H license.
- (5) In recreation facilities, including, but not limited to, bowling alleys, billiard parlors, skating facilities, golf course clubhouses and other similar such family-oriented establishments where the majority of the establishment's annual gross revenue is derived from fees obtained in the furtherance of recreational activities.
- (6) In hotels, motels, inns, auditoriums, athletic facilities or stadiums.
- (7) In other locations where alcohol is dispensed pursuant to a temporary event permit.

(b) Nothing in this section shall be construed to prohibit any person between the ages of 18 and 21 from dispensing, serving, selling or handling alcoholic beverages as a part of employment, to the extent authorized by state law.

(c) Nothing in this section shall be construed to prohibit any person less than 18 years of age from selling or handling alcoholic beverages sold for consumption off the premises as a part of employment in any grocery store, convenience store, brewery or drugstore.

Sec. 4-901. - Drinking, possession, furnishing of alcoholic beverages to underage persons illegal.

Except as otherwise authorized by law:

- (a) No person knowingly, 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;
- (b) No person under 21 years of age shall purchase, attempt to purchase or knowingly possess any alcoholic beverage;
- (c) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
- (d) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; or

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(e) No person under 21 years of age shall misrepresent his or her identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.

Secs. 4-902—4-999. - Reserved.

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Article X. - Penalties for Violations

Sec. 4-1000. - Penalties.

- (a) A violation of any state statute, regulation or city ordinance regulating a person licensed thereunder and committed by the licensee or any person, directly or indirectly, employed thereby shall be punished by a fine against the licensee, license suspension or revocation, following adequate warning, notice and failure by the licensee or person employed thereby to correct the infraction within a reasonable time, as follows:
 - (1) First offense: Minimum fine of \$500.00.
 - (2) Second offense: If within 12 months of the first, minimum fine of \$750.00.
 - (3) Third offense: If within 18 months of the first, minimum fine of \$1,000.00.
 - (4) Any offense after the third: If within 24 months of the first, issuance of notice to appear to show cause why license should not be revoked.
- (b) A licensee shall be notified in writing of the time, date, place and nature of the violation and the time and date when the licensee shall be afforded a hearing with an opportunity to present evidence and cross-examine opposing witnesses. Proof of a criminal conviction for the violation shall not be required. The burden of proof shall be by a preponderance of the evidence.
- (c) If the licensee cannot present evidence of their activity, it shall be presumed that such evidence does not exist.
- (d) When a license has been revoked, no further license shall issue under this article to the former licensee for a period of 24 months from the date of revocation.
- (e) Any person who violates this article or any other state law, regulation or local ordinance may also be subject to citation and subpoena to the Municipal Court of the City of Brookhaven or the State Court of DeKalb County, and to judicial penalties resulting therefrom.

Secs. 4-1001.- 4-1099. - Reserved.

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