CHAPTER 5 – ALCOHOLIC BEVERAGES

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~~It shall be unlawful for any person to establish and/or operate a microbrewery within the corporate limits of the city without having the appropriate license for such operation, or to carry on such activity in violation of the terms of such license or of this chapter.~~

~~Sec. 5-6.4-5. – Separate license for each microbrewery; surrender.~~

~~(a) A separate license shall be required for each microbrewery, and a separate application shall be made for each such place.~~

~~(b) Immediately upon the sale or closing of a business, it shall be the duty of the licensee to surrender his license to the ARB.~~
~~Sec. 5-6.4-6. - Applications for microbrewery license.~~

~~Applications for microbrewery licenses shall be as follows:~~
~~(a) Forms; submission. Each initial applicant shall make written application to the ARB for the privilege of establishing and operating a microbrewery, such applicant using forms provided by the clerk.~~

~~(b) Where filed; fee. The application shall be filed with the clerk with a fee as set out in the fee schedule under section 5-3-15, for review of the applicant and of the proposed location and processing of the application.~~

~~(c) Contents. The application shall state:~~
~~1. As to the applicants, full name, birth date, present address and addresses for the past five years, business address and business addresses of employers and their addresses for the last five years, name of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, counties, state and federal, and other cities, counties, and states of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.~~
~~2. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection 1.~~
~~3. Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.~~
~~4. Name and address of the owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.~~
~~5. Trade name (or proposed trade name) of proposed business.~~
~~6. Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.~~
~~7. Certification that the applicant(s) are in compliance with the state requirements for establishing and operating a brewery as set forth in Title 3 of the Official Code of Georgia, as amended from time to time, including submission of copies of state-issued permits, licenses, and other documents if requested by the city council, the chief of police, the city manager, or the city attorney.~~
~~8. A complete set of the applicant(s)' fingerprints.~~
~~9. Such other background information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.~~

~~(d) Approvals. The application shall contain evidence of the following individual's approval of the licensee and of the owner and the manager of the microbrewery:~~
~~1. Building inspector (i.e., building permit, certificate of occupancy, or other evidence).~~
~~2. Traffic engineer.~~
~~3. Fire marshal/fire chief.~~
~~4. Chief of police/assistant chief of police.~~
~~5. Planning and zoning coordinator.~~

~~(e) Oath. The application shall be sworn to.~~

~~(f) Surveyor's certificate. The application shall be accompanied by a current certificate from a registered surveyor containing the following information:~~
~~1. A scale drawing of the building or proposed building, as situated on the proposed lot.~~
~~2. The proposed off-street parking facilities available to the building and all outdoor lighting on the premises.~~
~~3. The exact location of the business, including street address, ward, and county tax map number.~~
~~4. Current zoning classification of the location.~~
~~5. The distance in yards as measured in a straight line from nearest property line to nearest property line from each of the following: the nearest school building, school ground or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.~~
~~(g) False information. An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.~~

~~Sec. 5-6.4-7. - Sham applicant; de facto applicant or location manager.~~
~~A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.~~
~~(a) It shall be unlawful for any person to file, or permit to be filed, an application for license under this division wherein a sham applicant or a sham location manager is named.~~
~~(b) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of a location manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.~~
~~(c) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of~~
~~the license or the de facto location manager, as the case may be.~~
~~(d) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~Sec. 5-6.4-8. - Surveyor's certificate containing false information.~~
~~(a) It shall be unlawful for any applicant under this article to submit with his or her application any surveyor's certificate containing known false information and/or measurements.~~
~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~
~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~
~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~Sec. 5-6.4-9. - Advertisement; proof thereof.~~
~~(a) Each applicant under this article shall advertise his or her application for license at his or her own expense in the legal organ newspaper once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall appear after the application is filed and before the public hearing provided for in this article. The advertisement shall contain the name of the~~

~~applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each initial application.~~
~~(b) The applicant, before consideration will be given to his application, shall file with the clerk a copy of the advertisement together with affidavits from the newspaper to the effect that it has been printed as required.~~

~~Sec. 5-6.4-10. - Action by ARB and city council.~~
~~(a) After proof of advertisement is filed, the clerk shall notify the chief of police, who shall investigate the applicant and the reputation of the location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee, when assured that all requirements have been complied with and the application is complete, shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to the city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~
~~Sec. 5-6.4-11. - Approval of application; expiration in 90 days; extension for cause.~~
~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war, and other uncontrollable occurrences, provided the request is made within the original 90-day period.~~

~~Sec. 5-6.4-12. - Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application subject matter being litigated.~~
~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~
~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.~~

~~Sec. 5-6.4-13. - Considerations and guidelines for grant or denial.~~
~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(a) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(b) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~
~~(c) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~
~~(d) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~
~~(e) The criminal record of the applicant and the location manager, and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~
~~(f) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~
~~(g) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use, distribution, manufacture, or sale of alcohol at the proposed location have been met.~~
~~(h) Evidence presented to the ARB for or against the application relating to the sale, manufacture, distribution, or use of alcohol at the proposed location.~~
~~(i) Whether or not the granting of the application is in the best interest of the health, safety, and welfare of the city.~~
~~(j) Whether any license for sale or manufacture of beer, malt beverages, wine, or alcohol previously issued for the location has been revoked for cause by the city.~~
~~(k) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~
~~(l) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (k) as related to the sale or use of alcohol at the proposed location.~~
~~(m) Whether or not the applicant or location manager has violated other jurisdictions' laws regarding alcohol beverage licensing.~~
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Content:

ARTICLE 1. - LICENSING GENERALLY

Sec. 5-1~~2~~-1. - ~~Licenses required.~~
~~(a)~~ Purposes.

The purposes of this chapter shall include, but not be limited to, the following:

(a) Compliance with and effectuation of state law;

(b) Promotion and effectuation of the city's land use and zoning policies/plans;

(c) Prevention of the unlawful sale and use of alcohol;

(d) Protection of schools, homes, churches, parks and other entities; and

(e) Protection of the public health, safety and welfare.

The businesses of manufacturing, distributing, selling, handling and otherwise dealing in or processing alcoholic beverages are privileges and not rights pursuant to O.C.G.A. § 3-3-1, and such privileges shall not be exercised within the city limits without full compliance with the licensing, regulatory, and revenue requirements of local, state and federal rules, regulations, and laws, including this chapter.

Sec. 5-1-2. - Licenses required.

(a) No person shall engage in the manufacture, sale or distribution of alcoholic beverages in the city without first having obtained a license therefor, provided that wholesalers and distributors maintaining no fixed place of business, warehouse or other facility in the city and possessing a valid state license may make sales and deliveries to licensed retailers and

Comment [e1]: New to code

Comment [e2]: New to code

to persons licensed for the sale of alcoholic beverages for consumption on the premises without obtaining a city license.

(b) Except as specifically authorized in this chapter, no person licensed for the sale of a particular class of alcoholic beverages may sell other classes of alcoholic beverages without obtaining the required license therefor, nor may any licensee engage in any activity in violation of 1) the terms of this chapter or 2) an issued license.

(c) Generally, no entity may hold more than two licenses total. The two licenses may be in a single class. Hotels may hold up to five licenses total as long as each licensed entity or facility is physically located or operated within one building.

~~(c)~~(d) All licensees hereunder must, within a six-month period after the issuance of a license, open for business the establishment referred to in the license and begin the sale of the product or products authorized by the license. Failure to open the establishment and begin the sale of such products within the six-month period shall serve as automatic forfeiture and cancellation of the unused license pursuant to the provisions of this chapter. No refund of a license fee shall be made to the licensee upon any forfeiture, abandonment, revocation, suspension, or cancellation of a license. Notwithstanding the provisions of this chapter, an alcohol license fee may be refunded on a pro-rata basis by vote of the Mayor and Council, upon an applicant's showing of good cause. All requests for refunds shall be made at least ninety days in advance of the date on which the applicant seeks for such license to cease, terminate and/or expire.

(e) Immediately upon the sale or closing of a business licensed ~~herein~~under this chapter, it shall be the duty of the licensee to surrender such~~his~~ license to the City Clerk. The failure to surrender such license within 30 days of the sale or closing of a business shall be a violation of this chapter.

(f) Any licensee who is an employee of a corporation, and who is separated from his employment, whether he resigns, retires or is fired, shall immediately file notice of such with the city clerk, in writing. If such employee is no longer the designated licensed representative for the establishment due to such separation, he shall immediately surrender his license to the clerk. Failure to surrender such license, if removed from the place of business, shall be a violation and shall be punished as provided by state law.

(g) Any license holder/applicant shall promptly notify the city manager, in writing, of any change in the interests in or ownership of the licensed business, the licensee and/or any change in the information stated in the original application for license. Any such change shall be subject to the requirements of this chapter and shall require the city manager's approval. A license holder/applicant's failure to notify the city manager of any such change within thirty (30) days of the change shall be a violation of this chapter and grounds for revocation by the city. Upon filing timely notice of such change, the licensee may continue to operate under the license until a decision is rendered by the City.

Comment [e3]: Formerly in Sec. 5-2-2. - Number of licenses

Comment [e4]: Relocated from Article 4, beer/wine and made a general requirement to all licensees

Sec. 5-1-3. - ~~(b)~~ Regulatory classes.

The following regulatory classes are established:

(1) Retail beer/wine store;

(2) ~~Package~~ Distilled Spirits store;

(3) On-premises ~~:consumption;~~

i. On-premises consumption

ii.

~~(5)~~ On-premises arts;

iii. Off premises and special event;

iv.

~~(6)~~ Alcoholic beverage caterer;

v. Ancillary wine tasting;~~;~~

(7) Growler;

(8) Microbrewery;

(9~~8~~7) Wholesale; ~~and~~

(10~~9~~8) Manufacturing.

With respect to ~~(c) Beer/wine~~ wholesale and manufacturing: ~~.~~

(a) The regulations for class retail beer/wine shall include requirements applicable to beer/wine wholesale and manufacture except where specified otherwise in this chapter.

(b) The regulations for class package store shall include requirements applicable to liquor wholesale and manufacture except where specified otherwise in this chapter.

Sec. 5-1-4. – General Application Requirements.

(a) Applicant: License for corporations shall be issued in the name of the corporation and applied for ~~by and in the name of~~ ~~and maintained~~ by and in the name of the designated stockholder, officer and/or employee primarily responsible for the operation of the licensed premises. License for partnerships shall be issued in the name of the partnership and shall be applied for ~~and maintained by~~by and in the name of ~~and in the name of~~ the partner and/or employee primarily responsible for the operation of the licensed premises.

~~(b)~~

(b) A change in a corporation or partnership's named representative may be permitted if his/her replacement meets the requirements of new license applicants. A corporation or partnership shall promptly file notice of any change in its named representative with the city clerk, and failure to do so within a period of thirty (30) days after such change shall be grounds for revocation by the city. Upon filing timely notice of such change, the licensee may continue to operate under the license until a decision is rendered by the City. All other license shall

Comment [e5]: Consolidated under one category

Comment [e6]: New to code

be applied for and issued in the name of the person and/or employee primarily responsible for the operation of the licensed premises.

~~(c) Corporate names. Corporations are authorized to apply for and to hold the licenses contemplated under this chapter in their corporate names and shall name on such application an agent and/or manager actively employed in the operation of the business who shall be responsible for operation under the license as is provided for in this Code and who shall qualify in all respects under the provisions of this Code. In addition, each corporation operating hereunder shall identify with the Georgia Secretary of State a registered agent for service. Should the manager and/or agent or registered agent leave the employment or service of the corporation a new agent and/or manager or registered agent shall be named by the license holder within ten days thereafter; otherwise, the license provided in this chapter shall be automatically forfeited and cancelled and no refund of license fees shall be made to the licensee. An appeal of the cancellation can be made to the ARB and then to the city council as provided in subsection 5-3-8(d).~~

~~(d)~~(c) Contents of application. The applicant ~~A person applying for a license under this Chapter~~ shall submit to the City Clerk~~ARB~~ an application containing the following:

(1) The Applicant's ~~As to the applicants,~~ full name, birth date, residential ~~present address and~~ addresses for the past five years, ~~business address and business addresses~~name and location of their employers ~~and their addresses~~ for the last five years, ~~name of~~ spouse's name, both the applicant and their spouse's criminal history showing all arrests, convictions, guilty pleas and dispositions for alleged violations of any local, state and/or federal law for the last five years prior to the application, and, where applicable, the name of the partnership or corporation for whom they are applying, and any trade, business and/or organizational name under which the licensed premises may operate.

(2) The type of license under this chapter for which the applicant is applying.

~~(3)~~ (3) ~~complete record of all arrests, convictions and guilty pleas for violations of all laws, city, counties, state and federal, and other cities, counties, and states of both applicant and spouse, and the disposition of all charges within the last five years prior to the application~~

~~1. b. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection a.~~

~~c.~~ Exact location of the proposed business location, including complete street address, suite number (if applicable), County Tax Parcel ID, zoning district and nearest intersection)~~(street address and otherwise) of proposed business, including zoning district. The location must be properly identified~~.

(4) A copy of the lease to the premises, and/or proof of ownership of the premises, and/or proof of other authorization for use of the premises.~~Name and address of the owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.~~

(~~4)~~5) ~~and whether or not there is a building proposed to be used already ere~~

~~e. Trade name (or proposed trade name) of proposed business.~~

Comment [EW7]: Formerly in Sec. Sec. 5-3-2. - Regulations applicable to all classes

Comment [e8]: Removed contents from individual class sections and made a general requirement for all.

~~f.~~ Name and address of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.

(~~5~~6) Photographs of location. Applicants shall submit front, side and rear photographs of the alcohol beverage license desired location as part of the application process. If the location is located in another building, such as a hotel, pictures of the exterior building located on a city street may be submitted.

(7) The application shall be accompanied with a fee as set out in the fee schedule under Article 10.

(8) *Local bonding requirements.* A performance and tax liability bond payable to the city in the amount of $5,000.00 must be posted and filed with the city, along with the application, for the first five years an applicant seeks an alcohol beverage license under this chapter. In addition, all applicants who have been found to be in violation of any state regulation relating to the sale and distribution of alcoholic beverages as promulgated by the state department of revenue or any provision of this chapter must post and file with the city, along with the application, a performance and tax liability bond payable to the city in the amount of $5,000.00 for the five years immediately following the violation. The bond shall be conditioned upon the faithful observance and performance by the applicant of the rules and regulations contained in this chapter, and upon the payment of any taxes, license fees, or other sums due to the city pursuant to this chapter. Upon violation of this chapter, or any part thereof, the amount of the bond to be forfeited will be determined based on the nature of the violation after a hearing is provided in accordance with the provisions of this chapter. Forfeiture of any bond pursuant to this section may be in addition to any other action that may be taken against a licensee for violations of this chapter.

(9) Surveyor's certificate. All applicants seeking a package store license shall be required to submit a current certificate from a registered surveyor with their application. All other applicants shall be required to submit such certificate upon request by the city manager. The ~~application shall be accompanied by a current certificate from a registered~~ surveyor's certificate shall contain~~ing~~ the following information:

(a) A scale drawing of the building or proposed building, as situated on the proposed lot.

(b) The proposed off street parking facilities available to the building and all outdoor lighting on the premises.

(c) The exact location of the business, including street address, ward, and county tax map number.

(d) Current zoning classification of the location.

Comment [e9]: Formerly in Sec. 5-3-2, Definitions Article

Comment [e10]: Formerly in 5-3-2, definitions article.

Comment [e11]: Formerly 5-3-2, Definitions

(e) The distance in yards as measured in a straight line from nearest property line to nearest property line from each of the following: the nearest school building, school ground or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.

(f) If a business has been licensed since July 1, 1981, or before, the survey shall be required however no license will be denied based upon a failure to meet the distance requirements as set forth under O.C.G.A. § 3-3-21.

(10) Advertisement; proof thereof. After the application is filed, the applicant shall advertise his application for license at his own expense in the city's designated legal organ once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall contain the name of the applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each initial application. An application will not be deemed complete until the applicant has filed with the clerk a copy of the advertisement together with affidavits from the newspaper evidencing such publication as required. The applicant's failure to promptly file a copy of the advertisement together with affidavits may result in dismissal of the application.

(11~~e~~)— Required training. The applicant, and its named designated representative(s), seeking a license under this article shall submit with the application a certificate of attendance from an alcohol awareness training program. ~~In order to obtain and maintain a valid alcohol beverage license, the applicant and all managers of the licensed premises must attend annually alcohol beverage license training as provided by the city.~~

(12) Completed applications. All applications under this chapter shall not be deemed completed until all required information is accurately submitted, all criminal background checks are returned and attached to the application, all surveys are attached and such application has been reviewed and stamped complete by the alcohol beverage clerk or his/her designee. No time frame designated hereunder shall begin to run until an application is deemed complete. Premature or incomplete submission of an application may result in the city's refusal to accept the same until the application is complete.

(13) In additional to any other notice requirements set forth under this chapter, all notices under this chapter required to be submitted to the city, and/or any of the city's officials or employees, shall be submitted in writing and in a manner evidencing the city's receipt, to be valid.

Comment [e12]: Formerly in Sec. 5-3-2. – Definitions Article

Comment [e13]: Formerly 5-3-2, Definitions Article

Sec. 5-1-5. - Transferability of licenses.

Licenses to engage in the business of selling alcoholic beverages shall not be transferable to any other person or location. If a licensee seeks to relocate the licensed premises to another location within the city, application shall be made as for an original license, provided however a new license fee shall not be required for the remainder of the license year.

Sec. 5-1-6. - Issuance and Display of License.

(a~~d~~) ~~*[Licenses.]*~~ Licenses are issued on a calendar-year basis; however, such license may be abandoned, suspended, probated, or revoked as set forth in this chapter. Licenses may be issued at any time during a calendar year for the remainder of the calendar year.

~~(b) There shall be no refund of license fees for licensed businesses, which close during a calendar year.~~

(b~~e~~) New businesses starting after the beginning of the calendar year shall pay license fees prorated on the basis of the annual license fee.

~~(d) Where established businesses operating under an annual license are sold or otherwise conveyed (thus requiring a new license), the new license fee shall be determined according to a monthly proration.~~

(c~~e~~) The sale or conveyance of an alcohol beverage sale licensed business requires a new license application, license, and all associated fees.

(d~~f~~e) ~~*Display of licenses.*~~ All holders of local and state alcohol beverages licenses shall prominently display the same at the licensed location in an area accessible to city personnel. State licenses need not be displayed if the state prohibits such display.

Comment [e14]: Relocated from 5-3-2

~~**Sec. 5-2-2. - Number of licenses.**~~

Comment [e15]: Moved to 5-1-2

~~**Generally, no entity may hold more than two licenses total. The two licenses may be in a single class. Hotels may hold up to five licenses total as long as each licensed entity or facility is physically located or operated within one building.**~~

~~**Sec. 5-12-73. - Visibility.**~~

~~(a) Each facility that sells any alcoholic beverage shall have a clearly marked point(s) of entry.~~

~~(b) The point(s) of entry must be clearly visible from a public street; however, this requirement shall not apply to hotels or where the location of the point of entry is in a shopping center or multiple-story business building.~~

~~(c) At all points of entry, clear windows or clear doors are required in all facilities licensed hereunder. If a facility contains a cashier's cage or other internally enclosed facility, clear windows or clear doors must also be utilized except as set out below.~~

~~(d) All businesses licensed hereunder, including those entirely enclosed in another building such as a restaurant located in a hotel, must keep all windows, doors, etc., free of visual obstructions so that persons outside the facility may clearly see inside the facility. No tinting, shades or other devices shall be used to obstruct the view into the facility. Shades, curtains, blinds, etc., may be used to reduce sun glare so long as such measures do not impede visual access to the facility's interior.~~

~~(e) All businesses licensed hereunder must keep a level of lighting internally adequate to provide visual access and safety to law enforcement or other emergency responders 24 hours a day seven days a week. External lighting cannot be solely used to meet the standards required herein.~~

~~(f) Offices which do not contain cash registers within a facility may be excluded from subsections (c) and (d).~~

Sec. 5-12 87. - ~~Authorization of sale on el~~Election day sales~~s~~.

The sale of alcoholic beverages on election days is authorized, in accordance with state law.

Sec. 5-1-893 12. - Conduct p~~P~~rohibited, generally~~ion of certain types of entertainment, attire and conduct~~.

~~(a) *Findings; public purpose.* Based on the experience of other urban counties and municipalities, including, but not limited to, Atlanta and Fulton County, Georgia; DeKalb County, Georgia; Richmond County, Georgia; Amarillo, Texas; Austin, Texas; Garden Grove, California; Houston, Texas; Renton, Washington; Phoenix, Arizona; Indianapolis, Indiana; St. Paul, Minnesota; Tucson, Arizona; Augusta, Georgia; LaGrange, Georgia; Dalton and Whitfield County, Georgia; Carrollton, Georgia; Smyrna, Georgia; and Fort Lauderdale and Palm Beach, Florida, which experiences the city council believes are relevant to the problems faced by the city, the city council takes note of the notorious and self-evident conditions attendant to the commercial exploitation of human sexuality, which do not vary greatly among generally comparable communities within our country. Moreover, it is the findings of the city council that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages, begets criminal behavior and tends to create undesirable community conditions. Among the acts of criminal behavior identified with nudity and alcohol are disorderly conduct, prostitution, and drug trafficking and use. Among the undesirable community conditions identified with nudity and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for and allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior hereinabove described, and acceleration of community blight by the concentration of such establishments in particular areas. Therefore, the limitation of nude conduct in establishments licensed to sell alcoholic beverages is in the public welfare and it is a matter of governmental interest and concern to prevent the occurrence of criminal behavior and undesirable community conditions normally associated with establishments, which serve alcohol and also allow and/or encourage nudity. To that end, this section is hereby adopted.~~

~~(b) *Enactment.*~~ The following ~~types of entertainment, attire and conduct are~~conduct is prohibited upon any premises in the city licensed to sell, serve or disperse alcohol beverages:

(a~~1~~) Improper a~~A~~ttire:~~.~~ The employment or use of any person, in any capacity, in the sale or service of alcohol beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva and genitals.

(b~~2~~) Lewd Acts:~~.~~ Live entertainment where any person appears in the manner described in ~~subsection~~ paragraph (a~~b)(1~~) of this subsection or where such persons (or person) perform(s) acts of or acts which simulate any of the following:

Comment [e16]: Formerly in Sec. 5-3-2, Definitions

Comment [e17]: Formerly in Sec. 5-3-12, Definitions

Comment [e18]: Unnecessary

(1~~a)~~. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act which is prohibited by law.

(2~~b)~~. The touching, caressing or fondling of the breasts, buttocks, anus or genitals.

(~~c~~3). The displaying of the male or female pubic hair, anus, vulva or genitals.

(c~~3~~) The holding, promotion, sponsoring or allowance of any contest, promotion, special night, event or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct ~~described in subsections (b)(1) and (b)(2) above~~prohibited under this chapter.

(~~e~~d) Unauthorized alcohol use in City owned buildings and facilities:~~.~~ It shall be unlawful for any person to serve, possess and/or consume any alcoholic beverage within any city building or facility unless~~s (1)~~ prior written authorization of the city manager is first obtained~~, and (2) such service, possession and/or usage is in accordance with published rules of the city recreation department~~. Service of alcoholic beverages within a city building or facility shall not require an alcohol beverage license under this chapter provided it is in accordance with the requirements of this section. As used herein, city building or facility shall mean any and all city parks and any building owned or leased by the city.

(e) On duty consumption:

~~Sec. 5-3-3. - Drinking alcoholic beverages by licensees, managers, and employees while on duty at locations.~~

~~(a) -~~Unless otherwise permitted in this chapter, it shall be unlawful for the licensee or any manager or employee thereof of a license premise to consume any intoxicating beverage while on duty at the same, or to be on duty at the same in an intoxicated condition. "Intoxication" shall be defined as when a licensee's, manager's, or employee's alcohol concentration is 0.08 grams or more at any time while on duty as defined below.

~~(b) -~~For purposes of this section, any licensee, or interest holder thereof, manager, or employee of a licensee who is on the establishment's premises shall be presumed to be "on duty" if he is:

(1) Being paid any salary, wage or remuneration of any kind for his services rendered during the time he is on the premises;

(2) On the establishment's premises for the benefit of or at the direction of the establishment or its management (other than as a customer, patron or guest);

(3) Engaging in the sale, directly or indirectly, of any food or beverage; or

(4) Taking a break during periods of on-duty employment.

(f) Furnishing of alcohol to persons underage: It shall be a violation of this chapter for any person:

(1) under 21 years of age to purchase and/or possess any alcoholic beverage;

(2) to serve, provide and/or sale an underage person an alcoholic beverage;

(3) to fail to check the identification of any person so to result in an underage person being sold, served, and/or provided an alcoholic beverage.

(i) The prohibitions contained in this section with respect to underage persons shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:

(a) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state;

(b) At a religious ceremony; or

(c) In the home with parental consent.

(ii) Additionally, where such conduct is not otherwise prohibited by state law, nothing contained in this section shall be construed to prohibit any underage person from:

(a) Dispensing, serving, selling, or handling alcoholic beverages as a part of employment in any licensed establishment;

(b) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or

(c) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

(iii) The municipal court, in accordance with O.C.G.A. § 36-32-10, is granted jurisdiction to try and dispose of a first offense violation of O.C.G.A. § 3-3-23, pertaining to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurs within the corporate limits of the city. O.C.G.A. § 36-32-10 is incorporated in this section by reference.

(g)

~~(c) A violation of this section shall be punished in accordance with the City Charter. A violation of this section shall also constitute grounds for the suspension, revocation, and/or refusal to renew license.~~

~~Sec. 5-3-4. - Furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by persons under 21 years of age, violation; jurisdiction.~~

~~The municipal court, in accordance with O.C.G.A. § 36-32-10, is granted jurisdiction to try and dispose of a first offense violation of O.C.G.A. § 3-3-23, pertaining to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurs within the corporate limits of the city. O.C.G.A. § 36-32-10 is incorporated in this section by reference.~~

Comment [e19]: Relocated to enforcement section

~~Sec. 5-3-5. -~~Sale ~~of intoxicating~~alcohol beverages where firearms and weapons are sold.

It shall be unlawful for any person to sell, or offer for sale, firearms, knives or other weapons and intoxicating beverages at the same business establishment.

(h) Sham applicant; de facto applicant or location manager:

(1) It shall be unlawful for any person to file, or permit to be filed, an application for license with the city wherein a sham applicant or a sham location manager is named.

(2) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of a location manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.

(3) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of the license or the de facto location manager, as the case may be.

(4) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.

(i) Surveyor's certificate containing false information.

(1) It shall be unlawful for any applicant under this article to submit with his application any surveyor's certificate containing known false information and/or measurements.

(2) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.

(3) A violation of subsection (b) may result in prosecution as for a felony offense.

(4) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.

(~~i~~j) Prohibited persons. It shall be prohibited for the following persons to obtain an alcohol license ~~for the~~with the city ~~retail sale of malt beverages/wine~~:

(1) A person who does not comply with any residency requirements under state law.

(2) A person who has been convicted of a felony relating to violence, illegal substances, gambling, theft, or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city or any other city or county relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within five years preceding the application.

(3) A person whose license under this chapter has been revoked for cause or who has had a license under this chapter revoked for cause.

(4) A person who is under 18 years of age or who is not of sound mind and memory.

Any licensee under this ~~article~~ chapter who becomes a "prohibited person" as defined in this chapter, shall, within three days of the event, make the fact known to the city manager and shall surrender his license, such surrender being appealable to the city council.

(k) Back or side room sales. The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and, provided further that this prohibition shall not apply to the sale of alcoholic beverages for consumption hereunder to the registered guests of any hotel in their designated rooms.

(l) No drive-in windows for the sale of alcoholic beverages in the city shall be allowed.

Sec. 5-1-9~~10~~. - Discontinuance of business.

Any licensee hereunder who shall begin the operation of the business and sale of product or products as authorized in the license, but who shall, for a period of six consecutive months thereafter, cease to operate the business and sale of the product or products authorized in the license, shall upon completion of the six-month period automatically forfeit his license, which license shall by virtue of failure to operate, be cancelled without the necessity of any further action of the city. Provided, however, that where a business temporarily ceases operation solely to make substantial improvements or substantially refurbish the existing improvements which will enhance the taxable value of the property on which the business is located, and where there is no change in the licensee or interest holders thereof any business and/or alcoholic beverage license may be reissued routinely upon application therefore and payment of required fees when the business is ready to resume operations; provided, however, said cease of operations shall not exceed six consecutive months from the expiration date of the license then in existence at the time the operations cease. In order for an applicant's license to be reissued, the licensee must submit a written request to the ARB. Upon good cause shown by the applicant, the ARB may recommend reissuance of the license or an additional six-month extension of the unused license to the mayor and council.

Sec. 5-1~~3~~-910~~16~~. - Exception of operating prior to July 1, 1981.

Restrictions in this chapter on the sale of alcoholic beverages near alcoholic treatment centers owned and operated by any city, any county, or the state shall not apply to any hotel or business licensed for sales of wine or malt beverages, if such license was in effect on July 1, 1981.

Sec. 5-1-11~~2~~. - Violations.

Any person violating any of the provisions of this article shall be deemed guilty of an offense and, upon conviction thereof, shall be punished as provided in accordance with the city Charter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by such person and shall be punished accordingly. Additionally, all persons, firms, partnerships, entities, and corporations engaged in the sale or distribution of alcoholic beverages shall observe all laws, rules and regulations of the state as they pertain to the operation of their respective businesses and any violation of the same shall be determined to be a violation of this section and punishable in accordance with state law and this chapter.

Comment [EW20]: relocated from on premises section, article 6

Comment [e21]: Frmerly in Sec. 5-3-2, definitions article

Comment [e22]: Formerly in Sec. 5-3-2, Definitions

Comment [e23]: Formerly in 5-3-7, definitions article.

~~Sec. 5-3-7. - Violations; punishment.~~

~~Any violation of this chapter shall be punished as provided in the city Charter for violation of local ordinances unless otherwise specified.~~

Comment [e24]: Formerly in Sec. 5-3-2, Definitions

Comment [e25]: Relocated to enforcement

Sec. 5-~~4~~1-12~~37~~. - Changes of circumstances.

Unless expressly provided otherwise herein, licensees and applicants shall file written notice with the city clerk notice any changes in their initial alcohol license application, within (10) days of any such change.

~~The recommendation of approval of an application by the ARB, and/or the granting of a license by the clerk, may be suspended or revoked, after notice and hearing, if any change in the information supplied, or in the physical layout represented in the plat submitted, occurs without the approval of the ARB. An applicant anticipating any such change shall submit all details thereof to the ARB which shall report the same to the city council.~~

Sec. 5-1-134. - Renewal.

(a) All licenses under this article shall be issued on a calendar-year basis and may be renewable upon payment of the appropriate fee; however, the same may be suspended or revoked at any time as set forth in this chapter.

(b) Each licensee shall file a written application for renewal with the city clerk on or before October 15 of each year on forms approved by the clerk, and the license fee shall be paid in full no later than December 15 of each year.

(c) The application shall be referred to the ARB, who shall report to the city manager with any information relevant to the renewal they possess on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.

(d) The city manager shall grant or deny for cause the renewal of any license issued under this article.

Sec. 5-1-1~~45~~3 ~~2~~. -

Brown-bag, "BYOB" prohibitions and exemptions.

Comment [e26]: New, this may be expanded or restricted at the council's discretion due to recent requests by brewers, we will seek further feedback from you about the same.

It shall be unlawful for any person to bring in his own alcoholic beverage (BYOB) in any retail establishment, without regard to whether such establishment is licensed to serve alcoholic beverages. This section shall not prohibit any person dining at an establishment licensed to sell wine for consumption on the premises from bringing an unopened bottle of wine for consumption into said establishment, where the establishment's policies permit the same. For purposes of this paragraph, the term retail establishment shall not include a private hotel room or other similar guest room or a private club.

Sec. 5-1-156. - Number of package stores.

Comment [e27]: Relocated from article 5, package stores

The number of package stores selling malt beverages, wine, and liquor shall be limited based upon population. Population shall be determined by the U.S. decennial census. The census in effect for establishing enforcement of this section shall be the U.S. census in effect at the adoption of this chapter until such time as a new U.S. census is established. There shall be no more than one package store outlet selling malt beverages, wine, and liquor per 1,500 residents of the city according to the U.S. census.

Sec. 5-1-16~~7~~. - Consumption on city streets prohibited; limited in certain area.

(a) *Drinking alcohol on city streets prohibited.* Except as permitted otherwise in this chapter, it shall be unlawful for any licensed establishment to dispense any alcoholic beverage in an open container for removal from the premises, and it shall be unlawful for any person to remove from an alcoholic beverage establishment any open container of alcoholic beverage or to drink or attempt to drink any alcoholic beverage from any open container or to possess in any open container any alcoholic beverage on the streets, sidewalks, rights-of-way, and parking lots, whether public or private, within the corporate limits of the city.

(b) *Outside consumption of alcoholic beverage ~~permitted in certain area~~at city sponsored events; number and size limited.* From time to time, the city council may approve city sponsored special events at which the outside consumption of alcohol may be permitted during set time periods and at designated locations. The following regulations shall apply ~~within the Downtown Development Zone~~during any such city sponsored special events:

(1) *One drink on-street limit.* Any establishment licensed to dispense alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, or other container other than a can or~~,~~ bottle~~, or glass~~, for removal from the premises; provided, however, that no establishment shall dispense to any person more than one such alcoholic beverage at a time for removal from the premises, and no person shall remove at one time more than one such alcoholic beverage from the licensed premises.

(2) *Size limited to 16 ounces.* No container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed 16 fluid ounces in size. No person shall hold in possession on the streets and sidewalks, in parks and squares, or in other public places within the defined area any open alcoholic beverage container which exceeds 16 fluid ounces in size.

(3) *Drinking from can or ~~,~~ bottle ~~, or glass~~ prohibited.* It shall be unlawful for any person to drink or attempt to drink any alcoholic beverage from a can or~~,~~ bottle~~, or glass or~~ to possess in an open can or ~~,~~ bottle ~~, or glass~~ any alcoholic beverage on the streets, sidewalks, rights-of-way, and parking lots, whether public or private.

(c) *Drinking alcohol in parked motor vehicle prohibited.* It shall be unlawful for any person to consume any alcoholic beverages while in the confines of a motor vehicle when the vehicle is parked on any city street, alley, way or parking lot.

(d) *Open container of alcohol in moving vehicle prohibited.* It shall be unlawful for any person to possess an open container of an alcoholic beverage while operating a vehicle in the city or while a passenger in or on a vehicle being operated in the city.

Comment [e28]: Modeled by Savannah, will further tailor upon feedback from council

ARTICLE 2~~3~~. - DEFINITIONS APPLICABLE TO ALL CLASSES

Sec. 5-2~~3~~-1. - 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:

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

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

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

Authorized catered function means an event at a location not otherwise licensed for consumption of alcoholic beverages by the drink at which alcoholic beverages are furnished, for consideration, and sold, dispensed or provided free of charge to persons present at the event, by the drink, pursuant to a permit obtained under this section.

ARB means the city's ~~appointed~~ regulatory body ~~also~~ known as the alcohol review ~~board~~board.

Bed and breakfast means a facility used for accommodating travelers as guests for a charge or donation where at least one meal is served, excluding churches and nonprofit soup kitchens.

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

Booth means a seating area with a table for use by the public.

Bottle means a generic term for all alcoholic beverages whether or not the same are in a glass container including beer, wine, and hard liquor.

Brewery means any establishment where malt beverages are manufactured.

Brewpub means any eating establishment in which malt beverages are manufactured. For purposes of this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, beer, malt beverages, or wines and which derives at least fifty-one~~51~~ percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Business location means the site of an alcohol sales business or proposed site.

BYOB means "bring your own bottle" and/or "bring your own beer."

Comment [e29]: New

Comment [e30]: New

Comment [e31]: Made consistent with State Code (O.C.G.A. § 3-1-2)

Comment [e32]: New, similar to Sandy Springs, Savannah, and modeled after state code.

Cashier's cage means any area where money or other things of value are exchanged for goods or services in an enclosed area located within another facility the purpose of which is security and/or separation of the operator of the establishment from customers.

Church means a building, which is controlled by a religious organization or association and primarily utilized for religious services, ceremonies, or instruction.

Contiguity means a premises connected by open hallways or rooms without doors or dividers.

Distilled spirits or *spirituous liquor* means any alcoholic beverage obtained by distillation or containing ~~more than 21 twenty four~~the percent ~~(24)~~ of alcohol by volume sufficient ~~by volume including~~to constitute a distilled spirit as defined by state law~~, but not limited to, all fortified wines~~.

Election day means one hour before the polls open to one hour after the polls close.

Food means all edible substances appropriate for human consumption as determined by the health department inspecting the city's restaurants and lounges as sold or provided to the public in a restaurant as defined in this chapter. Food shall not be construed to mean: olives, cherries, limes, lemons, salt, pepper, pineapples, celery, tomato juice, or any other fruit, vegetable or dairy product such as ice cream, cream, yogurt, milk or soft drinks, water, tonic water, other non-alcoholic carbonated or non-carbonated beverages when such items are used in alcoholic beverages or mixed drinks as an essential part of the beverage, mixed drink, or as a garnish thereon.

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

~~*Gender*~~*His* or *her* means a word importing male or female, which shall be applied to either sex interchangeably in this chapter.

Growler means a glass, plastic or ceramic bottle not to exceed ~~two liters and not less than 12~~sixteen ounces that is filled by a licensee or employee of a licensee ~~that is filled~~ with beer or wine from a barrel, keg, or cask ~~maintained on premises by a licensee holding a growler license or employee of such licensee in accordance with the provisions of article 6.3~~for off premises consumption.

Hotel means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether conducted in the same building or in a separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation:

(1) Which maintains 50 or more rooms used for the sleeping accommodations of such guests;

(2) Which maintains an adequate and sanitary kitchen and dining room equipment to serve food as required therein;

(3) Which operates one or more public dining rooms (excluding banquet rooms) with a combined seating capacity of at least ~~50~~fifty, where meals are regularly served to

Comment [e33]: Made consistent with State Code (O.C.G.A. § 3-1-2)

Comment [e34]: New per new caterer provisions

Comment [e35]: Revised similar to Savannah

guests; provided that consistent with the definition of "lounge" in this section, in no event shall the seating capacity of the lounge exceed that of such public dining room;

(4) Which employs sufficient personnel to serve food as required in this chapter; and

(5) Which derives at least as much gross income from the sale of such meals prepared, served, and consumed in the hotel as it does from its sale of alcoholic beverages.

Individual means a natural person.

Intoxication means a condition where the licensee's, manager's, or employee's alcohol concentration is 0.08 grams or more at ~~anytime~~any time while on duty.

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

Licensed alcoholic beverage caterer means any person licensed for the sale of alcoholic beverages by the state and who possesses a license by a local government in the state authorizing such person to sell or dispense alcoholic beverages by the drink off licensed premises and in connection with an authorized catered function.

Comment [e36]: New

Lounge means a separate room connected with, a part of, and adjacent to, a restaurant or room located in a hotel as defined herein with all booths, stools, and tables being open and unobstructed to the view of any other customers in such lounge, or the manager thereof.

Malt beverage. See "Beer."

Manufacturer means any maker, and/or producer, of bottled alcoholic beverage. The term also means:

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

Comment [e37]: Made consistent with State Code (O.C.G.A. § 3-1-2)

(2) In the case of malt beverages, any brewer; and

(3) In the case of wine, any vintner.

Manager means the person who does or will actually manage or operate the premises on a day-to-day basis.

Measured means measured by way of a straight line from the nearest property line of a premises to the nearest property line of an involved institution.

Microbrewery is the term used in this chapter to collectively refer to breweries and brewpubs.

Monthly means on the basis of whole months.

Motel means facilities meeting the qualifications set out in this definition for hotels shall be also classified in the same category as hotels. Hotels shall have the privilege of granting

franchises for the operation of a lounge, or restaurant in their premises, and the holder of such franchise shall be included in the definition of "hotel."

On duty means any licensee, manager, or employee located on the premises while being remunerated in any way for services rendered; who is on the premises for the benefit or at the direction of the outlet or its management; who is engaging in the sale, directly or indirectly, of any food or beverage; or is taking a break during a precise work period.

"*Open container*" means any container which is immediately capable of being consumed from, or of which the seal has been broken.

Comment [e38]: New

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

Person means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

Pour means sell for beverage purposes, sell for consumption on the premises, sell by the drink, and the process of patrons bringing their own liquor, wine or malt beverages for the purposes of mixing drinks and/or consuming same on the premises. The sale of mixes or setups or advertising to "bring your own" or the possession by patrons on the premises of liquor, wine or malt beverages, not purchased at the licensed facility shall be prima facie evidence of pouring and shall be prohibited.

Premises means areas with dual or more: cash registers, menus, trade names, seating, counter space, cooking facilities or some combination of these elements shall be considered prima facie evidence of a separate facility requiring a separate license. However evidence of contiguity may be presented to rebut the presumption of separateness.

Principle [principal] business means that at least fifty-one~~51~~ percent of the receipts of such business shall come from the sale of food in lounges and restaurants. To be included in the tabulation of receipts for the purpose of this calculation are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other nonemployee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises.

Private club means any nonprofit association organized under the laws of this state which:

(1) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter;

(2) Has at least 75 regular dues-paying members;

(3) Owns, hires, or leases a building or space within a building for the reasonable use of its members, which building or space:

a. Has suitable kitchen and dining room space and equipment; and

b. Is staffed with a sufficient number of employees for cooking, preparing, and serving meals for its members and guests; and

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

Redecorate shall not include repair nor freshening, change of theme or scheme, or work of any kind which is incident to a repair.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are actual and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room seating capacity of at least 50 persons, including patios which are immediately adjacent to and a part of the main licensed facility and wherein the same services are offered as inside the main licensed facility, with said seating capacity complying with the Code; and having employed therein a sufficient number and kind of employees to prepare, cook, and serve edible food to its guests.

Retail beer/wine store means any location which sells malt beverages, wine or malt beverages and wine in unbroken packages at retail only to consumers and not for resale, such as, but not limited to, convenience and grocery stores, beer shops, and wine shops. Additionally, retail beer and/or wine stores shall be referred to as "retail beer/wine stores." Likewise, the words "beer" and "malt beverage" shall be synonymous.

Sham means any information provided for an application which is not true, accurate, or is spurious, or deceitful.

State law means the laws, rules, regulations and/or policies promulgated by the state of Georgia and/or its departments and/or agencies, including the Official Code of Georgia.

Taxpayer means any person made liable by law to file a return or to~~and~~ pay tax.

An *underage* person pertains to and includes any person to whom the sale of alcoholic beverages is prohibited by state law because of age.

Wholesaler or *wholesale dealer* means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to on-premises consumption locations.

Wine means any alcoholic beverage ~~containing not more than twenty-four21 percent alcohol by volume~~ made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added, and containing the percent of alcohol by volume sufficient to constitute a wine as defined by state law. The term 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 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 wine at the point in the manufacturing process when it conforms to the condition of wine contained in this Code section.

~~Sec. 5-3-2. - Regulations applicable to all classes.~~

Comment [e39]: new

Comment [e40]: new

Comment [e41]: Made consistent with State Code (O.C.G.A. § 3-1-2)

~~(a) *Issuance of license*. Licenses provided for in this chapter shall be issued as follows:~~

~~(1) There shall be no refund of license fees for licensed businesses, which close during a calendar year.~~

~~(2) New businesses starting after the beginning of the calendar year shall pay license fees prorated on the basis of the annual license fee.~~

~~(3) Where established businesses operating under an annual license are sold or otherwise conveyed (thus requiring a new license), the new license fee shall be determined according to monthly prorations.~~

~~(4) The sale or conveyance of an alcohol beverage sale licensed business requires a new license application, license, and all associated fees.~~

~~(5) All licenses shall be subject to nonrenewal suspension, probation, or revocation at any time for causes set forth in this chapter.~~

~~(6) Failure to pay the required fee shall result in revocation of the license. Sale of alcoholic beverages without a license may result in criminal prosecution.~~

~~(b) *Authorization of sale on election days*. The sale of alcoholic beverages on election days is authorized, in accordance with state law.~~

~~(c) *Corporate names*. Corporations are authorized to apply for and to hold the licenses contemplated under this chapter in their corporate names and shall name on such application an agent and/or manager actively employed in the operation of the business who shall be responsible for operation under the license as is provided for in this Code and who shall qualify in all respects under the provisions of this Code. In addition, each corporation operating hereunder shall identify with the Georgia Secretary of State a registered agent for service. Should the manager and/or agent or registered agent leave the employment or service of the corporation a new agent and/or manager or registered agent shall be named by the license holder within ten days thereafter; otherwise, the license provided in this chapter shall be automatically forfeited and cancelled and no refund of license fees shall be made to the licensee. An appeal of the cancellation can be made to the ARB and then to the city council as provided in subsection 5-3-8(d).~~

~~(d) *Periodic inspection and audits*. Sworn officers of the police department, the city clerk, and city manager and their designees shall have the authority to inspect establishments and their financial records licensed under the alcoholic beverage ordinances of the city during the hours in which the premises are open for business. The inspections shall be made for the purpose of verifying compliance with the requirements of this chapter.~~

~~(e) *Suspension; revocation*.~~

~~(1) Any untrue or misleading information contained in or material omissions left out of an original, or renewal application of a license hereunder shall be cause for the denial thereof, and, if any license has been granted under these circumstances, there shall be cause for the immediate suspension or revocation of the license pursuant to the provisions of this chapter subject to the appellate provisions set forth in subsection 5-3-8(d).~~

~~(2) All licensees hereunder must, within a six-month period after the issuance of a license, open for business the establishment referred to in the license and begin the sale of the product or~~

Comment [e42]: Relocated to Sec. 5-1-5

Comment [e43]: Moved to new revocation Article

Comment [e44]: Relocated to Article 1, Licensing Generally

~~products authorized by the license. Failure to open the establishment and begin the sale of such products within the six-month period shall serve as automatic forfeiture and cancellation of the unused license pursuant to the provisions of this chapter. No refund of a license fee shall be made to the licensee.~~

~~(3) Whenever the state shall revoke any permit or license, the city license to deal in such products shall thereupon be automatically revoked without the need of any action by the city.~~

~~(4) In the event of revocation, no refund of any portion of the license fee shall be paid.~~

~~(5) All persons, firms, partnerships, entities, and corporations engaged in the sale of alcoholic beverages shall observe all rules and regulations of the state revenue commissioner as they pertain to the operation of their respective businesses and any violation of such rule or regulation of the state revenue commissioner shall be determined to be a violation of this section and punishable in accordance with state law and this chapter.~~

~~(f) *Discontinuance of business.* Any licensee hereunder who shall begin the operation of the business and sale of product or products as authorized in the license, but who shall, for a period of six consecutive months thereafter, cease to operate the business and sale of the product or products authorized in the license, shall upon completion of the six-month period automatically forfeit his license, which license shall by virtue of failure to operate, be cancelled without the necessity of any further action of the city. Provided, however, that where a business temporarily ceases operation solely to make substantial improvements or substantially refurbish the existing improvements which will enhance the taxable value of the property on which the business is located, and where there is no change in the licensee or interest holders thereof any business and/or alcoholic beverage license may be reissued routinely upon application therefore and payment of required fees when the business is ready to resume operations; provided, however, said cease of operations shall not exceed six consecutive months from the expiration date of the license then in existence at the time the operations cease. In order for an applicant's license to be reissued, the licensee must submit a written request to the ARB. Upon good cause shown by the applicant, the ARB may recommend reissuance of the license or an additional six-moth extension of the unused license to the mayor and council.~~

~~(g) *Completed application.* All applications under this chapter shall not be deemed completed until all required information is accurately submitted, all criminal background checks are returned and attached to the application, all surveys (when required) are attached and such application has been reviewed and stamped complete by the alcohol beverage clerk or his/her designee. No time frame designated hereunder shall begin to run until an application is deemed complete. Premature or incomplete submission of an application may result in a refusal to accept the same until the application is complete.~~

~~(h) *Denied application.* If an applicant's license has been previously revoked or denied, upon reapplication for another license, such reapplication shall not be within a period of six months from the date of revocation or disapproval.~~

~~(i) (1)*Designated manager(s).* All alcohol beverage licensed establishments shall have a designated manager(s). If a manager resigns, is terminated, dies or otherwise is replaced during the calendar year license period the license holder shall notify the alcohol beverage~~

Comment [e45]: Relocated to new revocation Article

Comment [e46]: Relocated to 5-1-1, Licensing generally

clerk immediately. Failure to designate a manager(s) and update the clerk regarding changed managers may be cause for disciplinary action up to and including revocation.

(2) *Required training.* In order to obtain and maintain a valid alcohol beverage license, all managers of the license applicant and/or all managers of the licensee must attend annually alcohol beverage license training as provided by the city.

(j) *Photographs of location.* Applicants shall submit front, side and rear photographs of the alcohol beverage license desired location as part of the application process. If the location is located in another building, such as a hotel, pictures of the exterior building located on a city street may be submitted.

(k) *Probable cause audits.* Where the ARB has been presented evidence providing probable cause to reasonably suspect a license holder is failing to comply with accurate reporting or payment requirements under this chapter for reports or sums relating to the use or sale of alcoholic beverages then the ARB may order a probable cause audit of the license holder's alcohol related business.

(l) *Brownbagging, BYOB prohibited.* It is prohibited for any person to bring in his own alcoholic beverage in any establishment requiring a license to manufacture, distribute, serve, sell, handle, or otherwise deal in or process alcoholic beverages under this chapter or in any commercial establishment without regard to whether such establishment is licensed. This prohibition, however, shall not apply to a person bringing his own alcoholic beverage into a private hotel room or a guest room within a bed and breakfast.

(m) *Payment of taxes and other debts to the city.* The city clerk shall cause an inquiry to be made into the tax records of the city to determine if any applicant or other parties interested in an application have any outstanding taxes or special assessments that are delinquent or any other monies owing to the city. No license shall be issued, nor shall a license be renewed, until all such debts are paid in full.

(n) *Local bonding requirements.* A performance and tax liability bond payable to the city in the amount of $5,000.00 must be posted and filed with the city, along with the application, for the first five years an applicant seeks an alcohol beverage license under this chapter. In addition, all applicants who have been found to be in violation of any state regulation relating to the sale and distribution of alcoholic beverages as promulgated by the state department of revenue or any provision of this chapter must post and file with the city, along with the application, a performance and tax liability bond payable to the city in the amount of $5,000.00 for the five years immediately following the violation. The bond shall be conditioned upon the faithful observance and performance by the applicant of the rules and regulations contained in this chapter, and upon the payment of any taxes, license fees, or other sums due to the city pursuant to this chapter. Upon violation of this chapter, or any part thereof, the amount of the bond to be forfeited will be determined based on the nature of the violation after a hearing is provided in accordance with the provisions of this chapter. Forfeiture of any bond pursuant to this section may be in addition to any other action that may be taken against a licensee for violations of this chapter.

(o) *City buildings and facilities.* It shall be unlawful for any person to serve, possess and/or consume any alcoholic beverage within any city building or facility unless (1) prior written authorization of the city is first obtained, and (2) such service, possession and/or usage is in

Comment [e47]: Relocated to Sec. 5-1-4. – General Application Requirements

Comment [e48]: Relocated to Sec. 5-1-4. – General Application Requirements

Comment [e49]: Relocated to ARC

Comment [e50]: Relocated to 5-1-1 licensing generally

Comment [e51]: Relocated to fees, taxes

Comment [e52]: Relocated to fee and tax sec.

~~accordance with published rules of the city recreation department. Service of alcoholic beverages within a city building or facility shall not require an alcohol beverage license under this chapter provided it is in accordance with the requirements of this section. As used herein, city building or facility shall mean any and all city parks and any building owned or leased by the city.~~

~~Sec. 5-3-3. - Drinking alcoholic beverages by licensees, managers, and employees while on duty at locations.~~

~~(a) It shall be unlawful for the licensee or any manager or employee thereof to consume any intoxicating beverage while on duty at the same, or to be on duty at the same in an intoxicated condition. "Intoxication" shall be defined as when a licensee's, manager's, or employee's alcohol concentration is 0.08 grams or more at any time while on duty as defined below.~~

~~(b) For purposes of this section, any licensee, or interest holder thereof, manager, or employee of a licensee who is on the establishment's premises shall be presumed to be "on duty" if he is:~~

~~(1) Being paid any salary, wage or remuneration of any kind for his services rendered during the time he is on the premises;~~

~~(2) On the establishment's premises for the benefit of or at the direction of the establishment or its management (other than as a customer, patron or guest);~~

~~(3) Engaging in the sale, directly or indirectly, of any food or beverage; or~~

~~(4) Taking a break during periods of on-duty employment.~~

~~(c) A violation of this section shall be punished in accordance with the City Charter. A violation of this section shall also constitute grounds for the suspension, revocation, and/or refusal to renew license.~~

~~Sec. 5-3-4. - Furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by persons under 21 years of age, violation; jurisdiction.~~

~~The municipal court, in accordance with O.C.G.A. § 36-32-10, is granted jurisdiction to try and dispose of a first offense violation of O.C.G.A. § 3-3-23, pertaining to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurs within the corporate limits of the city. O.C.G.A. § 36-32-10 is incorporated in this section by reference.~~

~~Sec. 5-3-5. - Sale of intoxicating beverages where firearms and weapons are sold.~~

~~It shall be unlawful for any person to sell, or offer for sale, firearms, knives or other weapons and intoxicating beverages at the same business establishment.~~

~~Sec. 5-3-6. - Exception of operating prior to July 1, 1981.~~

~~Restrictions in this chapter on the sale of alcoholic beverages near alcoholic treatment centers owned and operated by any city, any county, or the state shall not apply to any hotel or~~

~~business licensed for sales of wine or malt beverages, if such license was in effect on July 1, 1981.~~

~~Sec. 5-3-7. - Violations; punishment.~~

~~Any violation of this chapter shall be punished as provided in the city Charter for violation of local ordinances unless otherwise specified.~~

Comment [e53]: Relocated to Sec. 5-1-1, Licensing generally

~~Sec. 5-3-8. - ARB establishment; composition.~~

~~(a) There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall consist of five members.~~

~~(b) All members of the ARB shall be appointed by the city council. All members shall serve staggered terms and occupy posts as follows:~~

~~(1) *Post 1.* The assistant police chief, serving at the pleasure of the city council, until December 31, 2004. After January 1, 2005, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 1. The term of appointment thereafter shall be one year. The post 1 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other one-year terms at the pleasure of the mayor and council of the city.~~

~~(2) *Post 2.* The fire marshal serving at the pleasure of the city council, until December 31, 2005. After January 1, 2006, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 2. The term of appointment thereafter shall be two years. The post 2 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other two-year terms at the pleasure of the mayor and council of the city.~~

~~(3) *Post 3.* The commercial code enforcement officer, serving at the pleasure of the city council, until December 31, 2006. After January 1, 2007, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 3. The term of the appointment thereafter shall be three years. The post 3 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other three-year terms at the pleasure of the mayor and council of the city.~~

~~(4) *Post 4.* A citizen of the city who has lived in the city for at least six months, serving at the pleasure of the city council, until December 31, 2007. After January 1, 2008, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 4. The term of appointment thereafter shall be four years. The post 4 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other four-year terms at the pleasure of the mayor and council of the city.~~

~~(5) *Post 5.* A resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 5. The term of appointment shall be three years. The post 5 holder shall remain a resident of the city~~

~~while serving as a member of the ARB and may be reappointed to other three-year terms at the pleasure of the mayor and council of the city.~~

~~(c) Each member shall serve his specified term and until his successor is appointed and qualified.~~

~~(d) In all actions by the ARB all members of the ARB shall be eligible to vote. The mayor and council shall make all final decisions regarding alcohol beverage licenses.~~

~~(1) The ARB shall conduct hearings on new licenses, renewals of licenses and disciplinary matters and make administrative recommendations to the mayor and council. The administrative recommendations of the ARB shall be deemed to be decisions of the mayor and council regarding all alcohol hearing beverage (sic) matters, excluding ordinance changes, if the applicant/license holder does not appeal such administrative recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk. If such appeal is sought, a hearing before mayor and council shall automatically occur. Such appeal to mayor and council shall be a de novo review of the administrative recommendation of the ARB.~~

~~(2) Further, if the mayor and council, by the votes of three members eligible to vote, deem it appropriate, with or without request of the applicant/license holder, a de novo appeal hearing may be granted.~~

~~If the applicant/license holder does not timely appeal and/or if the council does not elect to reconsider the matter on their own motion the ARB recommendation shall be deemed the final decision of the mayor and council and may be appealed by certiorari to superior court.~~

~~(3) For the purpose of effectuating this subsection the terms "ARB" "city council" or "mayor and city council" or "mayor and council" may be used interchangeably except as the words relate to the adoption of ordinances as set out in subsection (d)(4) or where the same would be nonsensical.~~

~~(4) It is not the intention of the mayor and council to unconstitutionally delegate its governmental authority to the ARB. All final decisions relating to local alcoholic beverage regulation shall be made by the mayor and council. Should any provision relating to the duties or powers of the ARB be deemed to be an unconstitutional designation of powers, the mayor and council shall be deemed to have exercised the powers of the ARB except where the council specifically repeals the same. It is hereby declared that all sections, paragraphs, sentences, clauses, and phrases of this subsection are or were upon their enactment, believed by the mayor and council to be fully valid enforceable and constitutional. It is hereby declared to be the intention of the mayor and council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this section is severable from every other section, paragraph, sentence, clause or phrase of this section. It is hereby further declared to be the intention of the mayor or council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this section is mutually dependent upon any other section paragraph, sentence, clause or phrase of this section. In the event that any phrase, clause, sentence, paragraph or section of this section shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by~~

~~the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the mayor and council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the section shall remain valid, constitutional, enforceable, and of full force and effect.~~

~~(c) The members of the ARB shall elect a chairperson who may preside over the meetings and promulgate such regulations as are necessary to govern its meetings.~~

~~Sec. 5-3-9. - Staff and advisors; duties.~~

~~(a) The city clerk or his/her designee shall be the recorder and record keeper of the ARB and as such shall attend meetings, take minutes thereof, be responsible for all files and records, receive and process applications, and perform other such tasks as designated by the ARB.~~

~~(b) The ARB shall have, as it requires, additional staff consisting of the city manager, city attorney, chief of police and all city employees available to it. These staff persons may participate in all discussions, if called upon to do so, by the ARB but shall not have the power to vote.~~

~~(Ord. No. 2002-14, § 1(9-1-18), 10-1-2002; Ord. No. 2009-14, § 16, 10-6-2009)~~

~~Sec. 5-3-10. - Powers and duties.~~

~~(a) *Responsibility and authority*. The ARB is hereby vested with the following duties and powers:~~

~~(1) *Initial applications.*~~

~~a. To screen, verify, and review all initial applications for licenses of the manufacture, and/or sale of liquor, wine and malt beverages, at wholesale and retail, by the package and by the drink.~~

~~b. To make recommendations to the city council to grant or to deny licenses for the manufacture, and/or malt beverages, at wholesale and retail, by the package and by the drink.~~

~~(2) *Renewals.*~~

~~a. To hear reports and charges constituting probable cause not to renew licenses for the manufacture, and/or sale of liquor, wine, and malt beverages, at wholesale and retail by the package and by the drink.~~

~~b. To make recommendations to the city council to grant or to deny renewals of licenses for the manufacture and/or malt beverages, at wholesale and retail, by the package and by the drink.~~

~~(3) *Suspension, revocation; probation.*~~

a. To hear reports and charges constituting probable cause to suspend or revoke licenses for the manufacture, and/or sale of liquor wine and malt beverages at wholesale and retail, by the package and by the drink.

b. To make recommendations to the city council to suspend, revoke and/or place on probation licenses for the manufacture and/or malt beverages, at wholesale and retail, by the package and by the drink.

(4) *Appeals.* To hear appeals on the seizure of a license by the chief of police, or other duly authorized suspending officers or the license inspector under sections of this chapter and to make recommendations to the city council which may affirm, reverse, or modify the actions of the suspending officer.

(5) *Entertainment.* To receive reports on entertainment at pouring outlets, all as provided in this chapter, and to take or recommend such action as is appropriate.

(6) *Employees.* To receive reports on and to recommend approval or disapproval of employees of businesses that sell alcoholic beverages by the package or by the drink, all as provided in this chapter, and to take such action as is appropriate in the case of such disapproval.

(7) *Ordinances and policies.* To recommend to the city council modifications to the ordinances and policies of the city pertaining to the regulation, control and taxing of liquor, wine and malt beverages.

(8) *Complaints, etc.* To hear complaints, suggestions and recommendations from the city manager, the city council, police department, state officials, alcoholic beverage dealers and the public at large as to the operation of retail beer/wine stores, packages stores, and on-premises consumption location, businesses within the city.

(9) *Rules and regulations.* To promulgate rules and regulations governing procedures regarding matters that may arise.

(b) *Meetings.* The ARB shall meet on an as-needed basis.

Sec. 5-3-11. – Identification cards for handlers of alcoholic beverages; possession of employee identification cards; application to police department; fingerprinting; photographing; employment of person without card; expiration.

(a) Any person, manager, or employee whose responsibility is the service of alcoholic beverages in restaurants, hotels, or lounges or who handles alcoholic beverages or who works as a security guard or as a security employee in any location licensed under this chapter, whether or not such person is an employee of such licensee, shall apply to the police department for an alcoholic beverage employee identification card, which shall be renewed annually upon the anniversary date of original issuance. The fee for the card shall be set forth under section 5-3-15.

(b) While on duty (as defined in section 5-3-1) in any business, every person required to hold a handler's identification card under subsection (a), whether or not an employee of the business, shall have their handler's identification card displayed on their person at all times. The card must be displayed in such a manner as to be clearly visible to any authorized city official observing the same. Upon request by the location manager, handler identification

~~cards may be issued in duplicate. However, no more than two cards shall be issued for any handler per any location. The purpose of the second card shall be solely for the manager's convenience as a backup if the handler fails to arrive at work with an identification card.~~

~~(c) Alcoholic beverage handlers shall make themselves available for photographing, fingerprinting and such other identification as may be required by the police department in accordance with state law and local ordinance.~~

~~(d) The police department shall investigate the handler applicants. An alcoholic beverage handler identification card shall not be issued to any person who has pled guilty to, or has been convicted of a felony involving violence, gambling, theft, use of alcohol, or use of illegal substances, or of a crime opposed to decency and morality or who has been convicted of a crime involving violation of the ordinances of the city or other jurisdictions relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof, or who has pled guilty to or who has been guilty of multiple felonies involving violence, use of alcohol, theft, gambling, or use of controlled substances, or of a crime opposed to decency and morality unless five years shall have elapsed between the date of the applicant's most recent conviction and the date of issuance of the handler identification card, provided that a handler identification card shall not be issued to any person who is then serving probation of a felony sentence from any felony described above. The police department shall report any other detrimental information about an application to the ARB and the ARB may suggest prohibiting the issuance of an alcoholic beverage employee identification card where the applicant's record indicates such employment would adversely affect the public health, safety or welfare or violate the law. All employees who serve alcoholic beverages must be at least 18 years old.~~

~~(e) No package store or on-premises consumption licensee under the provisions of this chapter shall hire any person, nor permit any person to work or assist in a licensed business, until such person has procured an alcoholic beverage handler identification card as prescribed in this section.~~

~~(f) The ARB may, after hearing (unless waived by applicant), recommend or revoke an identification card. The city council may demand the card's surrender where the employee violates the provisions of this chapter or for behavior which adversely affects the public health, safety and welfare.~~

~~(g) It shall be unlawful for a handler whose card has been revoked, and upon whom demand for surrender of a card has been made, to refuse to so surrender, or to alter, conceal, deface or destroy the card such action being punishable in accordance with the city Charter.~~

~~(h) Identification cards may be produced for multiple locations if requested by the handler. When applying for any card the applicant must list all city locations for which the cards are to be applicable.~~

~~(i) Proof of employment is required at each location and must be provided.~~

~~(j) All cards are the sole and exclusive property of the city. Destruction, theft, defacement, or detriment of identification cards shall be punishable as a felony under state law. One card is required for each location a handler is employed.~~

~~(k) Fees for a card and each additional card are found in section 5-3-15.~~

~~(Ord. No. 2002-14, § 1(9-1-20), 10-1-2002; Ord. No. 2006-08, § 5, 6-13-2006; Ord. No. 2007-05, § 1, 5-1-2007; Ord. No. 2009-14, §§ 18, 19, 10-6-2009; Ord. No. 2013-14, § 3, 1-21-2014; Ord. No. 2014-04, § 3, 4-15-2014)~~

Comment [e54]: Relocated to new alcohol Review committee section

~~Sec. 5-3-12. Prohibition of certain types of entertainment, attire and conduct.~~

~~(a) *Findings; public purpose.* Based on the experience of other urban counties and municipalities, including, but not limited to, Atlanta and Fulton County, Georgia; DeKalb County, Georgia; Richmond County, Georgia; Amarillo, Texas; Austin, Texas; Garden Grove, California; Houston, Texas; Renton, Washington; Phoenix, Arizona; Indianapolis, Indiana; St. Paul, Minnesota; Tucson, Arizona; Augusta, Georgia; LaGrange, Georgia; Dalton and Whitfield County, Georgia; Carrollton, Georgia; Smyrna, Georgia; and Fort Lauderdale and Palm Beach, Florida, which experiences the city council believes are relevant to the problems faced by the city, the city council takes note of the notorious and self-evident conditions attendant to the commercial exploitation of human sexuality, which do not vary greatly among generally comparable communities within our country. Moreover, it is the findings of the city council that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages, begets criminal behavior and tends to create undesirable community conditions. Among the acts of criminal behavior identified with nudity and alcohol are disorderly conduct, prostitution, and drug trafficking and use. Among the undesirable community conditions identified with nudity and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for and allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior hereinabove described, and acceleration of community blight by the concentration of such establishments in particular areas. Therefore, the limitation of nude conduct in establishments licensed to sell alcoholic beverages is in the public welfare and it is a matter of governmental interest and concern to prevent the occurrence of criminal behavior and undesirable community conditions normally associated with establishments, which serve alcohol and also allow and/or encourage nudity. To that end, this section is hereby adopted.~~

~~(b) *Enactment.* The following types of entertainment, attire and conduct are prohibited upon any premises licensed to sell, serve or disperse alcohol beverages:~~

~~(1) The employment or use of any person, in any capacity, in the sale or service of alcohol beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva and genitals.~~

~~(2) Live entertainment where any person appears in the manner described in subsection (b)(1) of this subsection or where such persons (or person) perform(s) acts of or acts which simulate any of the following:~~

~~a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act which is prohibited by law.~~

~~b. The touching, caressing or fondling of the breasts, buttocks, anus or genitals.~~

~~c. The displaying of the male or female pubic hair, anus, vulva or genitals.~~

~~(3) The holding, promotion, sponsoring or allowance of any contest, promotion, special night, event or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct described in subsections (b)(1) and (b)(2) above.~~

~~(c) *Severability*.~~

~~(1) It is hereby declared to be the intention of the mayor and council that all sections, paragraphs, sentences, clauses and phrases of this section are or were, upon their enactment, believed by the mayor and council to be fully valid, enforceable and constitutional.~~

~~(2) It is hereby declared to be the intention of the mayor and council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this section is severable from every other section, paragraph, sentence, clause or phrase of this section. It is hereby further declared to be the intention of the mayor or council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this chapter is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this section.~~

~~(3) In the event that any phrase, clause, sentence, paragraph or section of this chapter shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the mayor and council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the chapter and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the chapter shall remain valid, constitutional, enforceable, and of full force and effect.~~

~~Sec. 5-3-13. - Timing of ARB recommendation.~~

~~If the ARB does not recommend to approve, deny, or renew a license within 90 days of the receipt of a complete application, the same shall be considered approved by the mayor and council until revoked.~~

~~(Ord. No. 2002-14, § 1(9-1-22), 10-1-2002; Ord. No. 2009-14, § 21, 10-6-2009)~~

~~Sec. 5-3-14. - Violations.~~

~~Any person violating any of the provisions of this article shall be deemed guilty of an offense and, upon conviction thereof, shall be punished as provided in accordance with the city Charter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by such person and shall be punished accordingly.~~

~~Sec. 5-3-15. - Fee chart depending upon the licenses sought.~~

Comment [e55]: Relocated to Sec. 5-1-1, Licensing generally

Comment [e56]: Deleted as unnecessary

Comment [e57]: Relocated to ARB

Comment [e58]: Relocated to enforcement

All fees established throughout this chapter shall be as set forth in the chart below. Some fees may be cumulative depending upon the licenses sought. Where no fee is specifically set forth the fee shall be $1,000.00. This fee schedule is subject to change by ordinance adopted by the mayor and council. The most current duly adopted change in the fees shall supersede any fee provision in this chapter.

Beer/Wine/Liquor – Retail, Wholesale, Manufacturer, Restaurant, Lounge, Hotel	$5,000.00
Beer/Wine Only – Retail, Wholesale, Manufacturer, Restaurant, Lounge, Hotel	$3,150.00
Liquor Only – Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees	$3,000.00
Beer Only – Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees	$1,600.00
Wine Only – Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees	$1,600.00
Growler License	$1,600.00
On-Premises Arts License	$250.00
Administration Fee	$200.00
Handler Identification	$25.00 ($5.00 for each additional) and $10.00 refundable deposit
Off-Premises and Special Events	$50.00 annually
Late Fee	15% penalty for failure to pay amount when due and payable to city and interest at rate of 1% per month until paid

Sec. 5-3-16. - Denial of application; appeal; resubmittal.

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Comment [e59]: Relocated to ARC

~~No application shall be considered until the alcohol beverage clerk deems the same complete as set forth in this chapter. If the application is denied, the same or substantially same application cannot be resubmitted for six months after the date of den~~**Sec. 5-2-2. – Terms not expressly defined.**

Comment [e60]: New, similar to Johns Creek

Except where the context clearly indicates a different meaning, any term in this chapter not expressly defined herein shall have the same meaning as when used in a comparable provision of the "Georgia Alcoholic Beverage Code," O.C.G.A. § 3-1-1 et al.

ARTICLE 3. – ~~DEFINITIONS APPLICABLE TO ALL CLASSES~~ALCOHOL REVIEW BOARD

Sec. 5-3-1~~8~~. - ARB establishment; composition.

~~(a)~~ There is hereby established an alcohol review board (sometimes referred to as the "ARB") which shall have the responsibility for verification and review of all applications for alcoholic beverage license and renewals in the city and who shall consist of ~~five~~ the following members:

(a)~~.~~ City manager

(~~.~~b) Building inspector

(c) Traffic engineer

(d) Fire chief

(e) Police chief

(f) Planning and zoning coordinator

~~**(b) All members of the ARB shall be appointed by the city council. All members shall serve staggered terms and occupy posts as follows:**~~

~~**(1) *Post 1.* The assistant police chief, serving at the pleasure of the city council, until December 31, 2004. After January 1, 2005, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 1. The term of appointment thereafter shall be one year. The post 1 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other one-year terms at the pleasure of the mayor and council of the city.**~~

~~**(2) *Post 2.* The fire marshal serving at the pleasure of the city council, until December 31, 2005. After January 1, 2006, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 2. The term of appointment thereafter shall be two years. The post 2 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other two-year terms at the pleasure of the mayor and council of the city.**~~

~~(3) *Post 3.* The commercial code enforcement officer, serving at the pleasure of the city council, until December 31, 2006. After January 1, 2007, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 3. The term of the appointment thereafter shall be three years. The post 3 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other three-year terms at the pleasure of the mayor and council of the city.~~

~~(4) *Post 4.* A citizen of the city who has lived in the city for at least six months, serving at the pleasure of the city council, until December 31, 2007. After January 1, 2008, a resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 4. The term of appointment thereafter shall be four years. The post 4 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other four-year terms at the pleasure of the mayor and council of the city.~~

~~(5) *Post 5.* A resident of the city at the time of appointment and for at least six months immediately preceding the date of taking office shall be appointed to post 5. The term of appointment shall be three years. The post 5 holder shall remain a resident of the city while serving as a member of the ARB and may be reappointed to other three-year terms at the pleasure of the mayor and council of the city.~~

~~(c) Each member shall serve his specified term and until his successor is appointed and qualified.~~

~~(d) In all actions by the ARB all members of the ARB shall be eligible to vote. The mayor and council shall make all final decisions regarding alcohol beverage licenses.~~

~~The ARB shall conduct hearings on new licenses, renewals of licenses and disciplinary matters and make administrative recommendations to the mayor and council. The administrative recommendations of the ARB shall be deemed to be decisions of the mayor and council regarding all alcohol hearing beverage (sic) matters, excluding ordinance changes, if the applicant/license holder does not appeal such administrative recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk. If such appeal is sought, a hearing before mayor and council shall automatically occur. Such appeal to mayor and council shall be a de novo review of the administrative recommendation of the ARB.~~

~~(2) Further, if the mayor and council, by the votes of three members eligible to vote, deem it appropriate, with or without request of the applicant/license holder, a de novo appeal hearing may be granted.~~

~~If the applicant/license holder does not timely appeal and/or if the council does not elect to reconsider the matter on their own motion the ARB recommendation shall be deemed the final decision of the mayor and council and may be appealed by certiorari to superior court.~~

~~(3) For the purpose of effectuating this subsection the terms "ARB" "city council" or "mayor and city council" or "mayor and council" may be used interchangeably except as the words relate to the adoption of ordinances as set out in subsection (d)(4) or where the same would be nonsensical.~~

~~(4) It is not the intention of the mayor and council to unconstitutionally delegate its governmental authority to the ARB. All final decisions relating to local alcoholic beverage regulation shall be made by the mayor and council. Should any provision relating to the duties or powers of the ARB be deemed to be an unconstitutional designation of powers, the mayor and council shall be deemed to have exercised the powers of the ARB except where the council specifically repeals the same. It is hereby declared that all sections, paragraphs, sentences, clauses, and phrases of this subsection are or were upon their enactment, believed by the mayor and council to be fully valid enforceable and constitutional. It is hereby declared to be the intention of the mayor and council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this section is severable from every other section, paragraph, sentence, clause or phrase of this section. It is hereby further declared to be the intention of the mayor or council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this section is mutually dependent upon any other section paragraph, sentence, clause or phrase of this section. In the event that any phrase, clause, sentence, paragraph or section of this section shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the mayor and council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the section shall remain valid, constitutional, enforceable, and of full force and effect.~~

~~(e) The members of the ARB shall elect a chairperson who may preside over the meetings and promulgate such regulations as are necessary to govern its m~~Sec. 5-3-2~~9~~. - ~~Staff and advisors; duties~~Alcoholic beverage clerk.

~~(a)~~ The city clerk or his/her designee shall be the alcoholic beverage clerk, ~~recorder and record keeper of the ARB and as such shall attend meetings, take minutes thereof,~~ and shall be responsible for all files and records, ~~receive and process~~the in-take of completed and supplemented applications ~~applications~~, and ~~perform~~ other such tasks as designated by the ARB.

Sec. 5-3-3. - Investigation of application, issuance, denial and appeal.

(a) All applications for new or renewal licenses, and accompanying fees, shall be submitted to the city clerk who shall, upon subsequent receipt of proof of advertising from the applicant, promptly refer such applications to the ARB for its review and recommendation. The members of the ARB shall forward their comments and recommendation on the application to the city manager within thirty (30) days. The city manager shall then make an independent review of each application and ARB member's recommendation.

(b) Applicants for new or renewal licenses shall furnish all data, information and records considered pertinent to such application by the ARB to the city clerk, and the failure to furnish such data, information and records within thirty (30) days from the date of the request may subject the applicant to dismissal of the application.

(c) The city manager shall render a decision with respect to applications for new licenses, permits, renewals and transfers of locations within sixty (60) days from the date of the filing of a completed application. The sixty (60) day period under this section shall be tolled during period where the city manager has requested and is awaiting receipt from the applicant of supplemented information pertinent to the application. If the city manager does not render a decision with respect to the application within sixty (60) days from the date of the filing of a completed application, subject to any time tolled, the application shall be considered approved until revoked and/or a decision by the city manager on the application is rendered, whichever occurs first.

(d) The city manager shall grant all applications for alcoholic beverage licenses meeting the standards of this chapter. The approval of an application under this article ~~by the city council~~ shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid, ~~-~~the ~~same~~ license shall lapse if no action is taken on the license by the applicant within six months of issuance. The city ~~council~~ manager may extend ~~the approval~~expiration period up to 90 days for good cause shown, such as fire, flood, war, and other uncontrollable occurrences, provided that a written~~the~~ request for extension ~~is made~~is submitted to the city clerk by the application within the original 90-day period.

(e) In the event the city manager denies, revokes, suspends, refuses to renew, or renders an unfavorable decision with respect to an alcohol license or permit, such decision shall be transmitted to the applicant, in writing, with the reason(s) for such action. Any decision rendered by the city manager under this chapter shall be final and deemed to be the decision of the mayor and council unless the applicant files a notice of appeal with the city clerk to the city council within fourteen (14) days of the applicant's receipt of such decision. A hearing before the city council shall be held not more than thirty (30) days from the date of filing of the applicant's notice of appeal, where the city council may vote to ratify or reject the city manager's decision.

(f) In all instances in which an application or license is revoked, suspended or denied, the applicant may not reapply for an alcohol license for at least six months from the date of such decision by the city manager or city council, whichever occurs later.

(g) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.

Comment [e61]: Relocated from retail license article

Comment [e62]: Modeled after Savannah.

Sec. 5-3-4. – Criteria for denial, renewal, suspension, or revocation.

The ARB, city manager and the city council in making its determinations and recommendations on an ~~initial~~ alcohol license application, request, revocation, suspension or renewal, shall be guided by the following factors ~~as to whether or not to grant a license under this article~~:

(1) The nature of the neighborhood immediately adjacent to the ~~proposed~~ subject location, that is, whether the same is predominantly residential, industrial or business.

(2) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.

(3) Whether the ~~proposed~~ subject location has adequate off street parking facilities or other parking available for its patrons.

(4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.

(5) The criminal record and financial responsibility of the licensee, applicant and their ~~the~~ named representatives~~location manager~~, ~~and their financial responsibility;~~ provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.

(6) ~~A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager~~The reports of the ARB members relating to the use or sale of alcohol at the ~~proposed~~ subject location.

(7) The applicant, business or licensee's meeting of the requirements of ~~The information required in the application or statement and whether all requirements~~ this chapter and state, federal and local laws, including as such pertains to ~~as to~~ notice and distance requirements~~, advertisement,~~ , fire codes, building, zoning, parking, storage, sanitation codes, parking buffers, lighting and other matters relating to public welfare and safety and the use or sale of alcohol at the proposed location ~~have been met~~.

(8) Evidence presented to the ARB ~~for or against the application~~ relating to the sale or use of alcohol at the ~~proposed~~ subject location.

(9) Whether or not the granting of the application or request is in the best interest of the health, safety, and welfare of the city.

(10) Whether any license for sale of beer or wine or alcohol previously issued for the subject location or applicant has been revoked for cause by the city.

(11) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.

(12) Whether or not the applicant, licensee or subject~~outlet~~ location is in violation of other local ordinances or state laws relating to ~~the~~ misconduct, nuisances or crimes ~~and issues referenced in subsection (11)~~ as related to the sale or use of alcohol at the ~~proposed~~ subject location.

(13) Whether or not the ~~applican~~applicant, licensee t or ~~location manager~~their named representatives have~~s~~ violated other jurisdictions laws regarding alcohol beverage licensing.

(14) Evidence of fraudulent, false, omitted, and/or misleading information provided by the applicant, licensee, and/or their employee's in securing, renewing and/or maintaining the alcohol license;

Sec. 5-3-5. – Effect of revocation by State.

The State of Georgia's revocation of any state license to sell any alcoholic beverage shall result in the automatic revocation a license issued under this chapter without any action by the city.

Sec. 5-3-6.

Periodic inspection and audits.

The members of the ARB and their designees shall have the authority to inspect establishments and their financial records licensed under the alcoholic beverage ordinances of the city during the hours in which the premises are open for business. The inspections shall be made for the purpose of verifying compliance with the requirements of this chapter.

ARTICLE 4. - RETAIL BEER/WINE STORES

Sec. 5-4-1. - Retail beer/wine stores, regulations generally~~Retail sales generally of beer and/or wine from stores~~.

The following regulations shall apply to licensed retail beer/wine establishments:

(a) ~~For purposes of this chapter, retail beer and/or wine stores shall be referred to as "retail beer/wine stores." Likewise, the words "beer" and "malt beverage" shall be synonymous. The building or proposed building to house a retail beer/wine by the package store shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking buffers and other issues.~~

~~(b)~~ No screen, partition or thing which prevents a clear view into the interior of a retail sale of beer/wine store by the package from the street, nor any booth within, shall be permitted.

(~~c~~b) No sale of malt beverage and/or wine by the package shall be permitted between the hours of 2:00 a.m. and 8:00 a.m. In addition, no sale of malt beverages and/or wine by the package shall be permitted on Sundays before 12:30 p.m. and after 11:30 p.m., or any other days or times prohibited by state law.

(~~d~~c) The state regulations relating to the sale and distribution of malt beverages and/or wine b~~u~~y the package, as revised, promulgated by the state revenue department, are hereby incorporated into and made a part of this chapter as if fully set out in this section.

(~~e~~d) ~~Any license holder/applicant shall make an immediate report to, and receive approval by, the ARB of any change in the interests in, or ownership of or of the license of a beer/wine store and/or any change in the information stated in the original application for license. The ARB shall report the changes and its recommendations to the city council for the city council's final approval.~~

Comment [e63]: Formerly in Sec. 5-3-2-, definitions article.

Comment [e64]: Covered in ARB and definitions sections.

Comment [e65]: Redundant, see Sec. 5-1-4

~~(f) No drive-in windows for the sale of malt beverages or wine shall be allowed.~~

~~(g)~~ The open parking area of any building or proposed building to house a retail beer/wine store shall have an average maintained footcandle intensity of at least one footcandle with a minimum allowable intensity of three-tenths of a footcandle. The covered parking area of any building or proposed building to house a retail outlet shall have an average maintained footcandle intensity of at least two footcandles with a minimum allowable intensity of five-tenths footcandle.

(~~h~~e) Each retail beer/wine store shall install and maintain in a secure location security cameras in the outlet of a type and number approved by the chief of police. Such cameras:

(1) Shall be placed in the outlet to record activities in the checkout or cash register area(s).

(2) Shall be capable of producing a retrievable image on film, tape, or any readable medium that can be made a permanent record and enlarged through projection or other means.

(~~i~~f) Each retail outlet shall post at least four copies of its complete price list or, in lieu thereof, place a price on each package for sale.

(g) No screen, blind, curtain, partition, article or thing which shall prevent a clear view into the interior shall be permitted in the window or opening of any door of any retail beer/wine store, and no booth, screen, partition or other obstruction shall be permitted within the interior of any such store. Each such retail store shall be so lighted that the interior and exterior of the store is visible day and night.

~~Sec. 5-4-2. - Required.~~

~~It shall be unlawful for any person to manufacture, sell or offer to sell any malt beverage or wine at wholesale or retail within the corporate limits of the city without having the appropriate license for such manufacture or sale, or to carry on such activity in violation of the terms of such license or of this chapter.~~

Sec. 5-4-2~~3~~. - Separate license for each retail beer/wine store~~; surrender~~.

~~(a)~~ A separate license shall be required for each retail beer/wine store ~~outlet~~, and a separate application shall be made for each such place.

~~(b) Immediately upon the sale or closing of a business, it shall be the duty of the licensee to surrender his license to the ARB.~~

~~(c) Any licensee who is an employee of a corporation, and who is separated from his employment, whether he resigns, retires or is fired, shall immediately notify the office of the clerk of such separation Monday through Friday, 8:00 a.m. until 5:00 p.m. If such employee removes the retail beer/wine license from the establishment, he shall immediately surrender such license to the clerk. Failure to surrender such license, if removed from the place of business, shall be a violation and shall be punished as provided by state law.~~

Comment [e66]: Relocated to article 1, general regulations

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Comment [e67]: Redundant, see Sec. 5-1-2

Sec. 5-4-~~4~~3. - Classification of licenses~~; fees~~.

(a) *Types of classification.* Licenses under this article shall be classified as follows:

(1) *Retail package.* Retail beer/wine store, which shall permit only the sale of malt beverages and/or wine in packages at retail.

(2) *Wholesale.* Wholesale malt beverage/wine distributor, which shall permit only the sale of malt beverages and/or wine at wholesale.

(3) *Manufacture.* Manufacturers of malt beverages/wines, which shall permit only the manufacture, bottling and packaging of malt beverages and/or wine.

~~(b) *Fee amount.* The amount of the license fee for each class shall be set forth under section 5-3-15.~~

Comment [e68]: Relocated to article 1, general licensing

~~Sec. 5-4-5. - Applications for beer/wine license, wholesale malt beverage/wine distributor (vintner) license.~~

~~Applications for retail beer/wine licenses and applications for wholesale malt beverage/wine distributor licenses and manufacturing shall be as follows:~~

~~(1) *Forms; submission.* Each initial applicant shall make written application to the ARB for the privilege of engaging in the sale (specifying wholesale, manufacturing, or retail) of malt beverages/wines, such applicant using forms provided by the clerk.~~

~~(2) *Where filed; fee.* The application shall be filed with the clerk with a fee as set out in the fee schedule under section 5-3-15, for review of the applicant and of the proposed location and processing of the application.~~

~~(3) *Contents.* The application shall state:~~

~~a. As to the applicants, full name, birth date, present address and addresses for the past five years, business address and business addresses of employers and their addresses for the last five years, name of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, counties, state and federal, and other cities, counties, and states of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.~~

~~b. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection a.~~

~~c. Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.~~

~~d. Name and address of the owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.~~

~~e. Trade name (or proposed trade name) of proposed business.~~

~~f. Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.~~

~~g. Such other information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.~~

(4) *Approvals*. The application shall contain evidence of the following persons' approval of the licensee and of the owner and the manager of the malt beverage/wine establishment:

a. Building inspector (i.e., building permit, certificate of occupancy, or other evidence).

b. Traffic engineer.

c. Fire marshal/fire chief.

d. Chief of police/assistant chief of police.

e. Planning and zoning coordinator.

(5) *Oath*. The application shall be sworn to.

(6) *Surveyor's certificate*. The application shall be accompanied by a current certificate from a registered surveyor containing the following information:

a. A scale drawing of the building or proposed building, as situated on the proposed lot.

b. The proposed off street parking facilities available to the building and all outdoor lighting on the premises.

c. The exact location of the business, including street address, ward, and county tax map number.

d. Current zoning classification of the location.

e. The distance in yards as measured in a straight line from nearest property line to nearest property line from each of the following: the nearest school building, school ground or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.

f. If a business has been licensed since July 1, 1981, or before, the survey shall be required however no license will be denied based upon a failure to meet the distance requirements as set forth under O.C.G.A. § 3-3-21.

(7) *False information*. An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.

Sec. 5-4-6. - Sham applicant; de facto applicant or location manager.

A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.

(1) It shall be unlawful for any person to file, or permit to be filed, an application for license under this division wherein a sham applicant or a sham location manager is named.

(2) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of a location manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.

(3) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of the license or the de facto location manager, as the case may be.

Comment [e69]: Redundant, see Sec. 5-4-1

Comment [e70]: Redundant, see Sec 5, ARB

Comment [e71]: Relocated to article 1, general prohibitions and article 3, definitions

~~(4) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~Sec. 5-4-7. - Surveyor's certificate containing false information.~~

Comment [e72]: Relocated to Article 1, general prohibitions

~~(a) It shall be unlawful for any applicant under this article to submit with his application any surveyor's certificate containing known false information and/or measurements.~~

~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~

~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~

~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~Sec. 5-4-8. - Advertisement; proof thereof.~~

Comment [e73]: Relocated to Sec 5-1-4, general regulations

~~(a) Each applicant under this article shall advertise his application for license at his own expense in the legal organ newspaper once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall appear after the application is filed and before the public hearing provided for in this article. The advertisement shall contain the name of the applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each initial application.~~

~~(b) The applicant, before consideration will be given to his application, shall file with the clerk a copy of the advertisement together with affidavits from the newspaper to the effect that it has been printed as required.~~

~~Sec. 5-4-9. - Action by ARB and city council.~~

Comment [e74]: Relocation to 5-1-4

~~(a) After proof of advertisement is filed, the clerk shall notify the chief of police, who shall investigate the applicant and the reputation of the location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee, when assured that all requirements have been complied with and the application is complete, shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to the city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~

Comment [e75]: See revised ARB section

~~Sec. 5-4-10. - Approval of application; expiration in 90 days; extension for cause.~~

Comment [e76]: Relocated to new ARB section

~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war, and other uncontrollable occurrences, provided the request is made within the original 90-day period.~~

~~Sec. 5-4-11. - Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application subject matter being litigated.~~

Comment [e77]: Relocated to new ARB section

~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~

~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.~~

~~(Ord. No. 2002-14, § 1(9-1-36), 10-1-2002)~~

~~Sec. 5-4-12. - Considerations and guidelines for grant or denial.~~

Comment [e78]: Relocated to new ARB section

~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(1) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(2) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~

~~(3) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~

~~(4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~

~~(5) The criminal record of the applicant and the location manager, and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~

~~(6) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~

~~(7) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use or sale of alcohol at the proposed location have been met.~~

~~(8) Evidence presented to the ARB for or against the application relating to the sale or use of alcohol at the proposed location.~~

~~(9) Whether or not the granting of the application is in the best interest of the health, safety, and welfare of the city.~~

~~(10) Whether any license for sale of beer or wine or alcohol previously issued for the location has been revoked for cause by the city.~~

~~(11) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~

~~(12) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (11) as related to the sale or use of alcohol at the proposed location.~~

~~(13) Whether or not the applicant or location manager has violated other jurisdictions laws regarding alcohol beverage licensing.~~

Sec. 5-4-4~~13~~. - Prohibited locations~~; prohibited persons; incomplete application~~.

(a) *Prohibited locations.* It shall be prohibited to obtain a license for the sale of malt beverages within the following areas of the city:

(1) Within any residential zoning district or other prohibited zoning district established in the zoning ordinance.

(2) Within a measured 100 yards of any alcoholic treatment center owned and operated by the state or any county or municipal government therein.

(3) Within a measured 100 yards of any school building, school ground, or college campus.

~~(b) *Prohibited persons.* It shall be prohibited for the following persons to obtain a license for the retail sale of malt beverages/wine:~~

~~(1) A person who does not comply with any residency requirements under state law.~~

~~(2) A person who has been convicted of a felony relating to violence, illegal substances, gambling, theft, or alcohol use, or of a crime opposed to decency and morality, or who~~

~~has been convicted of a crime involving violation of the ordinances of the city or any other city or county relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within five years preceding the application.~~

~~(3) A person whose license under this chapter has been revoked for cause or who has had a license under this chapter revoked for cause.~~

~~(4) A person who is under 18 years of age or who is not of sound mind and memory.~~

~~(c) *Incomplete application*. An application under this article filed and submitted before containing substantially all the information required may be refused by staff.~~

~~Sec. 5-4-14. Becoming a prohibited person.~~

~~Any licensee under this article who becomes a "prohibited person" as defined in this chapter, shall, within three days of the event, make the fact known to the ARB and shall surrender his license, such surrender being appealable to the city council.~~

~~Sec. 5-4-15. Renewal; denial of renewal.~~

Comment [e79]: Relocated to new ARB section

~~(a) All licenses under this article shall be issued on a calendar year basis; however, the same may be suspended or revoked at any time for violations set out in this chapter and may be renewable upon payment of the appropriate fee, except as is set out in subsections (d) and (e) below.~~

~~(b) Each licensee shall make a written application for renewal on or before October 15 of each year on forms approved by the clerk, and the license fee shall be paid in full no later than December 15 of each year.~~

~~(c) The application shall be referred to city staff, who shall report on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.~~

~~(d) If any city official reports any activity which constitutes probable cause for not renewing a license, the renewal shall not be made. All renewals shall be referred to the ARB for its consideration.~~

~~(e) The ARB shall afford the licensee a public hearing, and in passing upon the application for renewal, the recommendation shall be guided by the following factors applicable to an initial application: subsections (5), (6), (8), (9), (10), (12), and (13) of section 5-4-12. The city council may grant or deny for cause the renewal of any license issued under this article.~~

~~(f) At the public hearing, the ARB may recommend to the city council granting, or denying for cause, the renewal of any license issued under this article.~~

~~Sec. 5-4-16. Revocation, refusal to renew, suspension, probation.~~

~~(a) *Summary action*. There shall be no summary seizure of licenses under this article, unless there exists in the city a state of emergency duly declared; after any such~~

~~seizure, a hearing shall be held as soon as practicable except where the applicant/holder has allowed the license to lapse from lack of use.~~

~~(b) *Action by ARB and council.* The ARB shall have full power and authority to recommend to the city council: revocation, refusal to renew, suspending, or placing on probation any alcohol beverage license for violation of this chapter, city ordinance or of the state or federal laws where such violation relates to the sale, manufacture or use of alcoholic beverages or when the continued operation of the licensed business is detrimental to the health, safety or welfare of the public as determined by failure to comply with the aforementioned alcohol beverage related laws. Before taking any such action, the city council shall require a hearing, before it and/or the ARB, as relevant in accordance with subsection 5-3-8(d); at least five days' notice of said hearing shall have been govern to the affected licensee. The ARB shall make relevant recommendations which may be reviewed pursuant to subsection 5-3-8(d). The city council shall make all final determinations either by adopting the ARB recommendations or as otherwise set out in subsection 5-3-8(d).~~

~~Sec. 5-4-17. - Changes of circumstances.~~

~~The recommendation of approval of an application by the ARB, and/or the granting of a license by the clerk, may be suspended or revoked, after notice and hearing, if any change in the information supplied, or in the physical layout represented in the plat submitted, occurs without the approval of the ARB. An applicant anticipating any such change shall submit all details thereof to the ARB which shall report the same to the city council.~~

Comment [e80]: Relocated to article 1, licensing generally

Sec. 5-4-5~~18~~. - No broken packages.

No package or retail store nor beer/wine store may sell single alcoholic beverages from an ice chest, tub, or cooler. Packages of alcoholic beverages may not be broken for individual sale.

~~Sec. 5-4-19. - Reserved.~~

ARTICLE 5. – ~~PACKAGE~~ RETAIL PACKAGE STORES, DISTILLED SPIRITS

Sec. 5-5-1. - Additional Application Requirements.

~~Sec. 5-5-1. - General regulations.~~

In addition to the general application requirements set forth under article 1, applicants under this article shall:

(1) Show within the initial license application their compliance with O.C.G.A. § 3-4-23 when the applicant has been a resident of the city for less than 12 months immediately preceding the submission of their application.

(2) Within three days after filing the initial license application, identify the proposed location by posting a sign not less than 24 inches by 36 inches in size, with letters of at least 2½ inches on the front door of the building proposed to be used (if facing the right-of-way of the city street upon which the building fronts; otherwise, within three feet of the right-of-way), or upon a prominent place on the lot where the building is proposed to be constructed, facing

the street. The sign shall be captioned "Liquor License Application Pending" and shall designate the name and address of the applicant, the type of license and the date of the application, and no other advertisement or wording. The sign shall remain posted until final action on the license application by the city manager, or city council, if appealed. An application will not be deemed completed until an applicant has filed with the clerk a photograph of the sign erected pursuant to this section.

Sec. 5-5-2. - Retail package stores, regulations generally.

The following regulations shall apply to retail package establishments licensed to sell distilled spirits:

(~~b~~a) The building or proposed building to house a retail outlet for the sale of liquor by the package shall meet all requirements of the building inspector, the fire marshal, and the traffic engineer, and planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking, buffers, and other issues.

(~~c~~b) No screen, partition or thing which prevents a clear view into the interior of a retail outlet from the street, nor any booth within, shall be permitted.

(~~d~~c) No sale of distilled spirits shall be permitted between the hours of 12:00 a.m. and 8:00 a.m. In addition, no sale of distilled spirits shall be permitted on Sundays before 12:30 p.m. and after 11:30 p.m., or on any other days or times prohibited by state law.

(~~e~~d) Each retail outlet shall post at least four copies of its complete price list or, in lieu thereof, place a price on each package for sale.

(~~f~~e) The state regulations relating to the sale and distribution of distilled spirits, as revised, promulgated by the state department of revenue, are hereby incorporated into and made a part of this article as if fully set out in this section.

(~~g~~f) ~~Any license holder/applicant shall make an immediate report to, and receive recommendation of approval by, the ARB of any change in the interests in or ownership of the liquor location or liquor business, the licensee and/or any change in the information stated in the original application for license. The ARB shall report the changes and its recommendations to the city council for the city council's final approval.~~

~~(g) No drive-in windows shall be permitted.~~

Comment [e81]: Relocated to article 1, general licensing

~~(h)~~ The open parking area of any building or proposed building to house a package store location shall have an average maintained footcandle intensity of at least one footcandle with a minimum allowable intensity of three-tenths of a footcandle. The covered parking area of any building or proposed building to house a retail location shall have an average maintained footcandle intensity of at least two footcandles with a minimum allowable intensity of five-tenths of a footcandle.

(~~i~~g) Each location for a package store shall install and maintain security cameras in a secure location in the package store of a type and number approved by the chief of police. Such cameras:

(1) Shall be placed in the outlet to record activities in the checkout or cash register area(s).

(2) Shall be capable of producing a retrievable image on film, tape, or any readable medium that can be made a permanent record and enlarged through projection or other means.

Such cameras shall be maintained in proper working order at all times and shall be subject to periodic inspection by the chief of police or his designee. If a robbery or other felony occurs in such outlet, the film or tape recording of such event shall immediately be made available to the chief of police or his designee.

(h) No screen, blind, curtain, partition, article or thing which shall prevent a clear view into the interior shall be permitted in the window or opening of any door of any retail package store, and no booth, screen, partition or other obstruction shall be permitted within the interior of any such store. Each such retail store shall be so lighted that the interior and exterior of the store is visible day and night.

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Sec. 5-5-3. - Required.

It shall be unlawful for any person to manufacture, sell or offer to sell any spirituous liquors or distilled spirits at wholesale or retail within the corporate limits of the city without having the appropriate license for such manufacture or sale, or to carry on such activity in violation of the terms of such license or this article.

Sec. 5-5-4. - Separate license for each outlet~~; surrender~~.

(a) A separate license shall be required for each package store, and a separate application shall be made for each such place.

(b) ~~Immediately upon the sale or closing of a package store, it shall be the duty of the licensee to surrender his license to the ARBcity manager.~~

~~(c) A~~Any licensee who is an employee of a corporation, who is separated from his employment, whether he resigns, retires or is fired, shall immediately notify the office of the clerk of such separation Monday through Friday, 8:00 a.m. until 5:00 p.m. If such employee removes the package store license from the establishment, he shall immediately surrender such license to the clerk. Failure to surrender such license, if removed from the place of business, will be a violation and shall be punished as provided by ~~state~~ law.

Sec. 5-5-5. - Classification of licenses~~; fees~~.

~~(a) *Types of classifications.*~~ Licenses under this article shall be classified as follows:

(1) *Class R.* Retail liquor package store, which shall permit only the sale of liquor in packages at retail.

(2) *Class W.* Wholesale liquor distributor, which shall permit only the sale of liquor at wholesale.

(3) *Class M.* Manufacturers, which shall permit only the manufacture, bottling and packaging of distilled spirits.

~~**Sec. 5-5-5. - Initial application for license.**~~

~~**Application for a Class M, Class R, or Class W license shall be as follows:**~~

~~(1) *Forms; submission.* Each initial applicant shall make a written application to the ARB for the privilege of engaging in the sale (specifying wholesale or retail) of liquor, such applicant using forms approved by the clerk.~~

~~(2) *Where filed; fee.* The application shall be filed with the clerk with a fee as set out in the fee schedule under section 5-3-15, for review of the applicant and of the proposed location and processing of the application.~~

~~(3) *Contents.* The application shall state:~~

~~a. As to the applicants, full name, birth date, present address and addresses for the past five years (including compliance with O.C.G.A. § 3-4-23 when the applicant has been a resident of the city for less than 12 months immediately proceeding [preceding] application), business address and business addresses of employers and their addresses for the last five years, names of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, other cities, counties and states, county, state and federal, of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.~~

~~b. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection a.~~

~~c. Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.~~

~~d. Name and address of owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.~~

~~e. Trade name (or proposed trade name) of proposed business.~~

~~f. Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.~~

~~g. Such other information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.~~

~~(4) *Approvals.* The application shall contain evidence of the following persons' approval of the licensee and of the owner and the manager of the liquor establishment:~~

~~a. Building inspector (i.e., building permit, certificate of occupancy, or other evidence).~~

~~b. Traffic engineer.~~

~~c. Fire marshal/fire chief.~~

~~d. Chief of police/assistant chief of police.~~

~~e. Planning and zoning coordinator.~~

~~(5) *Oath.* The application shall be sworn to.~~

~~(6) *Surveyor's certificate.* The application shall be accompanied by a current certificate from a registered surveyor containing the following information:~~

~~a. A scale drawing of the building or proposed building, as situated on the proposed lot.~~

~~b. The proposed off street parking facilities available to the building and all outdoor lighting on the premises.~~

~~c. The exact location of the business, including street address, ward, and county tax map number.~~

~~d. Current zoning classification of the location.~~

~~e. The distance as measured in a straight line in yards from nearest property line to property line from each of the following: The nearest church building, the nearest school building, school ground, or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.~~

~~f. If a business has been licensed since July 1, 1981, or before, the survey shall be required however no license will be denied based upon a failure to meet the distance requirements as set forth under O.C.G.A. § 3-3-21.~~

~~(7) *False information.* An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.~~

~~(Ord. No. 2002-14, § 1(9-1-49), 10-1-2002; Ord. No. 2009-14, §§ 39, 40, 10-6-2009)~~

~~Sec. 5-5-6. Sham applicant; de facto applicant or location manager.~~

~~A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.~~

~~(1) It shall be unlawful for any person to file, or permit to be filed, an application for license under this article wherein a sham applicant or a sham location manager is named.~~

~~(2) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of an outlet manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.~~

~~(3) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of the license or the de facto location manager, as the case may be.~~

~~(4) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons and without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~(Ord. No. 2002-14, § 1(9-1-50), 10-1-2002)~~

~~Sec. 5-5-7. - Surveyor's certificate containing false information.~~

~~(a) It shall be unlawful for any applicant under this article to submit with his application any surveyor's certificate containing known false information and/or measurements.~~

~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~

~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~

~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~(Ord. No. 2002-14, § 1(9-1-51), 10-1-2002)~~

Comment [e82]: Relocated to general licensing section, article 1

~~Sec. 5-5-8. - Advertisement; proof thereof.~~

~~(a) Each applicant under this article shall advertise his application at his for license expense in the legal organ newspaper once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall appear after the application is filed and before the public hearing provided for in this article. The advertisement shall contain the name of the applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each application.~~

~~(b) The applicant shall also, within three days after filing a complete application, identify the proposed location by posting a sign not less than 24 inches by 36 inches in size, with letters of at least 2½ inches on the front door of the building proposed to be used (if facing the right-of-way of the city street upon which the building fronts; otherwise, within three feet of the right-of-way), or upon a prominent place on the lot where the building is proposed to be constructed, facing the street. The sign shall be captioned "Liquor License Application Pending" and shall designate the name and address of the applicant, the type of license and the date of the application, and no other advertisement or wording. The sign shall remain posted until final action by the city commission on the application.~~

~~(c) The applicant, before consideration will be given to his application, shall file with the clerk:~~

~~(1) A copy of the advertisement together with affidavits from the newspaper to the effect that it has been printed as required.~~

~~(2) A photograph of the sign erected pursuant to this section, together with affidavits to the effect that it has been erected as required.~~

~~Sec. 5-5-9. - Action by ARB and council.~~

~~(a) After proof of advertisement is filed under this article, the clerk shall notify the chief of police of the application, who shall investigate the applicant and the reputation of the~~

~~location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee when assured that all requirements have been complied with and the application is complete shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to the city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~

Comment [e83]: Relocated partially above and to ARB and general licensing sections

~~(Ord. No. 2002-14, § 1(9-1-53), 10-1-2002; Ord. No. 2009-14, § 42, 10-6-2009)~~

~~Sec. 5-5-10. - Approval of application; expiration in 90 days; extension for cause.~~

~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on the license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war and other uncontrollable occurrences, provided the request therefor is made within the original 90-day period.~~

~~(Ord. No. 2002-14, § 1(9-1-54), 10-1-2002; Ord. No. 2009-14, § 43, 10-6-2009)~~

~~Sec. 5-5-11. - Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application subject matter of which is being litigated.~~

~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~

~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state or federal courts until such time as the litigation is resolved.~~

~~Sec. 5-5-12. - Considerations and guidelines for grant or denial.~~

~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(1) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(2) The proximity of churches, school buildings, school grounds, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~

~~(3) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~

~~(4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~

~~(5) The criminal record of the applicant and the location manager and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~

~~(6) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~

~~(7) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use or sale of alcohol at the proposed location have been met.~~

~~(8) Evidence presented to the ARB for or against the application relating to the sale or use of alcohol at the proposed location.~~

~~(9) Whether or not the granting of the application is in the best interest of the health, safety and welfare of the city.~~

~~(10) Whether any license for sale of beer or wine or alcohol previously issued for the location has been revoked for cause by the city.~~

~~(11) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~

~~(12) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (11) as related to the sale or use of alcohol at the proposed location.~~

~~(13) Whether or not the applicant or location manager has violated other jurisdictions laws regarding alcohol beverage licensing.~~

~~(Ord. No. 2002-14, § 1(9-1-56), 10-1-2002; Ord. No. 2006-08, § 10, 6-13-2006; Ord. No. 2009-14, § 44, 10-6-2009)~~

Comment [e84]: Relocated to general licensing and ARB sections

Sec. 5-5-6. - Prohibited locations~~, prohibited persons, incomplete application~~.

~~(a)~~ Prohibited locations. It shall be prohibited to obtain a license for a package store within the following areas of the city:

(1) Within any residential zoning district or other prohibited zoning district as set out in the zoning ordinance.

(2) Within a measured 100 yards of any church building.

(3) Within a measured 100 yards of any alcoholic treatment center owned and operated by the state or any county or municipal government therein.

(4) Within a measured 200 yards of any school building, school ground, or college campus.

~~**(b) *Prohibited persons.* It shall be prohibited for the following persons to obtain a license for a package store:**~~

~~**(1) A person who does not comply with any residency requirements under state law.**~~

~~**(2) A person who has been convicted of a felony relating to violence, illegal substances, gambling, theft, or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within five years preceding the application.**~~

~~**(3) A person whose license under this chapter has been revoked for cause or who has had a license under this chapter revoked for cause.**~~

~~**(4) A person who is under 18 years of age or who is not of sound mind and memory.**~~

~~**(c) *Incomplete application.* An application under this article filed and submitted before containing substantially all the information required may be refused by staff.**~~

~~**(Ord. No. 2002-14, § 1(9-1-57), 10-1-2002; Ord. No. 2006-08, § 11, 6-13-2006; Ord. No. 2009-14, § 45, 10-6-2009)**~~

~~**Sec. 5-5-14. Becoming a prohibited person.**~~

~~**Any licensee under this article who becomes a "prohibited person" as defined in this chapter shall, within three days of the event, make the fact known to the ARB and shall surrender his license. Such surrender being appealable to the city council.**~~

~~**(Ord. No. 2002-14, § 1(9-1-58), 10-1-2002)**~~

~~**Sec. 5-5-15. Renewal; denial of renewal.**~~

~~**(a) All licenses under this article shall be issued on a calendar year basis; however, the same may be suspended or revoked at any time for violations set out in the chapter and may be renewable upon payment of the appropriate fee, except as is set out in subsections (d) and (e) below.**~~

~~**(b) Each licensee shall make written application for renewal of his license on or before October of each year on forms provided by the city, and the license fee shall be paid in full on or before December 15 of each year.**~~

~~**(c) The application shall be referred to city staff, who shall report on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.**~~

~~(d) If any city official reports any activity which constitutes probable cause for not renewing a license, the renewal shall not be made. All renewals shall be referred to the ARB for its consideration.~~

~~(e) The ARB shall afford the licensee a public hearing, and in passing upon the application for renewal, the recommendation shall be guided by the following factors applicable to an initial application: subsections (5), (6), (8), (9), (10), (12), and (13) of section 5-5-12. The city council may grant, or deny for cause, the renewal of any license issued under this article.~~

~~(f) At the public hearing, the ARB may recommend to the city council granting, or denying for cause, the renewal of any license issued under this article.~~

~~(Ord. No. 2002-14, § 1(9-1-59), 10-1-2002; Ord. No. 2004-02, § 5, 1-27-2004; Ord. No. 2004-24, § 3(9-1-59), 12-21-2004; Ord. No. 2009-14, § 46, 10-6-2009)~~

~~Sec. 5-5-16. - Revocation, refusal to renew, suspension, probation.~~

~~(a) *Summary action.* There shall be no summary seizure of licenses under this article, unless there exists in the city a state of emergency duly declared; after any such seizure, a hearing shall be held as soon as practicable or where the applicant/holder has allowed the license to lapse from lack of use.~~

~~(b) *Action by ARB and council.* The ARB shall have full power and authority to recommend to the city council: revocation, refusal to renew, suspending, or placing on probation any alcohol beverage license for violation of this chapter, city ordinance or of the state or federal laws where such violation relates to the sale, manufacture, or use of alcoholic beverages or when the continued operation of the licensed business is detrimental to the health, safety or welfare of the public as determined by failure to comply with the aforementioned alcohol-beverage-related laws. Before taking any such action, the city council shall require a hearing, before it and/or the ARB, as relevant in accordance with subsection 5-3-8(d); at least five days' notice of said hearing shall have been given to the affected licensee. The ARB shall make relevant recommendations which may be reviewed pursuant to subsection 5-3-8(d). The city council shall make all final determinations either by adopting the ARB recommendation or as otherwise set out in section 5-3-8(d).~~

~~(Ord. No. 2002-14, § 1(9-1-60), 10-1-2002; Ord. No. 2006-08A, § 4, 7-11-2006; Ord. No. 2007-15, § 2, 10-2-2007; Ord. No. 2009-14, § 47, 10-6-2009)~~

~~Sec. 5-5-17. - Changes of circumstances.~~

~~The recommendation of approval of an application by the ARB, and/or the granting of a license by the clerk, may be suspended or revoked, after notice and hearing, if any change in the information supplied, or in the physical layout represented in the plat submitted, occurs without the approval of the ARB. An applicant anticipating any such change shall submit all details thereof to the ARB, which shall report the same to the city council.~~

~~(Ord. No. 2002-14, § 1(9-1-61), 10-1-2002; Ord. No. 2009-14, § 48, 10-6-2009)~~

Comment [e85]: Relocated to ARB and general licensing sections

Sec. 5-5-7. - No broken packages.

No package store nor retail beer/wine store may sell single alcoholic beverages from an ice chest, tub, or cooler. Packages of alcoholic beverages may not be broken for individual sale.

ARTICLE 6. - ON-PREMISES CONSUMPTION

Sec. 5-6-1. - Required.

It shall be unlawful for any person to pour or offer to pour any distilled spirits, wine or malt beverages within the corporate limits of the city without having an on-premises consumption license, or to carry on such activity in violation of the terms of such license or this chapter. Additionally, applicants under this article shall show within the initial application their compliance with O.C.G.A. § 3-4-23 when the applicant has been a resident of the city for less than 12 months immediately preceding the submission of their application.

Sec. 5-6-2. - Qualification.

It is the intention of this article that alcoholic beverages be sold only at bona fide restaurants, hotels, private clubs and other locations as provided for in this chapter and under the restrictions set out in this article and not at walk-in bars or sham establishments.

Sec. 5-6-3~~2~~. - Separate license for each location.

(a) A separate license shall be required for each on-premises consumption location, and a separate application shall be made for each such place.

(b) Upon the resignation or termination of employment of a person who holds the license for a location who is not himself the owner of the location, the location owner or board of directors, if applicable, shall immediately file an application for another licensee.

Sec. 5-6-~~4~~9. - License for on-premises consumption~~; fee~~.

Licenses under this article shall be classified as follows:

(1) *Liquor pouring.* Location for pouring liquor, which shall permit only the sale of liquor by the drink for consumption on the premises.

(2) *Wine pouring.* Location for pouring wine, which shall permit only the sale of wine by the drink for consumption on the premises.

(3) *Malt beverage pouring.* Location for pouring malt beverages, which shall permit only the sale of malt beverages by the drink for consumption on the premises.

Sec. 5-6-5. - On-premises consumption regulations generally.

The following regulations shall apply to licensed on-premises consumption establishments:

(a) No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this article.

~~No on-premises consumption license establishment may allow BYOB on the licensed premises~~(b) No pouring of liquor, malt beverages, or wine, or any other on-premises alcohol service shall be permitted between the hours of 12:00 a.m. and 8:00 a.m. for licensed establishments whose property lines abut an area zoned residential, and 2:00 a.m. and 8:00 a.m. for all others. Except for bed and breakfasts and hotels, all patrons shall vacate such licensed establishments whose property lines abut an area zoned residential no later than 12:45 a.m., and 2:45 a.m. for all others. For purposes of this subsection, "residential" shall mean any parcel of land designated for use as a single or multifamily dwelling and duplexes.

(c) No pouring of liquor, malt beverages, or wine, or any other on-premises alcohol service shall be permitted on Sundays between the hours of 8:00 a.m. and 12:30 p.m.

(d) In no event shall drinks be mixed or sold, nor malt beverages sold, during the prohibited hours, based upon the timely sale of tickets, chits, decanters or other devices.

(e) On-premises consumption licensees may sell malt beverages by the pitcher, or wine by the bottle or decanter.

(f) Hotels shall have the privilege of granting franchises for the operation of a lounge or restaurant in their premises, provided the hotel and the franchisee meet all the requirements of this chapter.

(g) No provision of this section shall be construed to prohibit a licensee from offering free food or entertainment at any time; or to prohibit the licensee from including an alcoholic beverage as a part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals; or to prohibit any bed and breakfast, hotel or motel from offering room service or a complimentary social hour to its registered guests.

(h) It shall be unlawful for any person to employ knowingly in any pouring outlet in any capacity whatsoever, including performers, entertainers and musicians, any person who has plead guilty or has been convicted of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in drugs, sex offenses or for any charge relating to the manufacture or sale of intoxicating liquors, other alcohol related offenses or for violations of local other jurisdictions ordinances regarding alcoholic beverages within the last five years prior to the application.

(i) It shall be the duty of the licensee and designated representative of a licensed establishment to maintain a copy of this chapter at the licensed location and to instruct each employee on its terms.

(j) The state law and regulations relating to the sale of beer, wine, and distilled spirits, as revised, promulgated by the state department of revenue, and especially as related to retail sale for consumption on premises are hereby incorporated into and made a part of this article as if fully set out in this section.

(k) All on-premises consumption licenses shall collect and pay a tax of three percent on the sale of alcoholic beverages by the drink in the city in accordance with chapter 17, article 6 of the Hapeville Code of Ordinances.

~~(l) It shall be unlawful for any sales to be made outside of the building, premises or place of business licensed for such sale except as permitted herein.~~ (l) Serving standing patrons is

Comment [e86]: See new BYOB/brownbagging section in sec 5-1-15

Comment [e87]: See new outside sales section immediately below.

discouraged. The purpose of this section being the prohibition of bars and the encouragement of restaurants within the city. However, twenty-five~~25~~ percent of all patrons may be served while standing when waiting for seating as long as the maximum occupancy capacity of the premises is not violated; and such standing does not create a fire safety or violation under National Fire Protection Association (NFPA) standard code as adopted by the city. The determination of seventy-five~~75~~ percent seating shall be based upon the required seating in the facility mandated by the NFPA standard.

~~(m) All sales shall be made in bar glassware and no sales shall be made in paper cups or any other temporary type receptacle, nor shall any sale be made by the package, except that hotels may provide such sales for in room service for their guests. Notwithstanding the foregoing requirement, entities designated as 501(c)(3) or other non-profit organizations shall be permitted to serve alcoholic beverages in paper or plastic cups or any other temporary type receptacle.~~

(m~~n~~) All licensees hereunder shall display in prominent places their current prices of alcoholic beverages, also minimum, admission and cover charges. The licensee shall file a copy of same with the city manager and shall furnish to any customer that so desires an itemized bill of charges which shall not exceed the price list furnished to the city manager. Upon any increase or decrease of prices, a new list must be filed with the city manager.

(n~~o~~) No licensee or employee or agent of a licensee shall engage in any of the following practices in connection with the sale or other disposition of alcoholic beverages for consumption on the premises:

(1) The giving away of any alcoholic beverage in conjunction with the sale of any other alcoholic beverage;

(2) The sale of two or more alcoholic beverages for a single price, including the sale of all such beverages a customer can or desires to drink at a single price;

(3) The sale or serving of two or more alcoholic beverages at substantially the same price customarily charged for one such alcoholic beverage;

(4) Requiring or allowing the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased or before the first such beverage has been substantially consumed, by any one person;

(5) The sale or delivery to any person or group of persons of an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public; or

(6) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage.

Sec. 5-6-6. - Sales outside of licensed premises.

Comment [e88]: New, modeled substantially after Savannah

It shall be unlawful for any person to sell alcoholic beverages on the streets or sidewalks within the city, or elsewhere, outside of the building, premises, or place of business licensed for such sale, except that businesses with licenses to dispense alcoholic beverages by the drink for consumption on the premises may serve such beverages only within the confines of the licensed

building structure; provided, however, that any business with such license which has an outside patio area on private property or on privately leased public property that is actually and permanently attached to the main building may serve alcoholic beverages in an enclosed patio area. The structure enclosing the patio shall be a minimum of three feet above ground level, although it does not have to be solid or restrict visibility into or out of the patio/open area. The structure must be approved by the city's community development and fire departments. No bar, whether permanent or temporary, may be set up in such outside areas. Businesses with licenses to dispense alcoholic beverages by the drink for consumption on the premises within the city may also apply for a special use permit to sale alcoholic beverages at temporary events specifically authorized by the city for outside sales. Outside sales under this section shall be limited to the Downtown Development Zone and other areas as may be approved by the city council from time to time.

Sec. 5-6-7~~1~~. - Regulation of lounges; reporting food sales.

(a) All lounges shall submit a quarterly report to the ~~ARB~~city manager. ~~The report shall clearly indicate the sales receipts of the lounge for food and the sales receipts for alcoholic beverages. The report shall be sworn to. The report shall be post marked on or before the last day of the calendar month after the calendar quarter. For the purposes of reporting, food shall be defined as all edible substances appropriate for human consumption as determined by the health department inspecting the city's restaurants and lounges as sold or provided to the public in a restaurant as defined in this chapter. Food shall not be construed to mean: olives, cherries, limes, lemons, salt, pepper, pineapples, celery, tomato juice, or any other fruit, vegetable or dairy product such as ice cream, cream, yogurt, milk or soft drinks, water, tonic water, other non-alcoholic carbonated or non-carbonated beverages when such items are used in alcoholic beverages or mixed drink as a essential part of the beverage, mixed drink, or as a garnish thereon.~~ As used in this section, lounges must prove that at least 51 percent of the receipts of such business shall come from the sale of food. ~~To be included in the tabulation of receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services repairs or construction on equipment or building premises.~~

(b) For purposes of this section, the calculation of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained in this chapter. ~~If a lounge fails to report food sales receipts of at least fifty one51 percent as calculated herein and as defined herein after one quarter of a calendar year of reporting such failure shall be considered cause for probation, suspension, revocation or other appropriate action. The reports described herein shall be in a form recognized by certified public accountants and shall utilize common and generally recognized accounting principles and shall be submitted under oath. Those submitting the reports shall be prosecuted for fraudulent statements under O.C.G.A. § 16-10-20 in a court of competent jurisdiction, if such reports are not true. For the purposes of determining whether a lounge is qualified to be open during December and on January 1 of each year the preceding quarter's receipts shall be utilized on making such determination, unless such business is new and had not been open long enough to provide the quarterly reports required herein. Where the business has not been open long enough to~~

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Comment [EW89]: Confirm with City

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provide quarterly reports, then such reports as are available shall be used by the city managerARB to determine if the business shall be allowed to operate in December and on January 1 each year. If no quarterly reports are available, whatever sales receipts for daily sales from the outset of the business will be submitted to the city managerARB for review in order to make the determination. In such cases, suspension, probations, revocations, or other actions based solely on food sales receipts will not occur until after three months of receipts have been submitted. However, nothing in this section shall prohibit actions under this chapter for other violations of local ordinances or state or federal law.

Sec. 5-6-82. - Regulations of restaurants; reporting food sales.

(a) A restaurant holding an alcohol beverage license must (i) be open to the public at least six hours per day, serving at least two meals per day, with a minimum serving time of three hours per meal; and (ii) serve meals at least six days a week with the exception of weeks including holidays, vacations, and periods of redecorating. Before any repair, redecorating or any period of closure other than nationally recognized or religious holidays, vacations or emergencies, the details of such repair, or redecorating shall require approval by the city manager who shall first submit such information to the prereview and recommendation of the ARB for review and recommendation. .

Where closure is the result of a catastrophic emergency, postclosure review can be applied for; however, such review request must be applied for by the license holder no later than thirty30 days postclosure or the same closure may be prosecuted as a violation of this section and may result in administrative proceedings as well.

(b) Serving of alcoholic beverages at off-premises locations shall not be the principal business of the restaurant and consumption on the premises shall only be incidental thereto.

(bc) As used in this section, seating capacity shall mean that no more than twenty-five25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals.

(cd) The principle business of a restaurant shall be the sale of food. As used in this section, principal business shall mean that at least fifty-one51 percent of the receipts of such business shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. The calculation of receipts for alcoholic beverages shall be made pursuant to the regulations contained in this chapter. All restaurants shall submit a report to the ARBCity Manager. The report shall clearly indicate the sales receipts of the restaurant for food and the sales receipts for alcoholic beverages. The report shall be post marked on or before the last day of the calendar month after the calendar quarter. For the purposes of reporting, food shall be defined as all edible substances appropriate for human consumption as determined by the health department inspecting the city's restaurants and lounges as sold or provided to the public in a restaurant as defined in the Code. Food shall not be construed to mean: olives, cherries, limes, lemons, salt, pepper, pineapples, celery, tomato juice, or any other fruit, vegetable or dairy product such as ice cream, cream, yogurt, milk or soft drinks,

water, tonic water, other non-alcoholic carbonated or non-carbonated beverages when such items are used in alcoholic beverages or mixed drink as a essential part of the beverage, mixed drink, or as a garnish thereon. As used in this section, restaurants must prove that at least fifty one51 percent of the receipts of such business shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs, or construction on equipment or building premises.

(de) For purposes of this section, the calculation of receipts for alcoholic beverages shall be made pursuant to these regulations. If a restaurant fails to report food sales receipts of at least fifty one51 percent as calculated herein and as defined herein after one quarter of a calendar year of reporting such failure shall be considered cause for suspension, probation, revocation or other appropriate action under this chapter. The reports described herein shall be in a form recognized by certified public accountants and shall utilize common and generally recognized accounting principles and shall be submitted under oath. Those submitting the reports shall be prosecuted for fraudulent statements under O.C.G.A. § 16-10-20 by a court of competent jurisdiction, if such reports are not true. For the purposes of determining whether a restaurant is qualified to be open during December and on January 1 of each year the preceding one quarter receipts shall be utilized in making such determinations, unless such business is new and had not been open long enough to provide the monthly reports required herein. Where the business has not been open long enough to provide the quarterly reports, then such reports as are available shall be used by the ARB to determine if the business shall be allowed to operate in December and on January 1 each year. If no quarterly reports are available, whatever sales receipts for daily sales from the outset of the business will be submitted to the ARB city manager for review in order to make the determination. Suspension, probations, revocations, or other actions based solely on food sales receipts will not occur until after three months receipts have been submitted. However, in this section nothing shall prohibit actions under this chapter or for other violations of local ordinances or state or federal law.

Sec. 5-6-3. On-premises consumption regulations generally.

(a) The building or proposed building where pouring will take place shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking, buffers and other issues.

(b) No pouring of liquor, malt beverages, or wine, or any other on-premises alcohol service shall be permitted between the hours of 3:00 a.m. and 8:00 a.m.

(c) In addition to the prohibition set forth in subsection (b), no pouring of liquor, malt beverages, or wine, or any other on-premises alcohol service shall be permitted on Sundays between the hours of 8:00 a.m. and 12:30 p.m.

(d) In no event shall drinks be mixed or sold, nor malt beverages sold, during the prohibited hours, based upon the timely sale of tickets, chits, decanters or other devices.

Comment [EW90]: See new ARB and General Licensing section

~~(e) No location manager, nor other employee of a location, shall permit violations of subsections (b) through (d).~~

~~(f) On premises consumption licensees may sell malt beverages by the pitcher, or wine by the bottle or decanter.~~

~~(g) Hotels shall have the privilege of granting franchises for the operation of a lounge or restaurant in their premises, provided the hotel and the franchisee meet all the requirements of this chapter.~~

~~(h) It shall be unlawful for any person to employ knowingly in any pouring outlet in any capacity whatsoever, including performers, entertainers and musicians, any person who has plead guilty or has been convicted of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in drugs, sex offenses or for any charge relating to the manufacture or sale of intoxicating liquors, other alcohol related offenses or for violations of local other jurisdictions ordinances regarding alcoholic beverages within the last five years prior to the application.~~

~~(i) It shall be the duty of the management of a pouring outlet to maintain a copy of this chapter at the outlet and to instruct each employee on its terms.~~

~~(j) The state law and regulations relating to the sale of beer, wine, and distilled spirits, as revised, promulgated by the state department of revenue, and especially as related to retail sale for consumption on premises are hereby incorporated into and made a part of this article as if fully set out in this section.~~

~~(k) A on premises consumption licensee shall make immediate report to the ARB of any change in the interests in or ownership of the pouring outlet and/or any change in the information as stated in the original application for license.~~

~~(l) The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and, provided further that this prohibition shall not apply to the sale of alcoholic beverages for consumption hereunder to the registered guests of any hotel in their designated rooms.~~

~~(m) It shall be unlawful for any sales to be made outside of the building, premises or place of business licensed for such sale except as permitted herein.~~

~~(mn) Serving standing patrons is discouraged. The purpose of this section being the prohibition of bars and the encouragement of restaurants within the city. However, 25 percent of all patrons may be served while standing when waiting for seating as long as the maximum occupancy capacity of the premises is not violated; and such standing does not create a fire safety or violation under National Fire Protection Association (NFPA) standard code as adopted by the city. The determination of 75 percent seating shall be based upon the required seating in the facility mandated by the NFPA standard.~~

Comment [EW91]: Unnecessary

Comment [EW92]: Covered in new general license section, Article 1

Comment [EW93]: Relocated to general prohibition section, article 1

(no) All sales shall be made in bar glassware and no sales shall be made in paper cups or any other temporary-type receptacle, nor shall any sale be made by the package, except that hotels may provide such sales for their guest for service in their room.

(op) All licensees hereunder shall display in prominent places their current prices of alcoholic beverages, also minimum, admission and cover charges. The licensee shall file a copy of same with the city managerARB and shall furnish to any customer that so desires an itemized bill of charges which shall not exceed the price list furnished to the city managerARB. Upon any increase or decrease of prices, a new list must be filed with the city managerARB.

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

(1) The giving away of any alcoholic beverage in conjunction with the sale of any other alcoholic beverage;

(2) The sale of two or more alcoholic beverages for a single price, including the sale of all such beverages a customer can or desires to drink at a single price;

(3) The sale or serving of two or more alcoholic beverages at substantially the same price customarily charged for one such alcoholic beverage;

(4) Requiring or allowing the purchase of a second or subsequent alcoholic beverage a the same time another alcoholic beverage is purchased or before the first such beverage has been substantially consumed, by any one person;

(5) The sale or delivery to any person or group of persons of an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public; or

(6) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage.

(qr) No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under subsection (q) above.

(rs) No provision of this section shall be construed to prohibit a licensee from offering free food or entertainment at any time; or to prohibit the licensee from including an alcoholic beverage as a part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals; or to prohibit any hotel or motel from offering room service or a complimentary social hour to its registered guests.

(st) No on-premises consumption license establishment may allow BYOB on the licensed premises.

(tu) All on-premises consumption licenses shall collect and pay a tax of three percent on the sale of alcoholic beverages by the drink in the city in accordance with chapter 17, article 6 of the Hapeville Code of Ordinances.

(u) No drive-in windows shall be permitted.

Sec. 5-6-94. - Entertainment at pouring outlets.

(a) Bands or orchestras and patron dancing shall be permitted at on-premises consumption locations if the following conditions are met:

(1) Where adequate space exists after consideration of required NFPA occupancy and seating;

(2) Where all fire and safety regulations are met; and

(3) Where the appropriate license fee has been fully paid.

(b) If an on-premises consumption location provides music, dancing or other entertainment provisions for such security attendance and protection as, in the opinion of the chief of police, are adequate to meet the need therefore can be recommended to the licensee by the ARB.

~~Sec. 5-6-5. - Off-premises and special event licenses.~~

~~(a) Notwithstanding any other provision of this Code, the city council may grant a license to permit the off-premises pouring of malt beverages, wine, and liquor under the following terms and conditions:~~

~~(1) An off-premises license may only be issued to licensees who hold in good standing an alcohol pouring license issued by the city, and no such licensee shall be permitted to pour any alcoholic beverage off-premises which cannot be lawfully poured on the licensee's premises.~~

~~(2) An application for an off-premises pouring license shall contain the following information:~~

~~a. Name of licensee.~~

~~b. Address of licensee.~~

~~c. Type of on-premises pouring license held by licensee.~~

~~d. Type of off-premises license required by licensee.~~

~~(3) Reserved.~~

~~(4) Reserved.~~

~~(b) It shall be unlawful for an off-premises licensee to pour any malt beverages, wine, or liquor at any off-premises location until the licensee shall first obtain an off-premises pouring permit. Such permit may be issued by the city council for any period up to three days. Any permit for a period longer than three days must be issued by the city council. An off-premises permit may be issued in accordance with the following:~~

~~(1) No permit for a particular off-premises location shall be issued if the requested building is a "prohibited location" as set out in section 5-6-18(a), or fails to meet all requirements of the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for an on-premises pouring outlet.~~

~~(2) It shall be unlawful for any off-premises licensee to sell liquor at an off-premises location unless food is served at the event.~~

(3) Unless otherwise provided for in this section, all regulations of this code controlling the pouring of alcoholic beverages on premises shall govern the pouring of alcoholic beverages off premises.

(4) No off-premises license shall be valid until the licensee pays an annual license fee as set out in section 5-3-15.

(5) The amount of sales sold off-premises shall be included in the licensee's gross income figures for the purpose of establishing the amount of the mixed drink taxes due from the licensee to the city.

(c) The ARB may recommend and the city council may approve up to three special event licenses for an applicant in a single calendar year. Each special event license shall allow alcohol beverage sales for up to 12 days in a single calendar year and can be used no more than two consecutive days per calendar year up to the 12-day limit. In order to qualify to receive such license, the applicant must comply with the following terms and conditions:

(1) The applicant must be licensed for sale of alcoholic beverages by the state;

(2) The application must provide the information requested under subsection (a)(2) above;

(3) All distances and hours of operation set forth for on-premises consumption must be obeyed;

(4) All identification badge requirements must be met; and

(5) An annual license fee, as set out in section 5-3-15, must be paid in full.

Sec. 5-6-6. General regulations.

(a) The building or proposed building to house an on-premises consumption location shall meet all requirements of the building inspector, the fire marshal, and the traffic engineer, and planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking, buffers, and other issues.

(b) The state regulations relating to the sale and distribution of distilled spirits, as revised, promulgated by the state department of revenue, are hereby incorporated into and made a part of this article as if fully set out in this section.

(c) No drive-in windows shall be permitted.

Sec. 5-6-7. Required.

It shall be unlawful for any person to pour or offer to pour any distilled spirits, wine or malt beverages within the corporate limits of the city without having an on-premises consumption license, or to carry on such activity in violation of the terms of such license or this chapter.

Sec. 5-6-8. Separate license for each location; surrender.

(a) A separate license shall be required for each on-premises consumption location, and a separate application shall be made for each such place.

(b) Immediately upon the sale or closing of an on-premises consumption location, it shall be the duty of the licensee to surrender its license to the ARB.

~~(c) Upon the resignation or termination of employment of a person who holds the license for a location who is not himself the owner of the location, the location owner or board of directors, if applicable, shall immediately file an application for another licensee.~~

~~Sec. 5-6-9. - License for on-premises consumption; fee.~~

~~Licenses under this article shall be classified as follows:~~

~~(1) *Liquor pouring.* Location for pouring liquor, which shall permit only the sale of liquor by the drink for consumption on the premises.~~

~~(2) *Wine pouring.* Location for pouring wine, which shall permit only the sale of wine by the drink for consumption on the premises.~~

~~(3) *Malt beverage pouring.* Location for pouring malt beverages, which shall permit only the sale of malt beverages by the drink for consumption on the premises.~~

Comment [EW94]: Same article, moved up

~~Sec. 5-6-10. - Contents.~~

~~(a) *[Application.]* The application shall state:~~

~~(1) As to the applicant, full name, birth date, present address and addresses for the past five years (including compliance with O.C.G.A. § 3-4-23 when the applicant has been a resident of the city for less than 12 months immediately proceeding [preceding] application) business address and business addresses of employers and their addresses for the last five years, names of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, other cities, counties and states, county, state and federal, of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.~~

~~(2) As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection (1) above.~~

~~(3) Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.~~

~~(4) Name and address of owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.~~

~~(5) Trade name (or proposed trade name) of proposed business.~~

~~(6) Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.~~

~~(7) Such other information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.~~

~~(b) *Approvals.* The application shall contain evidence of the following persons' approval of the licensee and of the owner and the manager of the liquor establishment:~~

~~(1) Building inspector (i.e., building permit, certificate of occupancy, or other evidence).~~

~~(2) Traffic engineer.~~

~~(3) Fire marshal/fire chief.~~

~~(4) Chief of police/assistant chief of police.~~

~~(5) Planning and zoning coordinator.~~

~~(c) *Oath.* The application shall be sworn to.~~

~~(d) *Surveyor's certificate.* The application shall be accompanied by a current certificate from a registered surveyor containing the following information:~~

~~(1) A scale drawing of the building or proposed building, as situated on the proposed lot.~~

~~(2) The proposed off-street parking facilities available to the building and all outdoor lighting on the premises.~~

~~(3) The exact location of the business, including street address, ward, and county tax map number.~~

~~(4) Current zoning classification of the location.~~

~~(5) The straight line distance in yards from nearest property line to property line from each of the following: the nearest school building, school ground, or college campus; and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.~~

~~(e) *[On premises consumption.]* Only the distance requirements set forth in O.C.G.A. § 3-3-21, if any exist, for on-premises consumption shall be applicable.~~

~~(f) *False information.* An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.~~

~~Sec. 5-6-11. - Sham applicant; de facto applicant or location manager.~~

~~A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.~~

~~(1) It shall be unlawful for any person to file, or permit to be filed, an application for license under this article wherein a sham applicant or a sham location manager is named.~~

~~(2) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of an outlet manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.~~

~~(3) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of the license or the de facto location manager, as the case may be.~~

~~(4) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons and without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~Sec. 5-6-12. - Surveyor's certificate containing false information.~~

~~(a) It shall be unlawful for any applicant under this article to submit with his application any surveyor's certificate containing known false information and/or measurements.~~

~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~

~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~

~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~(e) The amount of the license fee for each class shall be as set forth in the license fee schedule under section 5-3-15.~~

Comment [EW95]: Redundant, covered now in article 1, general regulations

~~**Sec. 5-6-13. Application, qualification; regulation.**~~

~~It is the intention of this article that alcoholic beverages be sold only at bona fide restaurants, hotels and private clubs as defined in this chapter and under the restrictions set out in this article and not at walk-in bars or sham establishments.~~

~~**Sec. 5-6-14. Action by ARB and city council.**~~

~~(a) After proof of advertisement is filed, the clerk shall notify the chief of police, who shall investigate the reputation of the location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee when assured that all requirements have been complied with and the application is complete shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~

~~**Sec. 5-6-15. Approval of application; expiration in 90 days; extension for cause.**~~

~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on the license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war and other uncontrollable occurrences, provided the request therefore is made within the original 90-day period.~~

~~**Sec. 5-6-16. Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application where subject matter being litigated.**~~

~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~

~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.~~

~~Sec. 5-6-17. Considerations and guidelines for grant or denial.~~

~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(1) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(2) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~

~~(3) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~

~~(4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~

~~(5) The criminal record of the applicant and the location manager and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~

~~(6) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~

~~(7) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use or sale of alcohol at the proposed location have been met.~~

~~(8) Evidence presented to the ARB for or against the application relating to the sale or use of alcohol at the proposed location.~~

~~(9) Whether or not granting of the application is in the best interest of the health, safety and welfare of the city.~~

~~(10) Whether any license for sale of liquor, beer, or wine or alcohol previously issued for the location has been revoked for cause by the ARB.~~

~~(11) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to~~

~~the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~

~~(12) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (11) as related to the sale or use of alcohol at the proposed location.~~

~~(13) Whether or not the application or location manager has violated other jurisdictions laws regarding alcohol beverage licensing.~~

~~Sec. 5-6-18. - Prohibited locations, prohibited persons, incomplete application.~~

~~(a) *Prohibited locations.* It shall be prohibited to obtain a license for on-premises consumption within the following areas of the city:~~

~~(1) Within any residential zoning district or other prohibited district as set out in the zoning ordinance.~~

~~(2) In any existing building or establishment having a history of, or reputation for, prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel.~~

~~(b) *Prohibited persons.* It shall be prohibited for the following persons to obtain a license for an on-premises consumption location:~~

~~(1) A person who does not comply with any residency requirements under state law.~~

~~(2) A person who has been convicted of a felony relating to violence, illegal substances, gambling, theft, or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within five years preceding the application.~~

~~(3) A person whose license under this chapter has been revoked for cause or who has had a license under this chapter revoked for cause.~~

~~(4) A person who is under 18 years of age or who is not of sound mind and memory.~~

~~(c) *Incomplete application.* An application under this article filed and submitted before containing substantially all the information required may be refused by staff.~~

~~Sec. 5-6-19. - Becoming a prohibited person.~~

~~Any licensee under this article who becomes a "prohibited person" as defined in section in this chapter shall, within three days of the event, make the fact known to the ARB and shall surrender his license. Such surrender being appealable to the city council.~~

~~Sec. 5-6-20. - Renewal; denial of renewal.~~

~~(a) All licenses under this article shall be issued on a calendar year basis; however, the same may be suspended or revoked at any time for violations set out in this chapter~~

~~and may be renewable upon payment of the appropriate fee, except as is set out in subsections (d) and (e) below.~~

~~(b) Each licensee shall make written application for renewal of his license on or before October of each year on forms provided by the city, and the license fee shall be paid in full on or before December 15 of each year.~~

~~(c) The application shall be referred to the city staff, who shall report on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.~~

~~(d) If any city official reports any activity which constitutes probable cause for not renewing a license, the renewal shall not be made. All renewals shall be referred to the ARB for its consideration.~~

~~(e) The ARB shall afford the licensee a public hearing, and in passing upon the application for renewal, the recommended action shall be guided by the following factors applicable to an initial application: subsections (5), (6), (8), (9), (10), (12), and (13), of section 5-6-17.~~

~~(f) At the public hearing, the ARB may recommend to the city council granting, or denying for cause, the renewal of any license issued under this article.~~

~~Sec. 5-6-21. Revocation, refusal to renew, suspension, probation.~~

~~(a) *Summary action.* There shall be no summary seizure of licenses under this article unless there exists in the city a state of emergency duly declared; after any such seizure, a hearing shall be held as soon as practicable except where the applicant/holder has allowed the license to lapse from lack of use.~~

~~(b) *Action by ARB and council.* The ARB shall have full power and authority to recommend to the city council: revocation, refusal to renew, suspending, or placing on probation any alcoholic beverage license for a violation of this chapter, city ordinance, or of the state or federal laws, where such violation relates to the sale, manufacture, or use of alcoholic beverages or when the continued operation of the licensed business is detrimental to the health, safety, or welfare of the public as determined by failure to comply with the aforementioned alcohol beverage related laws. Before taking any such action, the city council shall require a hearing, before it and/or the ARB, as relevant in accordance with section 5-3-8(d), at least five days' notice of said hearing shall have been given to the affected licensee. The ARB shall make relevant recommendations which may be reviewed pursuant to subsection 5-3-8(d). The city council shall make all final determinations either by adopting the ARB recommendations or as otherwise set out in subsection 5-3-8(d).~~

~~Sec. 5-6-22. Effect of changes of circumstances on application.~~

~~The recommendation of approval of an application by the ARB, and/or the granting of a license by the clerk, may be suspended or revoked, after notice and hearing, if any change in the information supplied, or in the physical layout represented in the plat submitted, occurs without the approval of the ARB. An applicant anticipating any such change shall submit all details thereof to the ARB which shall report the same to the city council.~~

Sec. 5-6-10~~23~~. - Private clubs.

(a) Private clubs shall be subject to the requirements for on-premises consumption licenses as set out in this chapter, except as otherwise provided.

(b) Private clubs shall not be subject to section 5-6-1 and [subsection] 5-6-5~~2~~(a).

(c) Private clubs may sell alcoholic beverages only to their members, and shall be required to maintain the same percentage of food-drink sales as is required of restaurants under ~~subsection 5-6-2(c).~~this article. Private clubs shall further be required to submit monthly reports to the ~~ARB (i)~~city manager clearly indicating its sales receipts for food and its sales receipts for alcoholic beverages pursuant to ~~subsections 5-6-2(c) and 5-6-2(d), and (ii)~~this article attesting that they have at least 75 regular dues-paying members.

(d) No alcoholic beverage license shall be granted to a private club organized or operated primarily for the selling or serving of alcoholic beverages.

Sec. 5-6-11~~5~~. - Off-premises and special event licenses.

(a) Notwithstanding any other provision of this Code, the city ~~council~~ manager may grant a license to permit the off-premises pouring of malt beverages, wine, and liquor under the following terms and conditions:

(1) An off-premises license may only be issued to licensees who hold in good standing an alcohol pouring license issued by the city, and no such licensee shall be permitted to pour any alcoholic beverage off-premises which cannot be lawfully poured on the licensee's premises.

(2) An application for ~~–~~an ~~–~~off-premises pouring license shall contain the following information:

a. Name of licensee.

b. Address of licensee.

c. Type of on-premises pouring license held by licensee.

d. Type of off-premises license required by licensee.

~~(3) Reserved.~~

~~(4) Reserved.~~

(b) It shall be unlawful for an off-premises licensee to pour any malt beverages, wine, or liquor at any off-premises location until the licensee shall first obtain an off-premises pouring permit. Such permit may be issued by the city manager~~council~~ for any period up to three days. Any permit for a period longer than three days must be approved~~issued~~ by the city council. An off-premises permit may be issued in accordance with the following:

(1) No permit for a particular off-premises location shall be issued if the requested building is a "prohibited location" as set forth in this chapter or state law~~set out in section 5-6-18(a)~~, or fails to meet all requirements of this chapter and state law~~the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator~~ for an on-premises pouring outlet.

(2) It shall be unlawful for any off-premises licensee to sell liquor at an off-premises location unless food is served at the event.

(3) Unless otherwise provided for in this section, all regulations of this code controlling the pouring of alcoholic beverages on premises shall govern the pouring of alcoholic beverages off premises.

~~(4) No off-premises license shall be valid until the licensee pays an annual license fee as set out in section 5-3-15.~~

(4~~5~~) The amount of sales sold off premises shall be included in the licensee's gross income figures for the purpose of establishing the amount of the mixed drink taxes due from the licensee to the city.

(c) The ARB may recommend and the city manager ~~council~~ may approve up to three special event licenses for an applicant in a single calendar year. Each special event license shall allow alcohol beverage sales for up to 12 days in a single calendar year and can be used no more than two consecutive days per calendar year up to the 12-day limit. In order to qualify to receive such license, the applicant must comply with the following terms and conditions:

(1) The applicant must be licensed for sale of alcoholic beverages by the state;

(2) The application must provide the information requested under subsection (a)(2) above;

(3) All distances and hours of operation set forth for on-premises consumption must be obeyed;

(4) All identification badge requirements must be met; and

(5) An annual license fee, as set out ~~in section 5-3-15~~in this chapter, must be paid in full.

~~**ARTICLE 6.1. - ON-PREMISES CONSUMPTION UNDER 2,000 SQUARE FEET/OPEN SIX HOURS OR LESS IN DAY**~~

~~**Sec. 5-26.1-1. - Regulation of on-premises consumption establishments under 2,000 square feet/open less than six hours in day.**~~

~~(a) This article applies only to on-premises consumption establishments under 2,000 square feet (including any outside serving area) that are open to the public six consecutive hours or less in a day.~~

~~(b) Only on-premises consumption establishments under 2,000 square feet (including any outside serving area) that are open to the public six consecutive hours or less in a day may obtain an on-premises consumption under 2,000 square feet/open six hours or less in day license.~~

~~(c) All provisions set forth in this article 6 shall apply fully to on-premises consumption under 2,000 square feet/open six hours or less in day licensees, except such licensees shall only be required to:~~

~~(1) Serve one meal per day;~~

~~(2) Be open for service five days a week; and~~

~~(3) Have at least forty40 percent of its receipts come from the sale of food.~~

~~**ARTICLE 6.2. ON-PREMISES ARTS LICENSES**~~

Sec. 5-6-123~~.2-1~~. - ~~Regulation of o~~On-premises arts licenses.

(a) An on-premises arts license may be issued to a nonprofit arts organization whose primary purpose is to present productions or performances of an artistic or cultural nature.

(b) An on-premises arts license permits the licensee to sell alcoholic beverages only to patrons of the productions or performances for consumption inside the licensed premises in connection with the productions or performances.

(c) No licensee or employee or agent of a licensee under this section shall permit any exterior or interior advertising concerning the sale of alcoholic beverages on the licensed premises.

(d) No licensee or employee or agent of a licensee under this section shall engage in any of the following practices in connection with the sale or other disposition of alcoholic beverages:

(1) The giving away of any alcoholic beverage in conjunction with the sale of any other alcoholic beverage;

(2) The sale of two or more alcoholic beverages for a single price, including the sale of all such beverages a customer can or desires to drink at a single price;

(3) The sale or serving of two or more alcoholic beverages at substantially the same price customarily charged for one such alcoholic beverage;

(4) Requiring or allowing the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased or before the first such beverage has been substantially consumed, by any one person;

(5) The sale or delivery to any person or group of persons of an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public; or

(6) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage.

(e) No licensee or employee or agent of a licensee under this section shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under ~~subsection (d) above~~this article.

(f) The building or proposed building shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking, buffers and other issues.

(g) ~~No licensee under this section may allow BYOB on the licensed premises.~~

~~(h)~~ All on-premises arts licensees shall collect and pay a tax of three percent on the sale of alcoholic beverages by the drink in the city in accordance with chapter 17, article 6 of the Hapeville Code of Ordinances.

Comment [e97]: See new BYOB/brownbagging section, sec. 5-1-15

(h~~i~~) The state regulations relating to the sale and distribution of distilled spirits, as revised, promulgated by the state department of revenue, are hereby incorporated into and made a part of this article as if fully set out in this section.

~~(j) The regulations pertaining to special events licenses under section 5-6-5(c) shall apply to on-premises arts licenses.~~

Sec. 5-6-134. - Alcoholic beverage caterers.

Comment [e98]: New, added to address temporary amendments concerning private events

~~(b) Licenses may be obtained for the purpose of selling or dispensing alcoholic beverages by the drink on premises at which authorized catered functions are to be held. Such licenses shall be annual licenses and may be obtained only by those persons, firms or corporations already licensed by the city for the sale of alcoholic beverages at retail or by the drink.~~

~~(c) Before a licensed alcoholic beverage caterer may sell or dispense alcoholic beverages at any authorized catered function, such caterer shall obtain a permit from the city manager. The application for permit shall include the name of the alcoholic beverage caterer, the caterer's license number, and the date, address and time of the event. No permit fee shall be charged for the alcoholic beverage caterers licensed by the city. For caterers licensed by jurisdictions other than Hapeville, a fee of fifty dollars ($50.00) per event permit shall be charged. No permit shall be issued to any person under this section who does not hold an alcoholic beverage caterer's license from a local jurisdiction in the State. The permit shall be kept in the vehicle used to transport alcoholic beverage to the event at all times during which the permit is in effect.~~

~~(d) Caterers licensed by a jurisdiction other than Hapeville shall maintain a record of all alcoholic beverages transported into the city for the event, and shall pay an excise tax to the city covering all such beverages at the rates provided by this chapter. Failure to report and remit the tax within fourteen (14) days of the conclusion of the event shall be grounds for denial of subsequent permits to that caterer for similar events.~~

~~(e) Caterers licensed by Hapeville shall maintain a record of all alcoholic beverages transported for each event, by event, and shall make report and remittance of such taxes with their regular monthly reports to the city.~~

~~(f) No alcoholic beverages shall be transported, distributed or sold to other than licensed locations in the city, except to authorized catered functions, unless otherwise authorized by this chapter or by state law.~~

~~(g) The hours and days of sale or distribution of alcoholic beverages under this section shall be the same as provided for distilled spirit sales.~~

~~(h) No licensed alcoholic beverage caterer shall employ any person under eighteen (18) years of age to dispense, serve, sell or handle alcoholic beverages at authorized catered functions.~~

~~(i) As a condition of permit issuance, alcoholic beverage caterers licensed by jurisdictions other than Hapeville shall be provided to review the city's alcoholic beverages ordinances, and shall indicate, by signature, that they have received such ordinances and acknowledge the applicability of such ordinances to their operations.~~ Reserved.

Sec. 5-6-145. - Ancillary wine tasting license.

(a) The holder of a wine license shall be eligible for an ancillary wine tasting license to provide samples of wine offered for sale to customers under the conditions set forth in this section.

(b) Wine sampling shall be on limited occasions when a customer requests a sample of a wine offered for sale within the premises, or in conjunction with wine education classes and sampling designed to promote wine appreciation and education.

(c) Wine tasting for customers shall only be conducted at a wine counter area constituting no more than ten percent of the entire floor area of the premises.

(d) Wine sampling for customers shall be limited to no more than one time per day for a period of not to exceed two consecutive hours. Samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any two-hour period.

(e) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.

(f) No open containers of wine shall be removed from the licensed premises.

(g) Not more than two times per week for a period of not to exceed two consecutive hours, the holder of an ancillary wine tasting license may conduct educational classes and sampling for classes. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.

(h) Holders of an ancillary wine tasting permit shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.

~~(i) Wine sampling and tasting is only permitted within the enclosed portion of the premises.~~

Comment [e99]: Taken from Sandy Springs, I will tailor this upon reciept on feedback from council.

Sec. 5-6-15~~5~~. – Bed and b~~B~~reakfast l~~L~~icense.

(a) A bed and breakfast may obtain a bed and breakfast to sell alcohol on premises at the licensed location. Such license shall be limited to the sale of beer and wine.

(b) A bed and breakfast licensed under this article shall:

(1) Comply with all local, state and federal licensing and operational requirements;

(2) Have a full-service kitchen at the licensed location approved by the health and fire departments;

(3) Restrict its sell of alcohol to overnight customers staying on the premises and its customers who are served food that is to be consumed on the premises while dining or attending a culinary class. More than one bottle of wine shall not be sold to any customer in a three day period. A bed and breakfast shall not allow customers to take alcoholic beverages in any form away from the licensed premises, except that overnight customers may be permitted to remove one unsealed bottle of wine per patron for consumption off premises at the end of their overnight stay;

(4) Submit reports to the City Manager as required under this article.

Sec. 5-6-165. - Reports, required.

(a) All reports required under this article shall clearly indicate the sales receipts of the licensed establishment for food and the sales receipts for alcoholic beverages. The report shall be post marked on or before the last day of the calendar month after the calendar quarter. For the purposes of reporting, food shall be defined as all edible substances appropriate for human consumption as determined by the health department inspecting the city's restaurants and lounges as sold or provided to the public in a restaurant as defined in this chapter. Food shall not be construed to mean: olives, cherries, limes, lemons, salt, pepper, pineapples, celery, tomato juice, or any other fruit, vegetable or dairy product such as ice cream, cream, yogurt, milk or soft drinks, water, tonic water, other non-alcoholic carbonated or non-carbonated beverages when such items are used in alcoholic beverages or mixed drink as a essential part of the beverage, mixed drink, or as a garnish thereon.

(b) The report shall identify, by name and nature of service provided, all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel, not to include, however, persons who are called to the premises from other licensed businesses to perform services repairs or construction on equipment or building premises.

(c) The failure of a licensed establishment to submit a report required under this article shall be considered cause for probation, suspension, revocation or other appropriate action. The reports described herein shall be in a form recognized by certified public accountants and shall utilize common and generally recognized accounting principles and shall be submitted under oath. Those submitting the reports shall be prosecuted for fraudulent statements under O.C.G.A. § 16-10-20 in a court of competent jurisdiction, if such reports are not true.

(d) For the purposes of determining whether a licensed establishment is qualified to operate under the license during December and on January 1 of each year, the preceding quarter's receipts shall be utilized on making such determination, unless such business is new and had not been open long enough to provide the quarterly reports required herein. Where the business has not been open long enough to provide quarterly reports, then such reports as are available shall be used by the city manager to determine if the business shall be allowed to operate in December and on January 1 each year. If no quarterly reports are available, whatever sales receipts for daily sales from the outset of the business will be submitted to the city manager for review in order to make the determination. In such cases, suspension, probations, revocations, or other actions based solely on food sales receipts will not occur until after three months of receipts have been submitted. However, nothing in this section shall prohibit actions under this chapter for other violations of state, federal or local laws.

ARTICLE 7~~6.3~~. - GROWLERS

Sec. 5-7~~6.3~~-1. - Growler license.

(a) The retail sale of growlers is authorized for establishments licensed pursuant to this article. ~~The fee amount for a growler license shall be set forth in section 5-3-15.~~

(b) A growler license may be obtained only by establishments engaged in the retail sale of growlers.

(c) In addition to the retail sale of growlers, a growler licensee is permitted to engage in the retail sale of beer and/or wine by the package. A package of beer or wine may not be broken for individual sale; however, the filling of growlers by means of a tapped keg or barrel shall not constitute the breaking of a package.

(d) A licensee obtaining a growler license cannot hold any other category of alcohol beverage license.

(e) Growlers may only be filled with beer or wine from kegs or barrels procured by the licensee from a duly licensed wholesaler.

(f) After a growler is filled at the licensed premises, it must be securely sealed and removed from the premises in its original condition and cannot be opened or consumed on the premises.

(g) Only professionally sanitized and sealed growlers may be filled and made available for retail sale.

(h) A growler licensee shall be authorized to offer without charge samples of draft beer or wine to patrons over the age of 21. Samples shall not exceed three ounces in volume nor shall any one individual be offered more than a total of 12 ounces of samples within a calendar day.

(i) ~~It shall be unlawful for a growler licensee or any employee thereof to be on duty at the licensed premises in an intoxicated condition. "Intoxication" shall be defined as when a licensee's or employee's alcohol concentration is 0.08 grams or more at any time while on duty. For purposes of this section, "on duty" shall mean being paid any salary, wage, or remuneration of any kind for services rendered during the time he or she is on the premises; on the licensed premises for the benefit of or at the direction of the licensee or its management (other than as a customer, patron, or guest); engaging in the sale, directly or indirectly, of any food or beverage; or taking a break during periods of any on duty employment.~~ Subject to subsection (i) of this section, a growler licensee or employee thereof shall be permitted to taste draft beer and wine at the licensed premises for quality control or educational purposes only. Such tastings shall not exceed four ounces in volume per hour and eight ounces in volume total within a calendar day.

(j) No food purchased at an establishment possessing a growler license may be consumed on premises.

Comment [e100]: In article 1, general licensing

Comment [e101]: Deleted as uncommon and due to liberal approach of revisions. Will seek further input from council.

Sec. 5-7~~6.3~~-2. – Growlers license, regulations generally.

The following regulations shall apply to licensed growler establishments:

~~(a) The building or proposed building to house a growler licensee shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking buffers and other issues.~~

(a~~b~~) No screen, partition or thing which prevents a clear view into the interior of a growler store from the street, nor any booth within, shall be permitted.

(b) No sale of beer or wine shall be permitted between the hours of 2:00 a.m. and 8:00 a.m. In addition, no sale of beer or wine shall be permitted on Sundays before 12:30 p.m. and after 11:30 p.m., or any other days or times prohibited by state law.

(c) The state regulations relating to the sale and distribution of beer and/or wine, as revised, promulgated by the state revenue department, are hereby incorporated into and made a part of this chapter as if fully set out in this section.

~~No drive-in windows for the sale of beer or wine shall be allowed.~~

(d) The open parking area of any building or proposed building to house a growler store shall have an average maintained footcandle intensity of at least one footcandle with a minimum allowable intensity of three-tenths of a footcandle. The covered parking area of any building or proposed building to house a retail outlet shall have an average maintained footcandle intensity of at least two footcandles with a minimum allowable intensity of five-tenths footcandle.

(e) Each growler store shall install and maintain in a secure location security cameras in the outlet of a type and number approved by the chief of police. Such cameras:

(1) Shall be placed in the outlet to record activities in the checkout or cash register area(s).

(2) Shall be capable of producing a retrievable image on film, tape, or any readable medium that can be made a permanent record and enlarged through projection or other means.

(f) Each growler store shall post at least four copies of its complete price list or, in lieu thereof, place a price on each package for sale.

~~(j) Temporary Exemption. Nothing within this chapter shall prohibit a licensed growler store from selling beer and wine by the glass, on premises, in a manner which is expressly permitted by the state of Georgia under the Georgia Alcoholic Beverage Code. This exemption shall remain in effect until December 31, 2016 or until the effective date of the City's pending comprehensive update of Chapter 5 of the City's Alcohol Beverages Code, whichever occurs sooner.~~

Sec. 5-7~~6.3~~-3. - Required.

Comment [e102]: Redundant

It shall be unlawful for any person to sell or offer to sell a growler within the corporate limits of the city without having the appropriate license for such sale, or to carry on such activity in violation of the terms of such license or of this chapter.

Sec. 5-76.3-4. - Separate license for each growler store; surrender.

(a) A separate license shall be required for each growler store, and a separate application shall be made for each such place.

(b) Immediately upon the sale or closing of a business, it shall be the duty of the licensee to surrender his license to the ARB.

Sec. 5-6.3-5. - Applications for growler license.

Applications for growler licenses shall be as follows:

(1) *Forms; submission.* Each initial applicant shall make written application to the ARB for the privilege of engaging in the sale of growlers such applicant using forms provided by the clerk.

(2) *Where filed; fee.* The application shall be filed with the clerk with a fee as set out in the fee schedule under section 5-3-15, for review of the applicant and of the proposed location and processing of the application.

(3) *Contents.* The application shall state:

a. As to the applicants, full name, birth date, present address and addresses for the past five years, business address and business addresses of employers and their addresses for the last five years, name of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, counties, state and federal, and other cities, counties, and states of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.

b. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection a.

c. Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.

d. Name and address of the owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.

e. Trade name (or proposed trade name) of proposed business.

f. Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.

g. Such other information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.

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~~(4) *Approvals.* The application shall contain evidence of the following persons' approval of the licensee and of the owner and the manager of the malt beverage/wine establishment:~~

~~a. Building inspector (i.e., building permit, certificate of occupancy, or other evidence).~~

~~b. Traffic engineer.~~

~~c. Fire marshal/fire chief.~~

~~d. Chief of police/assistant chief of police.~~

~~e. Planning and zoning coordinator.~~

~~(5) *Oath.* The application shall be sworn to.~~

~~(6) *Surveyor's certificate.* The application shall be accompanied by a current certificate from a registered surveyor containing the following information:~~

~~a. A scale drawing of the building or proposed building, as situated on the proposed lot.~~

~~b. The proposed off street parking facilities available to the building and all outdoor lighting on the premises.~~

~~c. The exact location of the business, including street address, ward, and county tax map number.~~

~~d. Current zoning classification of the location.~~

~~e. The distance in yards as measured in a straight line from nearest property line to nearest property line from each of the following: the nearest school building, school ground or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.~~

~~f. If a business has been licensed since July 1, 1981, or before, the survey shall be required however no license will be denied based upon a failure to meet the distance requirements as set forth under O.C.G.A. § 3-3-21.~~

~~(7) *False information.* An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.~~

~~Sec. 5-6.3-6. Sham applicant; de facto applicant or location manager.~~

~~A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.~~

~~(1) It shall be unlawful for any person to file, or permit to be filed, an application for license under this division wherein a sham applicant or a sham location manager is named.~~

~~(2) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of a location manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.~~

~~(3) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of the license or the de facto location manager, as the case may be.~~

~~(4) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~(Ord. No. 2014-04, § 5, 4-15-2014)~~

~~Sec. 5-6.3-7. Surveyor's certificate containing false information.~~

~~(a) It shall be unlawful for any applicant under this article to submit with his or her application any surveyor's certificate containing known false information and/or measurements.~~

~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~

~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~

~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~Sec. 5-6.3-8. Advertisement; proof thereof.~~

~~(a) Each applicant under this article shall advertise his or her application for license at his or her own expense in the legal organ newspaper once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall appear after the application is filed and before the public hearing provided for in this article. The advertisement shall contain the name of the applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each initial application.~~

~~(b) The applicant, before consideration will be given to his application, shall file with the clerk a copy of the advertisement together with affidavits from the newspaper to the effect that it has been printed as required.~~

~~Sec. 5-6.3-9. Action by ARB and city council.~~

~~(a) After proof of advertisement is filed, the clerk shall notify the chief of police, who shall investigate the applicant and the reputation of the location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the~~

~~fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee, when assured that all requirements have been complied with and the application is complete, shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to the city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~

~~Sec. 5-6.3-10. Approval of application; expiration in 90 days; extension for cause.~~

~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war, and other uncontrollable occurrences, provided the request is made within the original 90-day period.~~

~~Sec. 5-6.3-11. Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application subject matter being litigated.~~

~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~

~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.~~

~~Sec. 5-6.3-12. Considerations and guidelines for grant or denial.~~

~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(1) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(2) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~

~~(3) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~

~~(4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~

~~(5) The criminal record of the applicant and the location manager, and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~

~~(6) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~

~~(7) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use or sale of alcohol at the proposed location have been met.~~

~~(8) Evidence presented to the ARB for or against the application relating to the sale or use of alcohol at the proposed location.~~

~~(9) Whether or not the granting of the application is in the best interest of the health, safety, and welfare of the city.~~

~~(10) Whether any license for sale of beer or wine or alcohol previously issued for the location has been revoked for cause by the city.~~

~~(11) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~

~~(12) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (11) as related to the sale or use of alcohol at the proposed location.~~

~~(13) Whether or not the applicant or location manager has violated other jurisdictions laws regarding alcohol beverage licensing.~~

Comment [e103]: Relocated to article 1, general licensing

Sec. 5-7~~6.3~~-5. - Prohibited locations; prohibited persons; incomplete application.

Prohibited locations. It shall be prohibited to obtain a growler license within the following areas of the city:

(1) Within any residential zoning district or other prohibited zoning district established in the zoning ordinance.

(2) Within a measured 100 yards of any alcoholic treatment center owned and operated by the state or any county or municipal government therein.

(3) Within a measured 100 yards of any school building, school ground, or college campus.

(b) *Prohibited persons.* It shall be prohibited for the following persons to obtain a growler license:
(1) A person who does not comply with any residency requirements under state law.
(2) A person who has been convicted of a felony relating to violence, illegal substances, gambling, theft, or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city or any other city or county relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within five years preceding the application.
(3) A person whose license under this chapter has been revoked for cause or who has had a license under this chapter revoked for cause.
(4) A person who is under 18 years of age or who is not of sound mind and memory.
(c) *Incomplete application.* An application under this article filed and submitted before containing substantially all the information required may be refused by staff.
Sec. 5-6.3-14. - Becoming a prohibited person.
Any licensee under this article who becomes a "prohibited person" as defined in this chapter, shall, within three days of the event, make the fact known to the ARB and shall surrender his license, such surrender being appealable to the city council.
Sec. 5-6.3-15. - Renewal; denial of renewal.
(a) All licenses under this article shall be issued on a calendar-year basis; however, the same may be suspended or revoked at any time for violations set out in this chapter and may be renewable upon payment of the appropriate fee, except as is set out in subsections (d) and (e) below.
(b) Each licensee shall make a written application for renewal on or before October 15 of each year on forms approved by the clerk, and the license fee shall be paid in full no later than December 15 of each year.
(c) The application shall be referred to city staff, who shall report on the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the year.
(d) If any city official reports any activity which constitutes probable cause for not renewing a license, the renewal shall not be made. All renewals shall be referred to the ARB for its consideration.
(e) The ARB shall afford the licensee a public hearing, and in passing upon the application for renewal, the recommendation shall be guided by the following factors applicable to an initial application: subsections (5), (6), (8), (9), (10), (12), and (13) of section 5-6.3-12. The city council may grant or deny for cause the renewal of any license issued under this article.
(f) At the public hearing, the ARB may recommend to the city council granting, or denying for cause, the renewal of any license issued under this article.
Sec. 5-6.3-16. - Revocation, refusal to renew, suspension, probation.
(a) *Summary action.* There shall be no summary seizure of licenses under this article, unless there exists in the city a state of emergency duly declared; after any such seizure, a hearing shall be held as soon as practicable except where the applicant/holder has allowed the license to lapse from lack of use.
(b) *Action by ARB and council.* The ARB shall have full power and authority to recommend to the city council: revocation, refusal to renew, suspending, or placing on probation any alcohol beverage license for violation of this chapter, city ordinance or of the state or federal laws where such violation relates to the sale, manufacture or use of alcoholic beverages or when the continued operation of the licensed business is detrimental to the health, safety or welfare of the public as determined by failure to comply with the aforementioned alcohol beverage-related laws. Before taking any such action, the city council shall require a hearing, before it and/or the ARB, as relevant in accordance with subsection 5-3-8(d); at least five days' notice of said hearing shall have been govern to the affected licensee. The ARB shall make relevant recommendations which may be reviewed pursuant to subsection 5-3-8(d). The city

council shall make all final determinations either by adopting the ARB recommendations or as otherwise set out in subsection 5-3-8(d).

Sec. 5-6.3-17. - Changes of circumstances.

The recommendation of approval of an application by the ARB, and/or the granting of a license by the clerk, may be suspended or revoked, after notice and hearing, if any change in the information supplied, or in the physical layout represented in the plat submitted, occurs without the approval of the ARB. An applicant anticipating any such change shall submit all details thereof to the ARB which shall report the same to the city council.

Comment [e104]: Relocated to general licensing section, article 1

ARTICLE 8~~6.4~~. – MICROBREWERIES

Sec. 5-8~~6.4~~-1. - Microbrewery license, regulations generally.

The following regulations shall apply to licensed retail beer/wine establishments:

(a) The operation of a microbrewery is authorized only for establishments licensed pursuant to this article. The fee amount for a microbrewery license shall be the same as the fee set forth in section 5-3-15 for "Beer/Wine Only – Retail, Wholesale, Manufacturer, Restaurant, Lounge, Hotel.

(b) A microbrewery license shall be an annual license subject to the renewal process outlined in section 5-6.4-16 below.

(a~~c~~) A microbrewery license may be obtained only by establishments operating as a brewery or a brewpub.

(e) It shall be unlawful for a microbrewery licensee or any employee thereof to be on duty at the licensed premises in an intoxicated condition. "Intoxication" shall be defined as when a licensee's or employee's alcohol concentration is 0.08 grams or more at any time while on duty. For purposes of this section, "on duty" shall mean being paid any salary, wage, or remuneration of any kind for services rendered during the time he or she is on the premises; on the licensed premises for the benefit of or at the direction of the licensee or its management (other than as a customer, patron, or guest) or taking a break during periods of any on-duty employment.

(b~~f~~) Subject to subsection (e) of this section, aA microbrewery licensee, or employee thereof, shall be permitted a limited exception to general consumption prohibitions under article 1 of this chapter to taste draft beer and wine at the licensed premises for quality control or educational purposes only. Such tastings shall not exceed four ounces in volume per hour and eight ounces
in volume total within a calendar day.

(c~~g~~) An individual applying for a microbrewery license shall indicate on their application whether he or she intends to open and operate a brewery or brewpub. All microbrewery licensees are expected to operate their breweries or brewpubs, as the case may be, in accordance with Chapter 5 of Title 3 of the Official Code of Georgia Annotated, as said Chapter may be amended from time to time.

Sec. 5-6.4-2. - General regulations applicable to all Microbreweries.

~~(da) The building or proposed building to house a microbrewery licensee shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking buffers and other issues.~~

(c~~b~~) All operations by a microbrewery shall be conducted within an enclosed building. Production space shall not exceed 15,000 square feet.

(f~~c~~) No microbrewery may manufacture on the licensed premises more than 160,000 gallons of malt beverages in a calendar year.

(g~~d~~) No screen, partition or thing which prevents a clear view into the interior of a microbrewery from the street, nor any booth within, shall be permitted.

(h~~e~~) The state regulations relating to the manufacture, sale, and distribution of beer, as revised from time to time, promulgated by the state revenue department, are hereby incorporated into and made a part of this chapter as if fully set out in this section.

~~(f) Any license holder/applicant shall make an immediate report to, and receive approval by, the ARB of any change in the interests in, or ownership of or of the license of a microbrewery and/or any change in the information stated in the original application for license. The ARB shall report the changes and its recommendations to the city council for the city council's final approval.~~

(i~~g~~) The open parking area of any building or proposed building to house a microbrewery shall have an average maintained footcandle intensity of at least one footcandle with a minimum allowable intensity of three-tenths of a footcandle. The covered parking area of any building or proposed building to house a retail outlet shall have an average maintained footcandle intensity of at least two footcandles with a minimum allowable intensity of five-tenths footcandle.

(j~~h~~) Each microbrewery shall install and maintain in a secure location security cameras in the outlet of a type and number approved by the chief of police. Such cameras:

(1) Shall be placed in the outlet to record activities in the checkout or cash register area(s).

(2) Shall be capable of producing a retrievable image on film, tape, or any readable medium that can be made a permanent record and enlarged through projection or other means.

Sec. 5-8-2. - Separate license for each microbrewery~~; surrender~~.

A separate license shall be required for each microbrewery, and a separate application shall be made for each such location.

Sec. 5-~~6.4~~8-3. -~~–~~ Provisions applicable to b~~B~~reweries only.

(a) A microbrewery licensee operating a brewery shall be authorized to provide guided tours of said brewery, during which a "free tasting" of malt beverages or beer may be conducted by the brewery. Said tours and tastings shall be permitted in accordance with the ~~provisions of O.C.G.A. § 3-5-38~~Official Code of Georgia, as amended from time to time.

(b) If "free tastings" are to be provided by a brewery pursuant to this section, said brewery must have a tasting room encompassing a minimum floor area of 1,500 square feet for conducting said "free tastings."

(c) No "free tasting" of beer or malt beverages shall be permitted between the hours of 12:00 a.m. and 8:00 a.m. any day of the week. In addition, no pouring or tasting of beer or malt beverages shall be permitted on Sundays before 12:30 p.m. and after 11:30 p.m., or on any other days or times prohibited by state law. Promotional or educational tours of a brewery facility shall also only be permitted within these allowed timeframes.

(d) No more than 36 ounces of malt beverage samples may be offered to the same individual within one calendar day pursuant to "free tastings" offered by a brewery.

(e) All malt beverages or beer provided at the "free tasting" shall be served by a state licensed representative of the brewery and shall be malt beverages or beer brewed on-site by said brewery.

(f) The licensed brewery may elect to provide non-alcoholic food or beverages at no charge to customers or tour-attendees, either directly or indirectly.

(g) No person who is a participant in an educational or promotional tour may bring alcoholic beverages obtained off the premises of the licensed brewery to said brewery under any circumstances.

(h) Souvenirs may be provided by a brewery, including souvenir containers that may be used in "free tastings" sponsored by the brewery, in compliance with O.C.G.A. § 3-5-38, as amended

from time to time. No brewery providing free souvenirs pursuant to this section shall provide, directly or indirectly, more than one souvenir to the same individual in one calendar day. An individual shall be 21 years of age or older to receive a free souvenir or "free tasting.

(i) Except as set forth in this section, a microbrewery licensee operating a brewery shall be subject to all sections of this chapter.

(j) Operation of a brewery shall prohibit a microbrewery licensee from obtaining any other category of alcohol beverage license available under this chapter for the same premises.

Sec. 5-~~6.4~~8-4.~~3.1~~ -~~–~~ Provisions applicable to Brewpubs only.

(a) A microbrewery licensee operating a brewpub shall be authorized to operate an eating establishment that shall be the sole retail outlet for such malt beverages and that may offer for sale for consumption on the premises any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, provided that such alcoholic beverages are purchased from a licensed wholesaler and, provided further, in addition to malt beverages manufactured on the premises, each brewpub licensee shall offer for sale commercially available canned or bottled malt beverages purchased from a licensed wholesale dealer.

(b) Notwithstanding any other provision of this section, a microbrewery licensee operating a brewpub may sell up to a maximum of 80,000 gallons annually of such malt beverages manufactured on its premises to licensed wholesale dealers. Under no circumstances shall such malt beverages be sold by said licensee to any person holding a retailer's license for the purpose of resale.

(c) Should a microbrewery licensee operating a brewpub offer for sale other alcoholic beverages produced by other manufacturers on the premises of the brewpub, the licensee shall also be required to obtain an on-premises consumption license.

(d) The holder of a microbrewery license who is operating a brewpub shall not be entitled by virtue of said microbrewery license to sell alcoholic beverages by the package for consumption off the premises.

(e) A microbrewery licensee operating a brewpub shall pay all state and local license fees and excise taxes applicable to individuals licensed under this chapter as manufacturers, retailers and, where applicable, wholesale dealers.

(f) Except as set forth in this section, a microbrewery licensee operating a brewpub shall be subject to all sections of this chapter.

(g) Brewpubs may not pour or serve malt beverages between the hours of 12:00 a.m. and 8:00 a.m. any day of the week. In addition, no sale or pouring of malt beverages or wine shall be permitted on Sundays before 12:30 p.m. and after 11:30 p.m., or on any other days or times prohibited by state law. Where in conflict with the operating hours permitted for other establishments offering on-premises consumption, the operating hours of this subsection shall control for brewpubs.

~~**Sec. 5-6.4-4. - Required.**~~

~~It shall be unlawful for any person to establish and/or operate a microbrewery within the corporate limits of the city without having the appropriate license for such operation, or to carry on such activity in violation of the terms of such license or of this chapter.~~

~~**Sec. 5-6.4-5. - Separate license for each microbrewery; surrender.**~~

~~(a) A separate license shall be required for each microbrewery, and a separate application shall be made for each such place.~~

~~(b) Immediately upon the sale or closing of a business, it shall be the duty of the licensee to surrender his license to the ARB.~~

~~**Sec. 5-6.4-6. - Applications for microbrewery license.**~~

~~Applications for microbrewery licenses shall be as follows:~~

~~(a) Forms; submission. Each initial applicant shall make written application to the ARB for the privilege of establishing and operating a microbrewery, such applicant using forms provided by the clerk.~~

~~(b) Where filed; fee. The application shall be filed with the clerk with a fee as set out in the fee schedule under section 5-3-15, for review of the applicant and of the proposed location and processing of the application.~~

~~(c) Contents. The application shall state:~~

~~1. As to the applicants, full name, birth date, present address and addresses for the past five years, business address and business addresses of employers and their addresses for the last five years, name of spouse, complete record of all arrests, convictions and guilty pleas for violations of all laws, city, counties, state and federal, and other cities, counties, and states of both applicant and spouse, and the disposition of all charges within the last five years prior to the application.~~

~~2. As to the applicant's location manager (if not the same as the applicant), the same information as required of the applicant in subsection 1.~~

3. Exact location (street address and otherwise) of proposed business, including zoning district. The location must be properly identified.
4. Name and address of the owner or landlord and/or resident manager of property proposed for location and whether or not there is a building proposed to be used already erected thereon.
5. Trade name (or proposed trade name) of proposed business.
6. Names and addresses of all persons having any financial interest in the outlet by way of ownership of building, property, or stock, receipt of income from the business or otherwise.
7. Certification that the applicant(s) are in compliance with the state requirements for establishing and operating a brewery as set forth in Title 3 of the Official Code of Georgia, as amended from time to time, including submission of copies of state-issued permits, licenses, and other documents if requested by the city council, the chief of police, the city manager, or the city attorney.
8. A complete set of the applicant(s)' fingerprints.
9. Such other background information as may be required by the city council, the ARB, the chief of police, the city manager, the city attorney or the clerk.

(d) Approvals. The application shall contain evidence of the following individual's approval of the licensee and of the owner and the manager of the microbrewery:
1. Building inspector (i.e., building permit, certificate of occupancy, or other evidence).
2. Traffic engineer.
3. Fire marshal/fire chief.
4. Chief of police/assistant chief of police.
5. Planning and zoning coordinator.

(e) Oath. The application shall be sworn to.
(f) Surveyor's certificate. The application shall be accompanied by a current certificate from a registered surveyor containing the following information:
1. A scale drawing of the building or proposed building, as situated on the proposed lot.
2. The proposed off-street parking facilities available to the building and all outdoor lighting on the premises.
3. The exact location of the business, including street address, ward, and county tax map number.
4. Current zoning classification of the location.
5. The distance in yards as measured in a straight line from nearest property line to nearest property line from each of the following: the nearest school building, school ground or college campus, and the nearest alcoholic treatment center owned and operated by the state or any county or municipal government therein.
(g) False information. An application under this chapter containing known false information may result in the disapproval, revocation, suspension or failure to renew the license applied for and prosecution as a felony.

Sec. 5-6.4-7. - Sham applicant; de facto applicant or location manager.
A "sham" means any information provided for an application which is not true, accurate, or is spurious, or deceitful.
(a) It shall be unlawful for any person to file, or permit to be filed, an application for license under this division wherein a sham applicant or a sham location manager is named.

~~(b) It shall be unlawful for any person to file an application for license containing his name as applicant, or the name of a location manager, when such person is not the de facto applicant or the de facto location manager, as the case may be.~~
~~(c) It shall be unlawful for any person to permit his name to be used on an application for license where such person will not be the de facto owner of~~
~~the license or the de facto location manager, as the case may be.~~
~~(d) It shall be unlawful for any person to file an application for license, or permit his name to be used in such application, where the application contains a nominal applicant or nominal location manager for the purpose of avoiding the provisions of this article restricting applicants or managers to persons without criminal records, or restricting economic interests in outlets, or for any other elusive purpose.~~

~~**Sec. 5-6.4-8. Surveyor's certificate containing false information.**~~
~~(a) It shall be unlawful for any applicant under this article to submit with his or her application any surveyor's certificate containing known false information and/or measurements.~~
~~(b) It shall be unlawful for any surveyor to submit, or allow to be submitted, a certificate containing known false information.~~
~~(c) A violation of subsection (b) may result in prosecution as for a felony offense.~~
~~(d) Substantial errors in measured distances, as determined by the city engineer, shall be prima facie evidence that the distances submitted are known to be false.~~

~~**Sec. 5-6.4-9. Advertisement; proof thereof.**~~
~~(a) Each applicant under this article shall advertise his or her application for license at his or her own expense in the legal organ newspaper once a week for two weeks. Advertisements shall not be required for renewals. The advertisement shall appear after the application is filed and before the public hearing provided for in this article. The advertisement shall contain the name of the applicant, the purpose of the application, the proposed location of the business, and its owner's name, and the name of the proposed location manager. An advertisement shall run for each initial application.~~
~~(b) The applicant, before consideration will be given to his application, shall~~
~~file with the clerk a copy of the advertisement together with affidavits~~
~~from the newspaper to the effect that it has been printed as required.~~

~~**Sec. 5-6.4-10. Action by ARB and city council.**~~
~~(a) After proof of advertisement is filed, the clerk shall notify the chief of police, who shall investigate the applicant and the reputation of the location and make a full report to the ARB. The clerk shall also circulate the application to the building inspector, the fire marshal, the traffic engineer, and the planning and zoning coordinator for their investigation and recommendation.~~

~~(b) The clerk or his/her designee, when assured that all requirements have been complied with and the application is complete, shall refer the application, together with any objections filed, to the ARB. The ARB shall, after review of the applicant and the proposed location, recommend action to the city council. The ARB shall afford the applicant a hearing prior to making a recommendation. Pursuant to subsection 5-3-8(d), the recommendation of the ARB shall be deemed to be the decision of the mayor and council if the applicant does not appeal such~~

~~recommendation to the mayor and council within 30 days of the ARB recommendation by filing a written appeal with the alcohol beverage clerk.~~

~~Sec. 5-6.4-11. Approval of application; expiration in 90 days; extension for cause.~~

~~Approval of an application under this article by the city council shall expire after 90 days from the date of such approval, unless the applicant has procured, and paid the fee for, the approved license. If the application is approved and all fees paid the same shall lapse if no action is taken on license by applicant within six months of issuance. The city council may extend the approval up to 90 days for good cause shown such as fire, flood, war, and other uncontrollable occurrences, provided the request is made within the original 90-day period.~~

~~Sec. 5-6.4-12. Substantially the same application not to be resubmitted or entertained within six months of previous application; deferral of action on application subject matter being litigated.~~

~~(a) No applicant under this article may submit, and the ARB shall not review, an application which is substantially the same as an application submitted within the previous six months that has been denied, unless directed by the city council.~~

~~(b) Either the ARB or the city council, or both, may defer action upon any application, the subject matter of which is substantially the same as the subject matter of litigation then pending in the city, state, or federal courts until such time as the litigation is resolved.~~

~~Sec. 5-6.4-13. Considerations and guidelines for grant or denial.~~

~~The ARB, and the city council in making its determinations on an initial application, shall be guided by the following factors as to whether or not to grant a license under this article:~~

~~(a) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.~~

~~(b) The proximity of school grounds, school buildings, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.~~

~~(c) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.~~

~~(d) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.~~

~~(e) The criminal record of the applicant and the location manager, and their financial responsibility; provided that nonpayment of federal, state, county or city taxes shall be prima facie evidence of lack of financial responsibility.~~

~~(f) A report of the chief of police, the building inspector, the fire marshal, the traffic engineer, and the planning and zoning manager relating to the use or sale of alcohol at the proposed location.~~

~~(g) The information required in the application or statement and whether all requirements as to notice, advertisement, fire codes, building, zoning, parking, lighting and other matters relating to the use, distribution, manufacture, or sale of alcohol at the proposed location have been met.~~

~~(h) Evidence presented to the ARB for or against the application relating to the sale, manufacture, distribution, or use of alcohol at the proposed location.~~

~~(i) Whether or not the granting of the application is in the best interest of the health, safety, and welfare of the city.~~
~~(j) Whether any license for sale or manufacture of beer, malt beverages, wine, or alcohol previously issued for the location has been revoked for cause by the city.~~
~~(k) The history or reputation of the building or establishment (proposed for business) for prostitution or other sex offenses; fighting, shooting, stabbing or other violence; gambling; illegal dealing in alcoholic beverages or drugs; or other violations of the law relating to the sale or use of alcohol at the proposed location; or the overtaxing of existing city infrastructure and personnel. Such determination of overtaxing will be made based upon reports of crimes and emergencies reported and responses made to the site when compared to the same factors found at all retail facilities averaged together as found in the city established by an annual study.~~
~~(l) Whether or not the applicant or outlet location is in violation of other local ordinances or state laws relating to the crimes and issues referenced in subsection (k) as related to the sale or use of alcohol at the proposed location.~~
~~(m) Whether or not the applicant or location manager has violated other jurisdictions' laws regarding alcohol beverage licensing.~~

Sec. 5-8~~6.4~~-5~~14~~. - Prohibited locations; prohibited persons; incomplete application.

Prohibited locations. It shall be prohibited to obtain a microbrewery license within the following areas of the city:

(1) Any area not authorized for the location and operation of microbreweries pursuant to Article 28, "A-D Zone (Arts District Overlay)" of Chapter 93, "Zoning," of the City Code. Any microbrewery not in compliance with said provisions of Chapter 93 shall not receive a license from the City and shall not open or operate.

(2) Within a measured 100 yards of any alcoholic treatment center owned and operated by the state or any county or municipal government therein.

(3) Within a measured 100 yards of any school building, school ground, or college campus.

ARTICLE ~~7~~9. ~~—~~ FEES, TAXES AND REPORTS

Sec. 5-~~3~~9-~~15~~1. - Fee chart depending upon the licenses sought.

All The fees established throughout this chapter shall be as set forth in the chart below. No license issued under this chapter shall be valid until the licensee pays the annual license fee as established and set forth under this chapter. Some fees may be cumulative depending upon the licenses sought. Where no fee is specifically ~~set forth~~provided for in this chapter, the fee shall be $1,000.00. This fee schedule is subject to change by ordinance adopted by the mayor and council. The most current duly adopted change in the fees shall supersede any fee provision in this chapter.

Beer/Wine/Liquor—Retail, Wholesale,	$5,000.00

Manufacturer, Restaurant, Lounge, Hotel	
Beer/Wine Only—Retail, Wholesale, Manufacturer, Restaurant, Lounge, Hotel	$3,150.00
Bed and Breakfast License ~~Liquor Only—Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees~~	$1,000~~$3,000.00~~
~~Beer Only—Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees~~	~~$1,600.00~~
~~Wine Only—Applicable Only to On-Premises Consumption Under 2,000 Square Feet/Open 6 Hours or Less in Day Licensees~~Microbrewery License	$1,600.00
Growler License	$1,600.00
On-Premises Arts License	$250.00
Art Gallery License	$50
Alcohol Beverage Caterer Permit (Hapeville Licensee, per event)	~~$0~~Reserved
Alcohol Beverage Caterer Permit (Non-Hapeville Licensee, per event)	~~$Inquire($50?)~~Reserved
Ancillary Wine Tasting	$100
Administration Fee	$200
Handler Identification	$25.00 ($5.00 for each additional) and $10.00 refundable deposit
Off-Premises and Special Events	$50.00 annually

Late Fee	15% penalty for failure to pay amount when due and payable to city and interest at rate of 1% per month until paid

Sec. 5-9-2~~1~~. - Rate of taxation for malt beverages.

In addition to the annual license fees required by this chapter, there is hereby levied upon each wholesale dealer selling malt beverages within the city an excise tax, on such malt beverages so sold, as follows:

(1) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, a tax of five cents per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(2) All malt beverages sold in or from a barrel or bulk container, and being commonly known as tap or draft beer, shall not be subject to the excise tax provided for in subsection (1), but in lieu thereof there is hereby imposed upon each wholesale dealer selling such malt beverages within the city an excise tax of $6.00 for each barrel or bulk container having a capacity of 15½ gallons sold by such wholesale dealer within the city and at a like rate for fractional parts thereof.

(3) This tax shall apply to all malt beverages except as except under O.C.G.A. § 3-5-90.

Sec. 5-9-3. - Method of payment.

The tax levied under this article shall be paid to the city by each wholesale dealer on all malt beverages sold within the city as follows: Each wholesale dealer selling, shipping or in any way delivering malt beverages to a retailer in the city shall collect the excise tax at the time of delivery and shall remit the same together with a summary of all such deliveries on or before the tenth day of the month next succeeding the calendar month in which such sales are made.

Sec. 5-9-4. - Payment of tax; report.

The summary report made by each wholesale dealer to the city shall show the exact quantities of malt beverages, by size and type of container, and the amount of excise tax collected.

Sec. 5-9-5. - Right to audit.

The city shall have the right to audit, and to require production of records from, each wholesaler of malt beverages supplying retailers in the city and each retailer so supplied.

Sec. 5-9-6. - Failure to make timely report; penalty.

(a) The failure to make a timely report and remittance under this article shall render a wholesale dealer liable for a penalty equal to ten percent of the total amount due during the first 30-day period following the date such report and remittance were due and a further penalty of

twenty-five~~25~~ percent of the amount of such remittance for each successive 30-day period or any portion thereof during which such report and remittance are not filed. The filing of a false or fraudulent report shall render the wholesale dealer making such report liable for a penalty equal to fifty~~50~~ percent of the amount of the remittance which would be required under an accurate and truthful report and prosecution for a felony offense.

(b) Such failure to make a timely report or remittance, or the filing of a false or fraudulent report, shall also constitute grounds for the revocation of the license issued by the city to the wholesale dealer and prosecution for a felony offense.

Sec. 5-9-~~6~~7. - Payment of fee to wholesaler; payment revocable.

The city may pay to each wholesaler for the service of computing and remitting the taxes collected from retailers under this article a fee of three percent of such remittances, such payment to be revocable by the city at any time. Such payment shall be forfeited if any report or payment of tax under this article is not submitted to the city by the time required in this article.

Sec. 5-9-~~7~~8. - Sale prohibited when tax not paid.

It shall be unlawful for any person to sell at retail or otherwise within the city any malt beverage on which the tax required in this article has not been paid to the wholesaler or distributor or the city.

Sec. 5-9-~~8~~9. - Rate of taxation for liquor.

In addition to the annual retail liquor license fee required by this chapter, there is hereby levied an excise tax computed at the rate of $0.22 per liter, which shall be paid to the city on all liquor sold, displayed or stored in the city. The $0.22 per liter shall be prorated down on miniatures, half pints, pints, fifths, half gallons and other quantities and on liquor gallons so that each bottle shall be taxed on the basis of $0.22 per liter.

Sec. 5-9-~~9~~10. - Method of payment.

The tax levied under this article shall be paid to the city by the wholesale distributor on all liquor sold to retailers in the city as follows: Each wholesale distributor selling, shipping or in any way delivering liquor to any such retailer shall collect the excise tax at the time of delivery and shall remit the same together with a summary of all deliveries to each retailer on or before the tenth day of the month following.

Sec. 5-9-~~10~~11. - Summary of purchase invoices.

Each wholesale distributor of liquor shall furnish to the city a summary of all purchase invoices for liquor sold to each retailer in the city on or before the tenth of each month following such purchases. Such invoices shall show the amount of excise tax paid.

Sec. 5-9-~~11~~12. - Right to audit, failure to timely report; penalty.

The city shall have the right to audit, and to require production of records from, each wholesaler of liquor supplying retailers in the city and each retailer so supplied. The same penalties shall apply for failure to timely and accurately report and remit as are set out in section 5-9-~~6~~.

Sec. 5-9-~~12~~13. - Payment of fee to distributor; payment revocable.

The city may pay to each wholesale distributor for the service of computing and remitting the taxes collected from retailers under this article a fee of three percent of the remittances, the payment to be revocable by the city at any time. Such payment shall be forfeited if any report or payment under this article is not submitted to the city by the time required in this article.

Sec. 5-9-~~13~~14. - Rate of taxation for wine.

(a) In addition to the annual retail wine license fee required by this chapter, there is hereby levied an excise tax computed at the rate of $0.22 per liter which shall be paid to the city on all wine sold, displayed or stored in the city. The $0.22 per liter tax rate shall be proportionally applied to smaller and larger quantities of wine so that each container shall be taxed on the basis of $0.22 per liter.

(b) This tax shall apply to all wine except as exempt under O.C.G.A. § 3-6-70.

Sec. 5-9-~~14~~15. - Method of payment.

The tax levied under this article shall be paid to the city by each wholesale distributor on all wine sold to retailers in the city as follows: Each wholesale distributor selling, shipping or in any way delivering wine to any such retailer shall collect the excise tax at the time of delivery and shall remit the same together with a summary of all deliveries to each retailer on or before the tenth day of the month following.

Sec. 5-9-~~15~~16. - Summary of purchase invoices.

Each wholesale distributor of wine shall furnish to the city a summary of all purchase invoices for wine sold to each retailer in the city on or before the tenth of each month following such purchases. Such invoices shall show the amount of excise tax paid.

Sec. 5-9-~~16~~17. - Right to audit, failure to timely report; penalty.

The city shall have the right to audit, and to require production of records from, each wholesaler of wine supplying retailers in the city and each retailer so supplied. The same penalties shall apply for failure to timely and accurately report and remit as are set out in section 5-9-6~~5~~.

Sec. 5-9-~~17~~18. - Payment of fee to wholesaler; payment revocable.

The city may pay to each wholesaler for the service of computing and remitting taxes collected from retailers under this article a fee of three percent of such remittances, such payment to be revocable by the city at any time. Such payment shall be forfeited if any payment of tax under this article is not submitted to the city by the time required herein.

Sec. 5-9-~~18~~19. - Tax on alcoholic beverages on-premises for consumption.

Chapter 17, article 6 (section 17-6-1 through section 17-6-10 of this Code) shall govern taxes on the sale of alcoholic beverages by the drink.

ARTICLE ~~8~~10. - ART GALLERY ALCOHOL LICENSE

Sec. 5-~~8~~10-1. - Applicability.

A person or entity operating an art gallery may offer complimentary alcoholic beverages to patrons for consumption within the premises by obtaining an art gallery alcohol permit, which shall be renewed annually.

As used herein, "art gallery" means an establishment whose primary purpose is to exhibit:

(1) A work of visual art such as a painting, sculpture, drawing, mosaic, or photograph:

(2) A work of calligraphy;

(3) A work of graphic art such as an etching, a lithograph, an offset print, a silk screen, or any other work of similar nature;

(4) A craft work in materials, including but not limited to clay, textile, fiber, wood, metal, plastic, or glass; or

(5) A work in mixed media such as collage or any combination of the art media set forth in this subsection.

Sec. 5-~~8~~10-2. - Art gallery license, regulations generally~~Regulations~~.

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(a) An art gallery alcohol permittee shall not, directly or indirectly:

(1) Sell alcoholic beverages;

(2) Charge an entrance fee or cover charge in connection with the offering of complimentary alcoholic beverages;

(3) Serve alcoholic beverages for more than four hours in any one day;

(4) Serve alcoholic beverages more than 15 days in any calendar year;

(5) Allow any alcoholic beverages to be consumed outside the facility;

~~(6) Allow BYOB; or~~(~~7~~6) Engage in any exterior or interior advertising concerning the consumption of alcoholic beverages on the permitted premises.

Comment [e105]: Deleted per new BYOB section 5-1-15

(b) An art gallery alcohol permittee shall provide the city at least 15 days written notice prior to any art gallery exhibit or display at which alcoholic beverages will be complimentarily offered.

(c) An art gallery alcohol permittee's building shall meet all requirements of the building inspector, the fire marshal, the traffic engineer, and planning and zoning coordinator and shall comply with other ordinances of the city for zoning, storage, parking, buffers and other issues.

~~(d) An art gallery alcohol permit may be revoked, non-renewed, suspended, or placed on probation in accordance with section 5-6-21(b).~~

Comment [e106]: Redundant, in ARB section

~~Sec. 5-4-19. - Reserved.~~

~~(b) The ARB shall have, as it requires, additional staff consisting of the city manager, city attorney, chief of police and all city employees available to it. These staff persons may participate in all discussions, if called upon to do so, by the ARB but shall not have the power to vote. Sec. 5-3-10. - Powers and duties.~~

~~(a) *Responsibility and authority*. The ARB is hereby vested with the following duties and powers:~~

~~(1) *Initial applications.*~~

~~a. To screen, verify, and review all initial applications for licenses of the manufacture, and/or sale of liquor, wine and malt beverages, at wholesale and retail, by the package and by the drink.~~

~~b. To make recommendations to the city council to grant or to deny licenses for the manufacture, and/or malt beverages, at wholesale and retail, by the package and by the drink.~~

~~(2) *Renewals.*~~

~~a. To hear reports and charges constituting probable cause not to renew licenses for the manufacture, and/or sale of liquor, wine, and malt beverages, at wholesale and retail by the package and by the drink.~~

~~b. To make recommendations to the city council to grant or to deny renewals of licenses for the manufacture and/or malt beverages, at wholesale and retail, by the package and by the drink.~~

~~(3) *Suspension, revocation; probation.*~~

~~a. To hear reports and charges constituting probable cause to suspend or revoke licenses for the manufacture, and/or sale of liquor wine and malt beverages at wholesale and retail, by the package and by the drink.~~

~~b. To make recommendations to the city council to suspend, revoke and/or place on probation licenses for the manufacture and/or malt beverages, at wholesale and retail, by the package and by the drink.~~

~~(4) *Appeals*. To hear appeals on the seizure of a license by the chief of police, or other duly authorized suspending officers or the license inspector under sections of this chapter and to make recommendations to the city council which may affirm, reverse, or modify the actions of the suspending officer.~~

~~(5) *Entertainment*. To receive reports on entertainment at pouring outlets, all as provided in this chapter, and to take or recommend such action as is appropriate.~~

~~(6) *Employees*. To receive reports on and to recommend approval or disapproval of employees of businesses that sell alcoholic beverages by the package or by the drink, all as provided in this chapter, and to take such action as is appropriate in the case of such disapproval.~~

(7) *Ordinances and policies*. To recommend to the city council modifications to the ordinances and policies of the city pertaining to the regulation, control and taxing of liquor, wine and malt beverages.

(8) *Complaints, etc*. To hear complaints, suggestions and recommendations from the city manager, the city council, police department, state officials, alcoholic beverage dealers and the public at large as to the operation of retail beer/wine stores, packages stores, and on-premises consumption location, businesses within the city.

(9) *Rules and regulations*. To promulgate rules and regulations governing procedures regarding matters that may arise.

(b) *Meetings*. The ARB shall meet on an as-needed basis.

(Ord. No. 2002-14, § 1(9-1-19), 10-1-2002; Ord. No. 2009-14, § 17, 10-6-2009)

Sec. 5-3-13. - Timing of ARB recommendation.

If the ARB does not recommend to approve, deny, or renew a license within 90 days of the receipt of a complete application, the same shall be considered approved by the mayor and council until revoked.

(Ord. No. 2002-14, § 1(9-1-22), 10-1-2002; Ord. No. 2009-14, § 21, 10-6-2009)

Sec. 5-3-16. - Denial of application; appeal; resubmittal.

No application shall be considered until the alcohol beverage clerk deems the same complete as set forth in this chapter. If the application is denied, the same or substantially same application cannot be resubmitted for six months after the date of denial.