

## Chapter 6 ALCOHOLIC BEVERAGES\*

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**\*Cross references:** Buildings and building regulations, ch. 18; businesses, ch. 22; law enforcement, ch. 50; offenses, ch. 58; parks and recreation, ch. 62; signs, ch. 70; taxation, ch. 82; zoning, ch. 94.

**State law references:** Use of proceeds of alcoholic beverage tax for prevention, education and treatment, Ga. Const. art. 3, sec. 9, par. 6; Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.; furnishing to, purchase of or possession by persons under 21 years of age, use of false identification, O.C.G.A. § 3-3-23; public drunkenness, O.C.G.A. § 16-11-41; furnishing alcoholic beverages to persons under 21 years of age, jurisdiction of municipal courts, O.C.G.A. § 36-32-10; treatment of alcoholics and intoxicated persons, O.C.G.A. § 37-8-1 et seq.; driving under the influence of alcohol or drugs, O.C.G.A. § 40-6-391.

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## **ARTICLE I. IN GENERAL**

## **Sec. 6-1. 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 beverages, wine or fortified wine.

*Beer* and *malt beverage* mean any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than six 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.

*Brown bag establishment* means any restaurant, music hall, theater or other establishment licensed as a brown bag establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

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

*Fortified wine* means any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added. The term "fortified wine" includes but is not limited to brandy.

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

*Liter* means the metric measurement currently used by the United States.

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

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

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

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

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

*Wine* means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural

fermentation with brandy added. The term "wine" includes but is not limited to all sparkling wines and champagnes, and combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

(Code 1982, § 9-2-2)

**Cross references:** Definitions and rules of construction generally, § 1-2.

### **Sec. 6-2. Penalty for violation of chapter.**

Any person who violates any provision of this chapter may, upon conviction, be punished as provided in section 1-6.

(Code 1982, § 9-2-26)

### **Sec. 6-3. Inspection of licensed establishments.**

Sworn officers of the police department shall have the authority to inspect establishments licensed under this chapter during the hours in which the premises are open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other city officer to conduct inspections authorized by other provisions of this Code.

(Code 1982, § 9-2-8)

### **Sec. 6-4. Audits.**

If the city clerk deems it necessary to conduct an audit of the records and books of a licensee under this chapter, he shall notify the licensee of the date, time and place of the audit.

(Code 1982, § 9-2-9)

### **Sec. 6-5. Collection of delinquent fees and taxes.**

If any person shall fail to pay any sum due under this chapter, the city clerk shall issue an execution against the person so delinquent, and his property, for the amount of the delinquent fee or tax.

(Code 1982, § 9-2-11)

### **Sec. 6-6. Service of notices.**

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

(Code 1982, § 9-2-25)

### **Sec. 6-7. Sale generally.**

Alcoholic beverages may be sold in the city, under a license granted by the mayor and council, upon the terms and conditions provided in this chapter.

(Code 1982, § 9-2-1(a))

### **Sec. 6-8. Sale on election days.**

The sale by wholesale or retail dealers of alcoholic beverages shall be lawful during the polling hours of any election; provided, however, nothing in this section shall authorize the sale of alcoholic beverages within 250 feet of a polling place during such time as the polls are open.

(Code 1982, § 9-2-19)

**State law references:** Sale of alcoholic beverages on election days, O.C.G.A. § 3-3-20.

### **Sec. 6-9. Posting of regulations regarding sales.**

- (a) All licensees under this chapter shall post in a prominent location on the licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage or intoxicated persons.
- (b) Each such sign shall be of a size and configuration approved by the police department and shall include either the language of the applicable code sections, or summaries approved by the police department.
- (c) The police department is authorized to design and have printed approved signs, which shall be made available to licensees at a price to be established by the chief of the department.

(Code 1982, § 9-2-13)

### **Sec. 6-10. Duty of licensee, licensee's employees or agents to require and check identification; sale to underage persons prohibited.**

It shall be a violation for a licensee, employee of a licensee or agent of a licensee not to require and properly check identification to ensure that an underage person is not sold or served or does not have in his possession alcoholic beverages while in a licensed establishment. The term "identification," as used in this section shall mean any document issued by a governmental agency containing a description of the person and such person's photograph, and giving such person's date of birth and includes but is not limited to a passport, military ID card, driver's license, state department of public safety ID card or any certified identification approved by the chief of police. It shall be a violation to serve, sell, dispense or otherwise provide any alcoholic beverages to a person under 21 years of age.

(Code 1982, § 9-2-20; Ord. No. 446, 11-18-97; Ord. No. 488, pt. I, 9-19-00)

### **Sec. 6-11. Employee age requirements.**

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

- (b) No consumption on the premises licensee shall allow any employee under the age of 18 years to dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (c) This section shall not prohibit the employment of persons under the above ages on licensed premises where such persons do not dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (d) This section shall not prohibit persons 16 years of age or older from selling or handling alcoholic beverages in grocery stores, supermarkets, or drugstores. For purposes of this subsection, the terms grocery stores and supermarkets shall not include convenience stores or service stations.

(Code 1982, § 9-2-12; Ord. No. 423, 8-20-96; Ord. No. 496, 1-4-01)

### **Sec. 6-12. Advertising.**

No outdoor advertising or signs with respect to the promotion of the sale of alcoholic beverages or the prices of such beverages shall be permitted on the exterior of any retail outlet, or on the windows or elsewhere in the outlet that may be viewed from the outside, except as follows:

- (1) Each licensee for the retail sale of liquors, except consumption on the premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment, together with the inscription, "City of Chamblee Retail License No. \_\_\_\_\_," in uniform letters not less than four and not more than eight inches in height.
- (2) Each retail licensee, except consumption on the premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four copies of a printed price list of the liquors offered for sale, or the licensee may have the price placed on the bottle or on the front of the shelf where liquors are exhibited for sale. No other signs may be used within or without the premises showing prices.
- (3) Lighted signs advertising beer and wine may be placed on the furthest back wall of the establishment.
- (4) Consumption on the premises establishments may advertise special days, nights or events in the newspaper or by flyers.

(Code 1982, § 9-2-14)

**State law references:** Retail dealers' signs, O.C.G.A. § 3-4-3.

### **Sec. 6-13. Happy hour promotions.**

- (a) No licensee under this chapter, 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) Selling, offering to sell or delivering to any person any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage; provided that nothing contained in this section shall be construed to prohibit reducing the price of a drink by up to one-half the price customarily charged;
  - (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 consumed, by any one person; or
  - (5) Increasing the volume of alcoholic beverage contained in a drink without proportionately increasing the price customarily charged for such beverage.
- (b) It is the intent of this section to prohibit activities typically associated with promotions referred to as happy hour.
- (c) As used in this section, the phrase "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

(Code 1982, § 9-2-28)

#### **Sec. 6-14. Prohibited entertainment, attire and conduct on licensed premises.**

The following types of entertainment, attire and conduct are prohibited upon any premises licensed to sell, serve, or dispense alcoholic beverages for consumption on such premises, or upon any premises licensed under the business and occupational ordinances of the City of Chamblee, in which alcoholic beverages are consumed, allowed, or dispensed on the premises within the City of Chamblee, Georgia.

- (1) The employment or use of any person, in any capacity, in the sale or service of alcoholic 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 or genitals;
- (2) Live entertainment where any person appears in the manner described in subsection (1) of this section or where such person or any person performs 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 breast, 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 (1) and (2) above; provided, however, that nothing contained in this section 6-14 shall apply to the premises of any mainstream performance house, museum, or theater which derives less than 20 percent of its

gross annual income from the sale of alcoholic beverages.

- (4) No licensee shall permit the sale of alcoholic beverages to any person who is in a state of noticeable intoxication or allow persons who are noticeably intoxicated to congregate on licensed premises.
- (5) No licensee shall permit any gambling, betting, lottery, or other device for the hazarding of any money or other thing of value on the licensed premises, except that this prohibition shall not apply with respect to a properly licensed bingo game.

(Code 1982, § 9-2-16; Ord. No. 380, 10-8-93; Ord. No. 496, 1-4-01)

### **Sec. 6-15. Retailers to purchase from licensed wholesalers; sales by wholesalers.**

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

(Code 1982, § 9-2-21)

### **Sec. 6-16. Handling permit required.**

- (a) An employee handling permit shall be required for:
  - (1) Any employee of a package licensee whose primary business is the sale of alcoholic beverages.
  - (2) Any employee of a package licensee who sells alcoholic beverages in a convenience store or service station.
  - (3) Any employee of a consumption on the premises licensee who serves or works in the serving area, including bar or lounge area of the licensed premises, and sells, serves, takes orders for, or handles alcoholic beverages.
- (b) No licensee shall employ any person required to have a handling permit until such person has been fingerprinted or cleared by the chief of police and a permit issued indicating that such person is eligible for this employment. An employee shall meet the same character requirements as set forth in this chapter for the licensee, except for the residency requirements.
- (c) No handling permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include but shall not be limited to the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (d) The chief of police shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this article, the chief of police shall issue a handling permit to the employee, stating that the person is eligible for employment.

- (e) A new search may be conducted on any person issued an employee handling permit if the police department receives information which warrants such a new search. If the new search reveals evidence that warrants revocation of the permit, the permit may be revoked following notice and a hearing.
- (f) When any employee's handling permit is denied or revoked, the chief of police shall issue to the applicant or permit holder a letter stating that the person does not meet the requirements of this chapter and that upon request the chief of police will refer the matter and any evidence the person cares to submit in his behalf to the city manager for consideration.
- (g) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the chief of police. The chief of police may also revoke an employee's handling permit and demand its return where the employee violated the provisions of this chapter or becomes one who adversely affects the public health, safety, or welfare.
- (h) Only one handling permit per individual will be issued and said permit shall be valid for employment at any establishment within the city. The permit shall be valid for a period of two years and shall be renewed on or before its expiration. The fee for a handling permit shall be set by the city council.
- (i) Any conviction for a violation of the provisions of section 6-10 of this ordinance shall result in the automatic suspension of the handling permit.
  - (1) Upon the first offense, a server or handler providing alcoholic beverage to an individual under 21 years of age shall have such individual's handling permit suspended for six months.
  - (2) A second offense within two years shall result in a suspension of the handling permit for one year.
  - (3) A third offense within two years shall result in the forfeiture of the right to sell or serve alcoholic beverages in a licensed establishment in the city.
- (j) All permits issued under this section remain the property of the city, and shall be produced for inspection upon the demand of any officer of the police department. It shall be unlawful for an employee whose handling permit has been revoked and upon whom demand for return of the card has been made to refuse to return the card or to alter, conceal, deface, or destroy the card.

(Ord. No. 496, 1-4-01)

### **Sec. 6-17. Handling not to include bagging and carrying out.**

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

(Ord. No. 496, 1-4-01)

### **Sec. 6-18. Licensee to report disciplinary action.**

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

(Ord. No. 496, 1-4-01)

Secs. 6-19--6-40. Reserved.

## **ARTICLE II. LICENSING**

### **Sec. 6-41. License required; sale or delivery off of licensed premises prohibited.**

It shall be unlawful for any person to sell or possess for the purpose of sale any alcoholic beverage where the person does not have a license from the city to sell or possess for sale these alcoholic beverages, or to sell or make deliveries beyond the boundaries of the premises covered by the license. Violations of this section shall be punishable as provided in section 1-6.

(Code 1982, § 9-2-3)

### **Sec. 6-42. Separate license required for each location.**

A separate application must be made under this article for each location, and a separate license must be issued.

(Code 1982, § 9-2-5)

### **Sec. 6-43. License a privilege.**

- (a) All licenses issued under this article shall be a mere grant or privilege to carry on the business during the term of the license subject to all terms and conditions imposed by this Code and state law.
- (b) All licenses issued under this article shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

(Code 1982, § 9-2-1(b), (c))

### **Sec. 6-44. Application for license.**

- (a) All persons desiring to sell alcoholic beverages shall make application on the form prescribed by the city clerk.
- (b) The application shall include but shall not be limited to the name and address of the applicant; the proposed business to be carried on; if a partnership, the names and residence addresses of the partners; if a corporation, the names of the officers; the

name and address of the agent for service of process; the name of the manager; and the names of all shareholders holding more than ten percent of any class of corporate stock, or any other entity which is to own or operate the establishment. If the manager changes, the applicant must furnish the city clerk and the police department with the name and address of the new manager and such other information as requested within ten days of such change.

- (c) All applicants shall furnish such data, information and records as required by the city clerk and to ensure compliance with the provisions of this article. Failure to furnish data on this request shall automatically serve to dismiss the application with prejudice.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) In all instances in which an application is denied under the provisions of this article, the applicant may not reapply for a license for at least one year from the final date of such denial.
- (f) The city clerk shall provide written notice to any applicant whose application is denied under the provisions of this article. Such written notification shall set forth in reasonable detail the reasons for such denial, and shall advise the applicant of the right to appeal under the provisions of this article.
- (g) The city shall process all alcoholic beverage license applications within 30 days of the city's actual receipt of an application for a license. The city clerk shall reject any application containing any false material statements or omissions. Any rejected application later resubmitted shall be deemed to have been resubmitted on the date of re-submission, instead of the original date of submission. Should it be determined that an alcoholic beverage license was issued pursuant to an application containing a false material statement, the city clerk shall revoke said application and the subject alcoholic beverage license shall be revoked. If the city does not process an alcoholic beverage license application within 30 days as set forth above in this subsection (g) then the applicant shall be permitted operation of the business for which the license is sought unless and until the city clerk notifies the applicant of a denial of the application.

(Code 1982, § 9-2-7; Ord. No. 497, pt. I, 3-20-01)

#### **Sec. 6-45. Licensing qualifications.**

- (a) No license for the sale of alcoholic beverages shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
- (b) No retailer's or consumption on the premises license for the sale of distilled spirits will be granted where the applicant is not a resident of a county or municipality within the state where the sale of distilled spirits is authorized.
- (c) Where the applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, then the license shall be issued jointly to the corporation and its agent registered under the provisions of this article. In the case of a partnership, the license will be issued to one of the partners.

- (d) No license for the sale of alcoholic beverages shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude, within ten years prior to the filing of the application for such license.
- (e) No license for the sale of alcoholic beverages shall be granted to any person convicted under any federal, state or local law of any felony, within ten years prior to the filing of the application for such license.
- (f) It shall be unlawful for any city employee of a department regulating alcoholic beverages, or his spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (g) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued under the police powers of the city previously revoked within two years prior to the filing of the application.
- (h) The city clerk may decline to issue a license when any person having any interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth in this section for the licensee.
- (i) All licensed establishments must have and continuously maintain in the city a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city clerk, in such form as he may prescribe.

(Code 1982, § 9-2-10)

**Sec. 6-46. Distance of premises from schools, churches, etc.**

- (a) No person, knowingly and intentionally, may sell or offer to sell, and no license will be issued to sell:
  - (1) Any wine, malt beverages, or distilled spirits within 200 yards of the grounds of any educational building, including those located in churches, public and private schoolgrounds or college campus.
  - (2) Any wine, malt beverages, or distilled spirits within 100 yards of any church building or any parcel of land in a residential zoning district.
  - (3) Any wine, malt beverages or distilled spirits within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government therein.
- (b) The reference in this section to a school building or educational building on a college campus shall apply only to state, county, city or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state. The term "campus," as used in this section, shall be defined as buildings used for educational purposes and the space adjoining such buildings necessary and convenient and habitually used for educational purposes.
- (c) The reference in this section to a residential zoning district shall apply to all parcels of land that hold the "R" zoning classification, such as R-1, R-1A, R-2 and R-3.

- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises showing the distance of the uses described in this section, and a certificate of a registered land surveyor or professional engineer stating that the location complies with the distance requirements of this section.
- (e) No license in effect as of the enactment of the ordinance from which this chapter is derived shall be revoked before its date of expiration, or its renewal denied, by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license or renewal shall be denied by reason of the method of measurement set out in this section, if such application is pending on the enactment date of the ordinance from which this section derives.

(Code 1982, § 9-2-15; Ord. No. 493, pt. 1, 11-21-00)

#### **Sec. 6-47. Compliance with applicable regulations; payment of license fee.**

Before a license shall be granted under this article, the applicant therefor shall comply with all rules and regulations adopted by the mayor and council regulating the sale of alcoholic beverages, and each applicant shall pay a license fee in accordance with the scale fixed by the mayor and council and set forth in this article and kept on file in the office of the city clerk.

(Code 1982, § 9-2-18)

#### **Sec. 6-48. Schedule of license fees.**

- (a) An annual license fee of \$5,000.00 shall be charged for an annual license to sell distilled spirits by the drink issued to any licensee under this article. The license fee shall include the right to sell wine and malt beverages for consumption on the premises.
- (b) An annual license fee of \$2,500.00 shall be charged for an annual license to sell beer and wine by the drink for consumption on the premises.
- (c) An annual license fee of \$5,000.00 shall be charged to wholesale dealers in distilled spirits.
- (d) An annual license fee of \$5,000.00 shall be charged to retail dealers in distilled spirits.
- (e) An annual license fee of \$100.00 shall be charged to wholesale dealers in beer and malt beverages.
- (f) An annual license fee of \$1,250.00 shall be charged to retail dealers in beer and malt beverages.
- (g) An annual license fee of \$650.00 shall be charged to wholesale dealers in wine.
- (h) An annual license fee of \$1,250.00 shall be charged to retail dealers in wine.
- (i) An annual license fee of \$750.00 shall be charged to wholesale dealers to sell both beer and wine.
- (j) An annual license fee of \$2,500.00 shall be charged to retail dealers to sell both beer and wine.

- (k) An annual license fee of \$2,500.00 shall be charged for a Sunday sale permit to sell distilled spirits by the drink. This fee shall include the right to sell wine and malt beverages for consumption on the premises.

(Code 1982, § 9-2-191; Ord. No. 521, pt. 1, 10-15-02)

#### **Sec. 6-49. Display of license.**

The city license issued under this article shall at all times be kept plainly exposed to view at the place of business of the licensee.

(Code 1982, § 9-2-4)

#### **Sec. 6-50. Transfer of license.**

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.
- (b) In case of the death of a licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 45 days from the date of death, or until expiration of the license, or until approval of a new licensee, whichever shall first occur; provided that no sale of alcoholic beverages shall be allowed until such time as a personal representative of the estate, appointed by a probate court of competent jurisdiction, shall make application for authorization with the city clerk.
- (c) If a license is surrendered or a licensee severs his association with a licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 45 days from the date of surrender or from the date determined to be the date of severance; provided that no such sale shall be authorized until such time as a new application for a license is made, with the application indicating that no change of ownership has occurred except as excepted in this section. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license, nor shall it prohibit transfers of stock which do not result in any person increasing his stock holdings to a total of ten percent or more of any class of stock.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided in this section, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this article automatically, without the necessity of any hearing.
- (g) Violation of this section shall result in revocation of the license being used, and the new ownership and the old ownership shall be punishable as provided in section 1-6. No

license will be issued to the old or the new owner in the city for one year from the date of the violation.

(Code 1982, § 9-2-6)

**Sec. 6-51. Expiration and renewal of license.**

- (a) All licenses granted under this article shall expire on December 31 of each year. Licensees who desire to renew their license shall file an application, with the requisite fee provided for in this article, with the city clerk, on the form provided for renewal of the license for the ensuing year. Applications for renewal must be filed before November 30 of each year; otherwise, investigative and administrative costs, penalties and interest will be assessed. No renewal license shall be granted after January 1, but such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (b) All licenses granted under this article shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this article who shall pay the required fee, or any portion thereof, after the date set by law for such payment, shall, in addition to the annual fee, pay a late charge of 20 percent, and shall also pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

(Code 1982, § 9-2-17)

**Sec. 6-52. Revocation, suspension or other penalties.**

- (a) The city clerk shall be authorized to suspend or revoke an alcoholic beverage license or impose other penalties upon the licensee under the conditions set forth in this section. However, no revocation, suspension or other penalty shall be imposed without first providing a licensee the notice, hearing and appeal rights as more specifically provided in section 6-54.
- (b) Sufficient grounds for the suspension or revocation of a license, or the imposition of other penalties include, but are not limited to, the following:
  - (1) A licensee has failed to open for business within six months after approval of the license.
  - (2) A licensee has ceased to operate the business for a period of three consecutive months.
  - (3) A licensee's state license or permit for the sale of alcoholic beverages has been revoked.
  - (4) A licensee, or such licensee's employee or agent, has sold alcoholic beverages during a period of suspension.
  - (5) A licensee gave false or misleading information in the original application or

renewal process.

- (6) A licensee has failed to pay any fee, license fee, fine or other amount of money due to the city under this chapter or any other licensing ordinance of the city.
  - (7) A licensee, or such licensee's employee or agent, has served or sold any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be under the age of 21 years. For purposes of this section, it shall be prima-facie evidence that a licensee, or such licensee's employee or agent, has served or sold any alcoholic beverage to a person that the licensee or licensee's employee or agent should have known to be under the age of 21 years if the licensee, or the licensee's employee or agent fails to require and check identification as set forth in section 6-10.
  - (8) A licensee, or such licensee's employee or agent, has served or sold any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be in a state of intoxication.
  - (9) A licensee has failed to maintain any and all of the general qualifications applicable to the initial issuance of a license as set forth in section 6-45.
  - (10) A licensee, or such licensee's employee or agent has allowed or required a person in his employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverages in violation of section 6-11.
  - (11) A licensee has violated any other law, ordinance or regulation governing the operation of establishments licensed to sell alcoholic beverages or which are reasonably related to the operation of such establishments.
  - (12) A licensee, or such licensee's employee or agent, has violated any other provision of this alcoholic beverage ordinance.
- (c) Subject to the notice, hearing and appeal rights of a licensee as provided in section 6-54, the city clerk is authorized, but not required to, revoke the license of any licensee found to be in violation of this chapter. In lieu of revocation, the clerk is also authorized to suspend the license of a licensee violating any provisions of this chapter. In the event that the clerk elects to suspend a license, such license shall be suspended for three days for the first violation, which shall be scheduled to include a Friday and Saturday, and 30 days for a second violation occurring within any consecutive 24 month period. For a third violation occurring within any consecutive 24 month period, the license shall be revoked. In lieu of revocation or suspension, the city clerk is also authorized, but not required, to accept a voluntary offer of a civil monetary penalty from the licensee, not to exceed \$1,000.00 per violation. No licensee or any other applicant may apply for a license for the same premises during any period of suspension or revocation. In determining the severity of any sanction imposed under this section, the city clerk may take into consideration any documented evidence that the licensee has, on prior occasions, undertaken proactive efforts to promote compliance with the provisions of this chapter, including the provisions of this chapter prohibiting the sale or serving of alcohol to minors. Documented evidence of such activities shall include, but shall not be limited to, written evidence that the licensee has promptly reported violations or attempted violations of this chapter.

(Code 1982, § 9-2-22; Ord. No. 446, 11-18-97; Ord. No. 474, § I, 6-15-99; Ord. No. 484, § 1, 4-18-00)

### **Sec. 6-53. Alcoholic beverage review board.**

There is hereby established an alcoholic beverage review board, which shall have the duty of hearing appeals from decisions of the city clerk denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city, and to hear appeals from the decision of the city clerk revoking or suspending a license. The alcoholic beverage review board shall be composed of the city manager, the chief of police and the mayor and council.

(Code 1982, § 9-2-23; Ord. No. 387, § 7(3), 12-10-93)

### **Sec. 6-54. Hearing procedures; appeal.**

- (a) Prior to imposing any sanction authorized by section 6-52 of this chapter, the city clerk shall provide written notice to the licensee specifying the licensee's alleged violations of this chapter and the date, time and place of the hearing to be held before the city clerk to determine if the violations have occurred. The date of the hearing shall be not less than five nor more than 30 days after the date of the written notice. At the request of the city clerk, the city council may appoint a hearing examiner to perform the duties of the city clerk under sections 6-52 and 6-54 of this chapter. Hearings shall be conducted under rules issued by the city clerk, which shall be consistent with rules applied in administrative proceedings, and shall insure that each party may present evidence, cross-examine witnesses and be represented by legal counsel. All testimony shall be sworn. The city shall have the responsibility to present evidence sufficient to carry the burden of proof by a preponderance of the evidence. Following the hearing, the city clerk shall prepare a written order to include findings, conclusions and sanctions (if any). A copy of the order shall be forwarded by certified mail to the licensee the same date it is filed in the office of the city clerk, with additional copies furnished to the city manager and the chief of police.
- (b) The order issued by the clerk in accordance with the procedures outlined above shall be stayed for a period of ten days after the issuance of the order. During this ten-day period, the licensee shall have the right to file an appeal to the alcoholic beverage review board. If the licensee files a timely appeal, the city clerk's order shall be stayed until the appeal is heard or withdrawn. If the licensee does not file a timely appeal, the city clerk's order shall be final.
- (c) The notice of appeal to the alcoholic beverage review board shall be in writing and accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The grounds for the appeal shall be limited to issues that were addressed in the hearing. Upon receipt of a notice of appeal, the city clerk shall submit the entire record of the case to the alcoholic beverage review board and may also submit a memorandum in response to the memorandum filed by the licensee. The clerk shall place the appeal on the agenda for a hearing at the next regular city council meeting occurring not less than ten nor more than 30 days after receipt of the appeal, unless the appellant stipulates to another date. The appellant shall have the right to be represented by legal counsel. At the hearing the alcoholic beverage review board shall be convened and the alcoholic beverage review board will receive oral arguments on the written memoranda and the evidence in the record. The right to offer oral argument may be waived. No additional evidence or arguments shall be permitted at the council meeting, and the alcoholic beverage review board shall base its decision on

the memoranda, oral arguments (if any) and other evidence in the record. Following the appeal hearing, the alcoholic beverage review board may sustain, overrule or modify the order of the city clerk. In lieu of suspension or revocation, the alcoholic beverage review board may impose a fine upon any licensee, such fine not to exceed \$1,000.00 for each violation occurring on the licensed premises. The alcoholic beverage review board shall also have the option to refer the matter to the clerk for a de novo hearing, or for the taking of additional evidence on specific points, and in either of such cases, the city clerk shall proceed as provided in this chapter. If the alcoholic beverage review board does not refer the matter back to the clerk, the decision of the alcoholic beverage review board shall be final, and the appellant shall have the right to seek a writ of certiorari to the superior court of the county within 30 days of the final action of the alcoholic beverage review board. The final action of the alcoholic beverage review board shall be reduced to a written order signed by the mayor. The original of the order shall be filed in the record of the case, and a copy of the order shall be included in the minutes of the alcoholic beverage review board. It shall be the responsibility of the clerk to provide a copy of the order to the appellant.

(Code 1982, § 9-2-24; Ord. No. 484, § 1, 4-18-00)

#### **Sec. 6-55. Temporary permit for nonprofit organizations.**

Any nonprofit civic organization may be issued a temporary permit authorizing the organization to serve alcoholic beverages for a period not to exceed five days in any one year. The nonprofit civic organization must make application and pay the fee that may be required by ordinance. Such civic organizations shall be required to comply with all the general ordinances and the licensing requirements and regulations for a consumption on the premises establishment, with the exception of the full-service kitchen requirement.

(Code 1982, § 9-2-101)

#### **Sec. 6-56. Temporary permit for business establishments serving alcoholic beverages free of charge.**

- (a) *Eligibility.* An establishment which maintains a valid city business license may be issued a temporary permit for a period not to exceed three days in any one calendar year, which permit shall authorize the establishment to serve alcoholic beverages to patrons of the establishment; provided, however, that such establishment shall not charge any sum of money or other medium of exchange for the beverages served, nor shall any admission fee or other charge be made to gain entrance to the establishment during the period in which alcoholic beverages are served at such establishment. The number of temporary permits issued to an establishment as set forth in this section shall not exceed four in any one calendar month.
- (b) *Compliance with applicable regulations.* Establishments governed under the provisions of this section shall be required to comply with all the general ordinances and the licensing requirements and regulations for a consumption on the premises establishment, except that such establishment shall not be required to have a full-service kitchen, shall not be required to pay the annual license fee charged for a consumption on the premises establishment, shall not be required to pay any investigative or administrative costs, shall not be subject to fingerprinting requirements, and shall not be subject to identification requirements for employees.

- (c) *Exemption from regulations regarding drinking in public place.* Persons consuming alcoholic beverages within any establishment governed under the provisions of this section which at the time of such consumption holds a valid temporary permit for serving alcoholic beverages under this section shall not be in violation of section 58-2 relating to the drinking of alcoholic beverages in public places.
- (d) *Fee.* A fee of \$300.00 shall be charged for each permit issued to any establishment governed under the provisions of this section.

(Code 1982, §§ 9-2-201--9-2-204)

Secs. 6-57--6-75. Reserved.

### **ARTICLE III. WHOLESALERS**

#### **Sec. 6-76. Licensing.**

- (a) Any person desiring to sell, at wholesale, any alcoholic beverages in the city shall make application to the city clerk for a license to do so, which application shall be in writing on the prescribed forms, and pay any license fee set by the mayor and council.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirits license.

(Code 1982, § 9-2-181(a), (b))

#### **Sec. 6-77. Sales to retailers.**

- (a) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (b) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

(Code 1982, § 9-2-181(c), (d))

#### **Sec. 6-78. Collection of excise tax; bond.**

- (a) There is hereby imposed an excise tax upon all alcoholic beverages purchased by persons holding a retail package license or a consumption on the premises license, at a rate set by the mayor and council.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses, and shall be paid by the wholesale dealers to the city clerk by the tenth of each month, based upon the units of alcohol sold during the previous month. Interest shall accrue on late payments at the rate of ten percent per annum. The wholesale dealer shall keep true and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement

showing, but not limited to, the type and volume of alcoholic beverages sold to each retail licensee, on a form or in a format approved by the city clerk.

- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the city clerk equal to 1 1/2 times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers, to secure the payment of the tax imposed in this section. These bonds shall be secured by cash, which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the mayor and council.
- (d) A wholesaler may be excused from posting the performance bond as provided in this section after demonstrating full and satisfactory compliance with the provisions of this section for a period of 12 months subsequent to the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums required by the provisions of this article.

(Code 1982, § 9-2-182)

#### **Sec. 6-79. Audits.**

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

(Code 1982, § 9-2-183)

#### **Sec. 6-80. Hours of sale.**

Wholesalers shall not engage in the sale of alcoholic beverages except between 7:00 a.m. and 6:00 p.m., Monday through Saturday.

(Code 1982, § 9-2-184)

Secs. 6-81--6-95. Reserved.

### **ARTICLE IV. RETAIL PACKAGE SALES OF DISTILLED SPIRITS**

#### **Sec. 6-96. Permitted locations.**

- (a) No distilled spirits by the package shall be sold at retail except in:
  - (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package;
  - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sale of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection (3) of this subsection; or
  - (3) Hotels, motels and high-rise office buildings where every public entrance to this

use shall be from a lobby, hallway or other interior portion of the primary use structure.

- (b) The requirements set out in this section shall apply to retail liquor stores accessory to these uses, even when located in a C-1 district. All retail liquor stores shall be located only in the OI, C-1 and I-1 zoning districts, in which these establishments are permitted uses under the zoning ordinance of the city.
- (c) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.
- (d) Notwithstanding the provisions of subsections (a) through (c), above, no new retail package liquor licensed place of business nor the relocation of an existing retail package liquor licensed place of business engaged in the retail package sales of distilled spirits shall be allowed within 500 yards of any other business licensed to sell package liquor at retail, as measured by the most direct route of travel on the ground; provided, however, that this limitation shall not apply to any hotel licensed under this chapter. The restriction provided for in this subsection shall not apply at any location for which a license was issued prior to July 1, 1997, nor to the renewal of such license. Nor shall the restrictions of this subsection apply to any location for which a new license is applied for if the sale of distilled spirits is lawful at such location at any time during the 12 months immediately preceding such application.

(Code 1982, § 9-2-141; Ord. No. 441, 7-15-97)

#### **Sec. 6-97. Investigative and administrative fee.**

Each application for license under this article shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$200.00 to defray investigative and administrative costs. If the application is denied and the license refused or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the cost of \$200.00 paid for investigation and administrative cost shall be retained.

(Code 1982, § 9-2-145)

#### **Sec. 6-98. Statement regarding ownership interest in other retail stores.**

- (a) All applications for a package liquor license, both original applications and renewal applications, must be accompanied by a full and complete statement, under oath, of information relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest each person or any immediate relative has in any other retail liquor store located in the city or any other place; the ownership of the land and building where this retail business is operated; the amount of rental paid for this land and building, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sublessor of this land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which this retail liquor store is located; and any other information called for by the city clerk to ensure compliance with the provisions of this chapter.
- (b) Information regarding any change in such relationship must be filed with the city clerk

when the change is made. Failure to so file within a period of ten days after this change is made shall be grounds for the city clerk to cancel the license.

(Code 1982, § 9-2-146)

**Sec. 6-99. Coin-operated or amusement machines prohibited; exception.**

No retail dealer in liquors shall permit on his premises any slot machines of any kind or character or any coin-operated machines or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

(Code 1982, § 9-2-142)

**Sec. 6-100. Hours of sale.**

Retailers shall not engage in the sale of spirituous liquors except between the hours of 8:00 a.m. and 11:45 p.m. on Monday through Saturday. The hours within which this business may be carried on shall be determined by the standard time in force at the time of the sale.

(Code 1982, § 9-2-143)

Secs. 6-101--6-120. Reserved.

**Editor's note:** Ord. No. 496, adopted Jan. 4, 2001, repealed section 6-101 in its entirety. Former section 6-101 pertained to employees and derived from the Code of 1982, § 9-2-144.

**ARTICLE V. RETAIL PACKAGE SALES OF WINE AND MALT BEVERAGES**

**Sec. 6-121. Permitted locations.**

No beer or wine shall be sold at retail except in establishments maintaining 80 percent of the floorspace and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use, or in a facility duly licensed by the city to sell liquor by the package.

(Code 1982, § 9-2-161)

**Sec. 6-122. Investigative and administrative fee.**

Each application for a license under this article shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$100.00 to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant withdraws his application prior to its being issued, the license fee shall be refunded, but the cost of \$100.00 paid for investigation shall be retained.

(Code 1982, § 9-2-164)

**Sec. 6-123. Hours of sale.**

Retail package licensees may engage in the sale of beer and wine between the hours of

8:00 a.m. and 11:45 p.m., Monday through Saturday. The hours within which business may be carried on shall be determined by the standard time in force at the time of the sale. No package beer or wine may be sold on Sunday.

(Code 1982, § 9-2-162; Ord. No. 442, 7-15-97)

#### **Sec. 6-124. Marking of prices.**

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

(Code 1982, § 9-2-163)

Secs. 6-125--6-140. Reserved.

### **ARTICLE VI. RETAIL SALES OF DISTILLED SPIRITS FOR CONSUMPTION ON THE PREMISES**

#### **Sec. 6-141. Permitted locations.**

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen. A full-service kitchen will consist of a four-compartment pot sink, a stove or grill, permanently installed, and a refrigerator, all of which must be approved by the county health and fire departments. Additionally, any such eating establishment must derive a minimum of 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food. Such eating establishments must be prepared to serve food every hour they are open and must seat 45 or more persons. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

(Code 1982, § 9-2-41; Ord. No. 452, 5-19-98)

#### **Sec. 6-142. Investigative and administrative fee.**

Each application for a license under this article shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$200.00 to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the cost of \$200.00 paid for investigation and administrative cost shall be retained.

(Code 1982, § 9-2-42)

#### **Sec. 6-143. Package sales prohibited.**

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle.

(Code 1982, § 9-2-44)

#### **Sec. 6-144. Hours of sale generally.**

Except as otherwise provided in this article, distilled spirits shall not be sold for consumption on the premises except between the hours of 9:00 a.m. and 3:55 a.m., Monday through Friday, and on Saturday from 9:00 a.m. to 2:55 a.m.

(Code 1982, § 9-2-43)

#### **Sec. 6-145. Sunday sales.**

- (a) Licensed establishments deriving a minimum of 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least 50 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. until 2:55 a.m.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the city clerk. An audit may be required at any time to ensure compliance.
- (c) All applications for annual permit renewal shall be filed with the city clerk not later than November 30 of the year preceding the license year for which the permit is to be issued. All persons applying for renewal are subject to audit prior to renewal to ensure compliance with this chapter.
- (d) Sunday sales permits are granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable, and permits shall not be transferable.

(Code 1982, § 9-2-46)

#### **Sec. 6-146. Reserved.**

**Editor's note:** Ord. No. 496, adopted Jan. 4, 2001, repealed section 6-146 in its entirety. Former section 6-146 pertained to employees and derived from the Code of 1982, § 9-2-45; and from Ord. No. 423, adopted Aug. 20, 1996.

#### **Sec. 6-147. Use of open areas, patios or decks.**

Consumption or sale of distilled spirits in open areas or on decks or patios is not permitted unless an establishment holding a license for consumption of distilled spirits on the premises complies with the following regulations:

- (1) The open area, patio or deck must be enclosed in a manner that directs ingress and egress by the public through a single entrance, which entrance shall be under the control of the licensee.
- (2) The open area, patio or deck shall be enclosed by a structure at least 42 inches in height as measured from the floor of the open area, patio or deck. Such

structure must meet all building code requirements of the city.

- (3) Any license holder desiring to obtain approval for open area, patio or deck sales must submit to the city building inspector a complete set of plans before approval for such sales may be granted. All plans and final construction pursuant to such plans shall meet the requirements of this chapter, the health code, the fire code and any other codes applicable to such structures. A written approval from the city building inspector, city clerk, county health department and county fire department must be provided to the city before approval of any open area, patio or deck sales.
- (4) Any structure or area set aside for open area, patio or deck sales shall not contain a number of square feet that represents an amount greater than 40 percent of the square footage of the existing seating area of the establishment.
- (5) Loudspeakers or other amplifiers of sound shall not be permitted on open areas, patios or decks.

(Code 1982, § 9-2-47; Ord. No. 365, § I, 7-10-92)

Secs. 6-148--6-165. Reserved.

## **ARTICLE VII. RETAIL SALES OF MALT BEVERAGES AND WINE FOR CONSUMPTION ON THE PREMISES**

### **Sec. 6-166. Permitted locations.**

No beer or wine shall be sold for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen. A full-service kitchen shall consist of a four-compartment pot sink, a stove or grill, permanently installed, and a refrigerator, all of which must be approved by the County Health and Fire Departments. Additionally, any such eating establishment must derive a minimum of 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food. Such eating establishments must be prepared to serve food every hour they are open and must seat 45 or more persons. When located in hotels, motels or high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

(Code 1982, § 9-2-61; Ord. No. 452, 5-19-98)

### **Sec. 6-167. Investigative and administrative fee.**

Each application for a license under this article shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$100.00 to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant withdraws his application prior to its being issued, the license fee shall be refunded, but the cost of \$100.00 paid for investigation shall be retained.

(Code 1982, § 9-2-62)

### **Sec. 6-168. Hours of sale generally.**

Except as otherwise provided in this article, beer and wine shall not be sold for consumption on the premises except between the hours of 9:00 a.m. and 3:55 a.m., Monday through Friday, and on Saturdays from 9:00 a.m. until 2:55 a.m.

(Code 1982, § 9-2-63)

### **Sec. 6-169. Sunday sales.**

- (a) Licensed establishments deriving a minimum of 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least 50 percent of their total annual gross income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages by the drink from 12:30 p.m. until 2:55 a.m.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the city clerk. An audit may be required at any time to ensure compliance.
- (c) All applications for annual permit renewal shall be filed with the city clerk not later than November 30 of the year preceding the license year for which the permit is to be issued. All persons applying for renewal are subject to audit prior to renewal to ensure compliance with this chapter.
- (d) Sunday sales permits are granted for the full calendar year for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable, and permits shall not be transferable.

(Code 1982, § 9-2-65)

### **Sec. 6-170. Reserved.**

**Editor's note:** Ord. No. 496, adopted Jan. 4, 2001, repealed section 6-170 in its entirety. Former section 6-170 pertained to employees and derived from the Code of 1982, § 9-2-64; and from Ord. No. 423, adopted Aug. 20, 1996.

### **Sec. 6-171. Use of open areas, patios or decks.**

Consumption or sale of beer or wine in open areas or on decks or patios is not permitted unless an establishment holding a license for consumption of beer or wine on the premises complies with the following regulations:

- (1) The open area, patio or deck must be enclosed in a manner that directs ingress and egress by the public through a single entrance, which entrance shall be under the control of the licensee.
- (2) The open area, patio or deck shall be enclosed by a structure at least 42 inches in height as measured from the floor of the open area, patio or deck. Such structure must meet all building code requirements of the city.
- (3) Any license holder desiring to obtain approval for open area, patio or deck sales must submit to the city building inspector a complete set of plans before approval for such sales may be granted. All plans and final construction pursuant to such

plans shall meet the requirements of this chapter, the health code, the fire code and any other codes applicable to such structures. A written approval from the city building inspector, city clerk, county health department and county fire department must be provided to the city before approval of any open area, patio or deck sales.

- (4) Any structure or area set aside for open area, patio or deck sales shall not contain a number of square feet that represents an amount greater than 40 percent of the existing seating area of the establishment.
- (5) Loudspeakers or other amplifiers of sound shall not be permitted on open areas, patios or decks.

(Code 1982, § 9-2-66; Ord. No. 365, § II, 7-10-92)

Secs. 6-172--6-190. Reserved.

## **ARTICLE VIII. PRIVATE CLUBS**

### **Sec. 6-191. Definitions.**

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

*Fixed salary* means the amount of compensation paid any member, officer, agent or employee of a bona fide 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 a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities which are added to the bills under club regulations shall not be considered as profits from the sale of alcoholic beverages.

*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 building space within a building for the reasonable use of its members with:
  - a. Suitable kitchen and dining room space and equipment; and
  - b. 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.

(Code 1982, § 9-2-81)

**Cross references:** Definitions and rules of construction generally, § 1-2.

**Sec. 6-192. Compliance with applicable regulations.**

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

(Code 1982, § 9-2-82)

**Sec. 6-193. Exemptions from requirement for food service facilities.**

Veterans' organizations, fraternal organizations and other nonprofit organizations regulated by this article currently having tax-exempt status under either the United States Internal Revenue Code or the state income tax law shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption on the premises establishments.

(Code 1982, § 9-2-83)

**Sec. 6-194. Investigative and administrative fee.**

Each application for license under this article shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$200.00 for distilled spirits or \$100.00 for beer or wine, to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the cost paid for investigation and administrative cost shall be retained.

(Code 1982, § 9-2-84)

**Sec. 6-195. Hours of sale generally.**

Except as otherwise provided in this article, distilled spirits shall not be sold for consumption on the premises at a private club except between the hours of 9:00 a.m. and 3:55 a.m., Monday through Friday, and on Saturday from 9:00 a.m. to 2:55 a.m.

(Code 1982, § 9-2-85)

**Sec. 6-196. Sunday sales.**

- (a) Licensed private clubs deriving a minimum of 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least 50 percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. until 2:55 a.m.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the

city clerk. An audit may be required at any time to ensure compliance.

- (c) All applications for annual permit renewal shall be filed with the city clerk not later than November 30 of the year preceding the license year for which the permit is to be issued. All persons applying for renewal are subject to audit prior to renewal to ensure compliance with this chapter.
- (d) Sunday sales permits are granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable, and permits shall not be transferable.

(Code 1982, § 9-2-87)

### **Sec. 6-197. Employees.**

The following regulations shall apply to all private clubs holding a license for consumption on the premises:

- (1) An employee shall meet the same character requirements as set forth in this chapter for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license under this article until such person has been fingerprinted or cleared by the chief of police and a permit issued indicating that such person is eligible for this employment.
- (3) The permit issued to a person under this section shall be either of the following:
  - a. An alcoholic beverage permit, which shall be issued only to a person who is 18 years of age or older and who sells, serves or dispenses alcoholic beverages;
  - b. A nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorman or bouncer.
- (4) No permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include but shall not be limited to the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (5) The chief of police shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this article, the chief of police shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the chief of police shall notify the employer that this person is not eligible for employment.
- (6) It shall be the duty of all persons holding any license to sell alcoholic beverages to file with the chief of police the name of the establishment, the license number

and a list of all employees, with their home addresses and home telephone numbers.

- (7) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the chief of police or the city clerk.
- (8) This section shall not be construed to include employees whose duties are limited solely to those of busboy, cook or dishwasher.
- (9) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (10) If any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the police department.
- (11) All permits issued under this section remain the property of the city, and shall be produced for inspection upon the demand of any officer of the police department.

(Code 1982, § 9-2-86; Ord. No. 423, 8-20-96)

#### **Sec. 6-198. Use of open areas, patios or decks.**

Consumption or sale of beer, wine or distilled spirits in open areas or on decks or patios is not permitted unless a private club holding a license for consumption of beer, wine or distilled spirits on the premises complies with the following regulations:

- (1) The open area, patio or deck must be enclosed in a manner that directs ingress and egress by the public through a single entrance, which entrance shall be under the control of the licensee.
- (2) The open area, patio or deck shall be enclosed by a structure at least 42 inches in height as measured from the floor of the open area, patio or deck. Such structure must meet all building code requirements of the city.
- (3) Any license holder desiring to obtain approval for open area, patio or deck sales must submit to the city building inspector a complete set of plans before approval for such sales may be granted. All plans and final construction pursuant to such plans shall meet the requirements of this chapter, the health code, the fire code and any other codes applicable to such structures. A written approval from the city building inspector, city clerk, county health department and county fire department must be provided to the city before approval of any open area, patio or deck sales.
- (4) Any structure or area set aside for open area, patio or deck sales shall not contain a number of square feet that represents an amount greater than 40 percent of the existing seating area of the establishment.
- (5) Loudspeakers or other amplifiers of sound shall not be permitted on open areas, patios or decks.

(Code 1982, § 9-2-88; Ord. No. 365, § III, 7-10-92)

Secs. 6-199--6-215. Reserved.

## **ARTICLE IX. BROWN BAG ESTABLISHMENTS**

### **Sec. 6-216. Permitted locations.**

Bring-your-own-bottle establishments or brown bag establishments must be establishments regularly serving prepared foods, with a full-service kitchen. A full-service kitchen will consist of a four-compartment pot sink, a stove or grill, permanently installed, and a refrigerator, all of which must be approved by the county health and fire departments. Such establishments must be prepared to serve food every hour they are open, and must seat 200 or more persons. Such establishments may not hold a license to sell and may not sell or serve any alcoholic beverages. They must be in a zoning district that allows a restaurant as a conforming use.

(Code 1982, § 9-2-121)

### **Sec. 6-217. License required; compliance with applicable regulations.**

It shall be unlawful to operate an establishment governed under the provisions of this article without first obtaining a license from the city clerk and paying such fees and taxes as may be required by the ordinances, rules and regulations of the city. A bring-your-own-bottle or brown bag establishment shall be subject to all the general licensing requirements and regulations as well as the licensing requirements and regulations for consumption on the premises establishments.

(Code 1982, § 9-2-122)

Secs. 6-218--6-235. Reserved.

## **ARTICLE X. EXCISE TAXES**

### **Sec. 6-236. Distilled spirits.**

- (a) There is hereby imposed an excise tax upon all distilled spirits purchased by persons holding retail distilled spirits licenses at the rate of \$0.22 per liter, and a proportionate tax at a like rate on all fractional parts of a liter.
- (b) The excise tax shall be collected by all wholesale dealers selling distilled spirits to persons holding retail licenses, and shall be paid by the wholesale dealers to the city clerk by the tenth of each month, based upon the liters of distilled spirits sold during the previous month. Interest shall accrue on late payments at the rate of nine percent per annum. The wholesale dealers shall keep true and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing the type, volume and price of distilled spirits sold to each retail licensee.

(Code 1982, § 3-4-1)

**State law references:** Levy of tax on sale of distilled spirits by the package, O.C.G.A. §

3-4-80.

**Sec. 6-237. Malt beverages.**

- (a) There is hereby imposed on the sale of malt beverages in the city an excise tax in the sum of \$0.05 per 12 ounces, and in a similar proportion for bottles, cans and containers of various sizes. The excise tax on draft beer shall be \$6.00 for each container containing not more than 15 1/2 gallons, and a like rate for fractional parts, where the beverage is sold in or from a barrel or bulk container, such beverage being commonly known as tap or draft beer.
- (b) The malt beverage excise tax is levied against and shall be paid by each licensed wholesale dealer in malt beverages in the city.

(Code 1982, § 3-4-2(a), (b))

**State law references:** Excise tax on malt beverages, O.C.G.A. § 3-5-80.

**Sec. 6-238. Wine.**

- (a) There is hereby imposed on the sale of wine in the city an excise tax at the rate of \$0.22 per liter, and a proportional tax at like rates on all fractional parts of a liter.
- (b) The wine excise tax is levied against and shall be paid by each licensed wholesale dealer in wine in the city.

(Code 1982, § 3-4-2(c), (d))

**State law references:** Excise tax on wine, O.C.G.A. § 3-6-60.

**Sec. 6-239. Payment; records of wholesalers; bond.**

- (a) The excise taxes imposed by this article shall be paid by the wholesale dealers to the city clerk by the tenth of each month based upon the units of malt beverages and wine sold during the previous month. Interest shall accrue on late payments at the rate of nine percent per annum.
- (b) The wholesale dealers shall keep true and correct records of all sales and shipments, and shall render a sworn statement of the sales and shipments accompanying the monthly report to the city clerk.
- (c) Wholesalers shall post a performance bond with the city clerk equal to 1 1/2 times the estimated highest monthly payment made in a calendar year of the prorated license fees based on sales collected by wholesalers from the retailers, to secure payment for the taxes imposed in this article. The bond provided for in this section shall be secured by cash, which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the mayor or city clerk.
- (d) Each wholesale dealer licensed to do business in the city shall submit his books and records for such audit thereof as may be requested by the mayor or city clerk at any reasonable time during business hours.

(Code 1982, § 3-4-2(e)--(h))