

MALT BEVERAGE AND WINE ORDINANCE

An ordinance to regulate the retail sale and wholesale distribution of malt beverages and wine within the jurisdictional limits of the City of Chickamauga, Georgia; to establish procedures and criteria for obtaining a license to sell malt beverages and wine within the jurisdictional limits of the City of Chickamauga, Georgia; to establish other provisions regarding malt beverages and wine; and to provide an effective date; and for other purposes.

Be it ordained by the City of Chickamauga, Georgia, as follows:

I. GENERAL

1. Definitions

Unless the context demands otherwise, the words and terms used in this ordinance shall have the same definitions and meanings as set out in O.C.G.A. Section 3-1-2 and elsewhere in O.C.G.A. Title 3. Specific definitions are as follows:

Business location means the location or proposed location of a retail or wholesale malt beverage outlet or retail wine outlet, as the case may be.

Malt Beverage as defined in O.C.G.A. Section 3-1-2 (12).

Outlet means a store in which malt beverages are sold, or a store for the retail sale of wine, as the case may be.

Outlet manager means the person who does or who will actually manage or operate on a day-to-day basis, the malt beverage store, or the retail wine store, as the case may be.

Wine as defined in O.C.G.A. Sections 3-1-2 (8) and 3-1-2 (24)

2. Appearance in public in intoxicated condition.

It shall be unlawful for any person to be in an intoxicated condition on or upon the public streets, sidewalks or other public ways of the city or in any public park, playground or recreational area of the city, or on any public property, within the limits of the city, which drunkenness or intoxication may be caused by the excessive use of any alcoholic beverages, as defined in O.C.G.A. Section 3-1-2.

3. Consumption on public property.

It shall be unlawful for any person to drink or consume any alcoholic beverage on the public streets, sidewalks, or other public ways of the city or in any public park, playground or recreational area of the city, or on any public property.

4. Employees; intoxicated or drinking on the premises.

No owner, operator, manager or employee of any outlet shall work in such outlet while intoxicated, nor shall any such persons drink any alcoholic beverage whatsoever while working and employed in any outlet.

5 - 19. Reserved

II. MALT BEVERAGES AND WINE

II a. GENERALLY

20. Wines authorized under this ordinance.

Wine which is authorized under this ordinance is that wine which may be legally sold and distributed and as further defined in O.C.G.A. Sections 3-1-2 (8) and 3-1-2 (24).

21. Applicability of malt beverage provision to wine.

All regulations controlling the sale of malt beverages shall also be applicable to the sale of wine as if fully set out as a separate section herein. It is the intention of the governing body that wine be sold either in conjunction with qualified and licensed retail malt beverage outlet under the same standards and restrictions as are applicable to retail malt beverage outlets, or if the licensee so desires wine may be sold at a qualified licensed wine outlet which does not sell malt beverages; however, under any circumstances all wine outlets shall be under the same standards, qualifications, rules, and restrictions as are applicable to malt beverage outlets under this ordinance.

22. Business hours.

Retail and wholesale licensees shall not engage in the sale of malt beverages or wine except between the hours of 7:00 a.m. and 1:00 a.m. of the immediate following days on Monday through Friday, and 7:00 am. and 12:00 p.m. on Saturdays; provided, however, retail dealers shall not permit their outlets to be open for the sale of malt beverages and/or wine on Sunday, Christmas Day, state or municipal elections, or on any other day or portion of a day on which they are required to be closed by the laws of the state.

23. Reserved.

24. Same- Compliance.

Retail licensees and wholesale licensees are hereby prohibited from selling, giving away, offering for sale, delivering, or dispensing in any manner whatsoever any malt beverages or wine within the city except on days and at such times as sales are specifically authorized in Section 22.

25. Visibility and Lighting of outlets.

No license shall be granted to a retailer under this ordinance unless the front entrance to the outlet is clearly visible from a public street, sidewalk, or other public way, and no screen, blind, curtain, partition, article or thing, which shall prevent a clear view into the interior of the outlet, shall be permitted in the window or on the doors of any retail outlet. Each retail outlet shall be so lighted that the interior of the store or the premises is visible day or night and all parking areas adjacent to or used in connection with such business shall be fully lighted and unobstructed.

26. Consumption on premises.

The retail licenses authorized hereunder are for retail sales in package only and there shall be no consumption on the premises of any outlet of any malt beverage or wine.

27. Curb service.

No retail licensee, through its officers, agents, employees or otherwise, shall serve, sell or deliver any malt beverage or wine to occupants of an automobile or other vehicles regardless of where the automobile or other vehicles are located. It is the intent of this section to prohibit what is commonly known as curb service sales of malt beverages or wine. This section shall not be construed to prohibit the delivery of sacks or other packages to automobiles or other vehicles when the sales have been consummated inside the retail outlet.

28. Intoxicated persons.

No malt beverage or wine shall be sold to any intoxicated person, nor shall any intoxicated person be allowed to remain on the premises of any outlet.

29. Sale to and loitering by minors.

No malt beverage or wine shall be sold under any condition to a person under the age of 21 years. Minors shall not be allowed to loiter or congregate on the premises of any retail outlet selling malt beverages or wine.

30. Advertising

It shall be a violation of this ordinance for any retail or wholesale licensee to advertise the sale of malt beverages or wine on the outside of the outlet. No signs advertising the sale of malt beverage or wine, which are visible from the outside of the outlet, will be permitted.

31. Compliance with rules and regulation of health authorities.

All retail licensees under this ordinance are hereby required to comply with all rules and regulations and requirements of any board of health, federal, state, or local.

32. Unlawful possession for purpose of sale or resale.

It shall be unlawful for any person, firm, or corporation to sell or possess for the purpose of sale or resale any malt beverage or wine when such person does not have a license from the city to sell or possess for sale or resale such beverages. It shall be presumed as a matter of law, that any person having located on such premises more than 15 gallons of malt beverage or wine shall have the same in such person's possession for the purpose of resale.

33. Receipt and delivery to retail licensees.

Malt beverages and/or wine shall be received at or delivered to the premises of a retail licensee by no other means than by conveyance owned and operated by a wholesale dealer with a permit from the city to make such deliveries in the city. Transportation of malt beverages or wine by any other means shall be grounds for revocation of a wholesale permit or license. Receipt of malt beverages or wine by any other means by a retail licensee shall be grounds for revocation of a retail license.

34. Manager of outlet; requirements.

If the person to whom any license under this ordinance is issued does not personally manage the outlet, the name of each manager on duty at the outlet must always be registered with the city clerk, and each manager of the outlet shall meet all the requirements of a person to whom a license could be granted hereunder. If such licensed outlet is not managed directly by the holder of the license, or a manager registered as provided hereunder who meets all of the requirements hereunder, then the license shall be immediately suspended or revoked. If such a manager is changed, the holder of the license must notify the city clerk not later than ten days from the date of the change of such manager and all information required hereunder with regard to managers shall be furnished to the city clerk at such time. This section shall apply to any person who is in charge of the business operation of the outlet at any given time.

35. Package sales only.

All malt beverages and wine shall be located within the interior of the outlet and shall be sacked in containers at the checkout counter of such outlet, and no such beverages shall be opened or consumed either inside the outlet or on the premises of the outlet.

36. Posting of this ordinance.

At all times all retail licensees under this ordinance must have posted within the place of business a copy of this ordinance.

37 - 39. Reserved.

II b. LICENSES

40. Necessity for city license.

It shall be unlawful to sell, or offer to sell at wholesale or retail within the city any malt beverage or wine 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 ordinance.

41. Separate license for each outlet; license not transferable; surrender of license.

(a) A separate license shall be required for each malt beverage outlet, and for each wine outlet, and a separate application shall be made for each.

(b) No license shall be transferable or assignable from one person or entity to another person or entity, nor shall a license be transferable from one outlet (location) to another.

(c) Immediately upon the sale of an outlet or immediately upon closing of an outlet, it shall be the duty of the licensee to surrender his license to the city clerk.

42. Classification of licenses.

Licenses under this ordinance shall be classified as follows

(1) **Retail; convenience store** means a retail store in which the primary function is the sale of food and related merchandise, and in which the sale of malt beverages and/or wine at retail is incidental to the operation thereof and in which the sales of malt beverages and/or wine represent less than 50 percent of the gross sales of such store.

(2) **Wholesale:** means wholesale malt beverage and/or wine distributors, who permit only the sale of malt beverages and/or wine at wholesale to duly licensed retailers.

43. License Application.

Application for retail or wholesale malt beverage or wine license shall be as provided in this section:

(1) Each initial applicant shall make written application to the city for the privilege of engaging in the sale of malt beverages or wine, specifying wholesale or retail, such application using forms approved by the governing body and furnished by the city.

(2) The application shall be filed with the city clerk with a non-refundable fee of \$100.00 for investigation of the applicant and application, and of the proposed location and processing of the application.

(3) The application shall include the following information:

(a) As to the applicant, the full name, age, home address, telephone number, place of permanent residence, date of establishment of permanent residence at such location, address of last place of residence, name of spouse, complete record of all convictions, guilty pleas and pleas of nolo contendere for violation of all laws, city, state, and federal, of applicant and of applicant's spouse. If the applicant is a partnership such information shall be furnished as to each partner. If the applicant is a corporation, such information shall be furnished as to each director, each officer and each stockholder who owns or controls ten percent or more of the issued and outstanding stock of such corporation.

(b) As to applicant's proposed outlet manager (if not the same as applicant) the full name, age, home address, business address, telephone number, place of permanent residence, date of establishment at such location, address of last place of residence, name of spouse, complete record of all convictions, guilty pleas and pleas of nolo contendere for violation of all laws, city, state, and federal, of the outlet manager and the outlet manager's spouse.

(c) Exact location (street address and otherwise) of proposed business and outlet.

(d) Name and address of owner and or landlord and residential manager, if any, of property proposed for location and whether or not there is a building proposed to be used already erected thereon.

(e) Name or trade name under which the proposed business shall be operated.

(f) Name and address of all persons having any financial interest in the outlet by way of ownership or stock, receipt of income from business or otherwise. This shall not apply to any stockholder who owns less than ten percent of the issued and outstanding stock of the corporation.

(g) If the applicant is a corporation, the address of the principal place of business, the registered office, and the names of the registered agents of the corporation.

(h) Such other information as may be required by the city.

(4) The application shall be sworn by all applicants.

(5) There shall be attached to the application a copy of the applicant's application or proposed application for a license from the State of Georgia, if one is required.

(6) At the time that the applicant files its application, the applicant shall furnish a complete set of fingerprints, which shall be forwarded to the Georgia Bureau of Investigation as is required under O.C.G.A Section 3-3-2(c).

44. Same- Action by city.

(a) Within seven days from the time the application is filed, the city clerk shall notify the city police chief or such other investigative officer as approved by the city, who shall investigate the character of the applicant and the reputation of the location, and make a full report to the city council. The investigative officer shall refer the application, together with any objections that may have been filed, to the city council.

(b) The city clerk shall notify the applicant of the date of the public hearing at which time the city council shall make a decision to either approve or deny the application.

(c) The city clerk shall have published a notice of the public hearing in a newspaper of general circulation within Walker County. The notice shall be published not less than 15 nor more than 45 days prior to the scheduled public hearing. The notice shall include the time, place, and purpose of the public hearing, the applicant's name, and the proposed location of the outlet.

(d) At the conclusion of the public hearing, the city council shall either approve or deny the application. If the application is denied, the city council shall state in the minutes of the meeting the reasons for the denial of the application.

45. Reserved

46. Considerations and Guidelines for Granting or Denying such License.

(a) **General.** The city council in making its determination on an initial application shall be guided by factors set out in this section and section 51.

(b) **Additional considerations.** The city council in reaching its final determination on an initial application shall also be guided by the following factors as to whether or not to grant such license:

(1) the proximity of other outlets.

(2) The nature of the neighborhood immediately adjacent to the proposed location; that is, whether the neighborhood is predominately residential, industrial, or business.

(3) The proximity of public parks and playgrounds.

(4) Whether the proposed location has adequate off-street parking or other parking available to patrons.

47. Grounds for denial of license.

(a) **Prohibited location.** It shall be unlawful to grant a license for sale of malt beverages or wine within the following areas of the city:

(1) Within 300 feet of any hospital building or rest home building. The word "building" as used herein shall mean a structure used at the time of filing of the application of license for the purposes of a hospital or resthome. The 300 feet shall be measured in a straight line from the closest corner of the outlet to the closest corner of the hospital building or resthome.

(2) Within 300 feet, measured in a straight line, from the nearest property line of any church building to the nearest corner of the building in which the outlet or proposed outlet is to be operated. For the purposes of this ordinance the words "church property line" shall mean the premises upon which the main sanctuary is located. Additionally for the purposes of this ordinance, a church is hereby defined as an organization for the purpose of preaching the gospel and other related religious activities located within a permanent structure either owned or leased by such organization or which is used by such organization with permission of the owner on a regular basis for such purpose.

Such organization must consist of at least 25 adult members on its official rolls that meet on a regularly scheduled basis not less than one time per week with an average

attendance of not less than 25 people or such organization must be duly recognized and affiliated with a parent religious denomination and be either chartered, recognized or approved by the parent religious denomination. Such organization must qualify under the rule of the Internal Revenue Service as an organization to which contributions may be deducted for federal income tax purposes.

(3) Within 300 feet, measured in a straight line, from the nearest property line of any city recreation area to the nearest corner of the building in which the outlet or proposed outlet is to be operated.

(4) Within 300 feet, measured in a straight line, from the nearest property line of any school or school house to the nearest corner of the building in which the outlet or proposed outlet is to be operated.

(5) In any existing building or establishment having a history of or reputation for prostitution or other sex offenses; fighting, shooting, or other violence; gambling; illegal dealing of alcoholic beverages or drugs; or other violations of the law.

(b) **Prohibited outlet building.** It shall be unlawful to grant a license for the sale of malt beverages or wine at retail where the proposed location does not have a front entrance to the premises which is clearly visible from a public street, road or highway.

(c) **Prohibited persons.** It shall be unlawful to grant a license for the sale of malt beverages or wine to:

(1) A person who is not a citizen of the United States.

(2) A corporation which is not duly qualified to do business in the State of Georgia and which is not in good standing with all the rules and regulations of the Georgia Corporation Code and the Georgia Secretary of State, and which does not have a registered agent for service of process within the State; however, the provisions of this subsection shall not apply to an individual or a partnership which has no corporate partners.

(3) A person who is not of good character and reputation in the community in which he resides.

(4) A person who has been convicted of a felony, or a crime opposed to decency and morality, within ten years immediately prior to the filing of the application.

(5) A person who has been convicted or who has entered a plea of nolo contendere for any felony or any misdemeanor involving the illegal possession, transportation or sale of any alcoholic spirits, prohibited liquors, wines, or malt beverages, or taxability thereof within ten years immediately prior to filing the application.

(6) A person who has been convicted or who has entered a plea of nolo contendere for any felony or any misdemeanor involving the illegal possession, transportation, or sale of any drug, narcotic, or controlled substance within ten years immediately prior to the filing of the application.

(7) A person, partnership or corporation whose license under this ordinance has been revoked for cause within five years immediately prior to filing of the application.

(8) A person, partnership or corporation who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

(9) A person who is under the age of 21 years.

(10) A person who is not of sound mind and memory.

(11) An elected official or employee of the city.

(12) Any partnership or corporation where the individual having any interest, either as owner, partner, stockholder, director or officer, or his or her spouse, shall have been convicted of or shall have entered a plea of nolo contendere for any felony, or a crime opposed to decency or morality, or any felony or misdemeanor involving the manufacturing, possession, transportation or sale of beer, alcoholic spirits, wine, or prohibited liquors, or the taxability thereof, or a violation of this ordinance, or shall have been convicted, or shall have entered a plea of nolo contendere for any felony or misdemeanor involving the illegal possession, transportation or sale of any drug, narcotic or controlled substance within ten years immediately prior to the filing of such application.

48. Posting of license.

All licenses required under this ordinance shall be posted in a conspicuous place within the outlet. If the license is not so posted the outlet shall not be authorized to continue business until the license is posted.

49. Renewal of licenses; denial of renewal.

(a) All licenses shall be issued for a period of one calendar year, running from January 1 through December 31.

(b) Each licensee shall make written application for renewal on or before November 1 of each year on forms approved by the city.

(c) Such application shall be referred to the city police chief or such other person as is designated by the city, who shall report to the city council regarding the licensee's activity, if any, and upon activity at the location of the licensed business, if any, during the

year.

(d) The city clerk shall notify the licensee of the date of the public hearing at which time the city council shall make a decision to either approve or deny the renewal application.

(e) In making its decision, the city council shall consider the information provided in Section 49 (c) and the factors set forth in Sections 46 and 47.

50. Annual license fee.

(a) The annual license fee for the privilege of engaging in the business of selling malt beverages at wholesale within the city shall be \$100.00.

(b) The annual license fee for the privilege of engaging in the business of selling wine at wholesale within the city shall be \$250.00.

(c) The annual license fee for the privilege of engaging in the business of selling malt beverages at retail within the city shall be \$250.00.

(d) The annual license fee for the privilege of engaging in the business of selling wine at retail within the city shall be \$250.00.

(e) No license shall be issued for less than the calendar year as herein provided and in the case of revocation or surrender of any license before expiration of such calendar year, the holder thereof shall not be entitled to receive any refund whatsoever.

(f) The aforesaid license fee herein set shall not be prorated for any portion of a year and shall remain the full amount regardless of the time the application is made. With regard only to applications for the year 2000, the City Council may either prorate or waive the applicable fee.

(g) All license fees required under this ordinance shall be paid prior to the issuance of any license.

51 – 52. Reserved.

53 Suspension and revocation of Licenses

(a) Summary action.

(1) If, at any time during the holding of a license granted under this ordinance, it should appear that the licensee has violated the provisions of this ordinance, or the state or federal laws relating to the possession, transportation or sale of any alcoholic spirits, prohibited liquors, wine or malt beverages or taxability thereof or involving the illegal possession, transportation or sale of any drug, narcotic, or controlled

substance, or has become a person prohibited by this ordinance for having a license granted to him or her, as contained in sections 46 and 47, or if it should appear that the application contained false information, or if it appears necessary for the public safety, health and welfare, the chief of police or some other police officer directed by the city may suspend and seize any retail license to sell malt beverages or wine within the city.

(2) If the licensee is dissatisfied with such suspension, such licensee may appeal to the city by filing a written request with the city clerk stating the grounds and reasons.

(3) The city council shall hold a hearing on such suspension within ten days of the filing of such appeal. After such hearing the city may affirm, reverse or modify the action of the suspending officer and may revoke or suspend the license or place the licensee on probation or refuse to renew at the time of renewal.

(b) **Action by the city.** The city shall have full power to revoke, refuse to renew, suspend or place on probation any license to sell malt beverages or wine for violation of this ordinance or violation of any law of the State or any federal law involving possession, transportation, or sale of any alcoholic spirits, prohibited liquors, wine or malt beverages or taxability thereof or involving any illegal possession, transportation or sale of any drug, narcotic, or controlled substance, or if the licensee has become a person prohibited by this ordinance from having a license granted to such person or it, as contained in section 46 and 47, or if it should appear that the application contained false information, or when the city shall determine after ten days' notice and hearing, that the operation of the licensed business is detrimental to the health, safety or welfare of the public. For the purposes of this section it shall be sufficient if notice is mailed giving the time and place of the hearing by United States registered or certified mail at the address of the licensee shown in the application.

54. Other permits and licenses.

In addition to the license required by the city, each licensee must obtain any permit or license required by the state and/or the United States of America. Failure to obtain any such permit or license or the revocation of such permit or license shall be grounds for revocation or suspension of a license granted under this ordinance.

55-59. Reserved.

II c. Taxes

60. Excise Tax

In addition to the annual fee required, there is hereby levied and imposed an excise tax which shall be paid to the city, on all malt beverages and/or wine which are sold within the corporate limits of the city. Such excise tax is to be the maximum amount authorized in

O.C.G.A Section 3-5-80 with regard to malt beverages, and O.C.G.A. Section 3-6-60, with regard to wine. Such excise tax is imposed upon and shall be paid by each wholesale dealer who sells and/or delivers malt beverages and/or wine within the corporate limits of the city.

61. Same- Method of payment.

The excise tax shall be paid by each wholesale dealer on all malt beverages sold and/or delivered within the corporate limits of the city not later than the tenth day of each month, based upon the units of beverage sold during the previous calendar month by such wholesalers to retailers in the city.

62. Same- Records and reports.

The wholesale dealers shall keep true and correct records of all sales and shipments and shall render a sworn statement of the same accompanying the monthly report to the city. Such report shall show the exact quantities of malt beverages by size and type of container and the amount of excise tax collected. Each of the reports required shall be under oath.

63. Same- Right of audit.

The city shall have the right to audit and to require production of records from each wholesaler supplying retailers in the city and also from each retailer so supplied within the city.

64. Failure to make a timely report and pay tax.

The failure to make a timely report and remit the taxes levied herein shall render a wholesale dealer liable for a penalty equal to ten percent of the total amount due in addition to the amount due, and, additionally if the report is not filed or if the taxes are not remitted and paid within 30 days from the date the taxes are due, the city shall have the right to suspend and/or revoke any wholesale license and further to prohibit such wholesaler from making any deliveries of any type whatsoever within the corporate limits of the city.

65. 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 or wine on which the excise tax required in this ordinance has not been paid by the wholesale dealer to the city.

66 - 69. Reserved.

70. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

71. Repeal of laws in conflict.

This ordinance supersedes all ordinances or parts of ordinances adopted prior hereto which are in conflict herewith, to the extent of such conflict.

72. Effective Date.

This ordinance shall take effect immediately upon adoption.

SO ADOPTED this ___day of _____, 2000.

MAYOR & COUNCIL
CITY OF Chickamauga

Mayor