

ORDINANCE NO. 2013-01

AN ORDINANCE REPEALING CHAPTER 3 ALCOHOLIC BEVERAGES OF THE CODE OF ORDINANCES FOR THE CITY OF BOSTON AND ENACTING A NEW ORDINANCE FOR REGULATION OF SAME.

BE IT ORDAINED by the City Council of Boston, Georgia, as follows:

That Chapter 3 (Alcoholic Beverages) of the Code of Ordinances, City of Boston, Georgia, is hereby repealed in its entirety and in lieu thereof, a new Chapter 3 (Alcoholic Beverages) is enacted to read as follows:

Article 1. General

Section 3-1. Definitions

The following words, terms and phrases, when used in this Ordinance, whether capitalized or not, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic Beverage means and includes all beverages containing alcohol including but not limited to distilled spirits, beer, malt beverages, wine or fortified wine.

Brown Bagging means the bringing of alcoholic beverages into business establishments licensed for the retail consumption of alcoholic beverages on the premises.

City means the City of Boston, Georgia.

City Council means the Council of the City of Boston, Georgia.

Container means a receptacle in which food is served.

Distilled Spirits means any alcoholic beverages obtained by distillation or containing more than 21% alcohol by volume, including, but not limited to, all fortified wines.

Fortified Wines means any alcoholic beverage containing more than 21% 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.

Legal Age means the age established by O.C.G.A. § 3-3-23, as amended from time to time, as the age below which alcoholic beverages may not lawfully be sold to, furnished to, purchased by, or possessed by a person.

Improved Outdoor Location means a privately owned area attached or immediately adjacent to the premises of a Retail Consumption Dealer which meets all applicable building code requirements, including seating and tables in adequate and sufficient numbers to accommodate any customers allowed into the Improved Outdoor Location and specifically designated for the consumption of food and alcoholic beverages. The same food menu available inside the premises must be available to and provided to all customers in the designated Improved Outdoor Location.

License means the authorization granted by the City of Boston to engage in the sale of specified alcoholic beverages for a calendar year, or the remaining portion of a calendar year.

Licensee means a person holding a License to sell alcoholic beverages issued by the City pursuant the terms of this Article.

License Year means the 12-month period for and with respect to which Licenses under this article shall be issued. License years shall begin on January 1 of each year and end on December 31.

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

Manager means the individual who supervises the regular operations of a business licensed under this Chapter and who is physically present on site at

such business: (a) at least 35 hours per week, or (b) at least 90% of the hours such business is open to the public, whichever is less.

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

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

Premises means one physically identifiable place of business consisting of one room or two or more contiguous rooms operating under the same trade name, business license, and ownership where alcoholic beverages are sold or otherwise dispensed to the public, such premises to be within the confines of the licensed building structure; provided, however that any outside area which meets the criteria for an *Improved Outdoor Location* may be considered premises for the purpose of serving alcoholic beverages from within the confines of the building structure.

Restaurant means a business kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly prepared and served for a period of at least 5 hours per day on at least 4 days per week with the exception of (i) holidays, (ii) vacations not exceeding 2 weeks duration, and (iii) periods of redecorating not exceeding 30 calendar days duration, except to the extent extended by the City Council in its discretion upon request therefore; and which satisfies all of the following requirements:

1. Meets all health and sanitation requirements for food service establishments required under applicable federal, state, and local laws, codes, ordinances, rules and regulations;
2. Maintains upon the premises thereof, in operative condition, cooking and kitchen facilities and equipment appropriate to accommodate the preparation of meals for at least 35 food service customers at one time;
3. Maintains upon the premises thereof seating facilities, at booths or tables designed for food service, sufficient for at

least 35 food service customers at one time, not including any seating which may be provided by counters and stools, and each booth and table must be large enough to adequately accommodate at least 2 place settings of cutlery and dishes;

4. Maintains at all times any additional facilities, equipment, and items, as well as sufficient employees, as shall be necessary for the cooking, preparation, and service of meals for consumption at tables or booths located upon the premises for at least 35 food service customers at one time;
5. Has a complete place setting of utensils and durable and reusable serving containers in regular use for 45 food customers;
6. Is at all times during the hours of operation thereof prepared to serve full course meals with substantial entrees from a substantial variety of culinary choices, or substantial substitutes thereof, chosen by food service customers from a printed menu available to all food service customers at prices which are competitive with other restaurants in the community whether or not such other restaurants engage in the sale of alcoholic beverages.
7. At all times during the hours of operation, is prepared to serve full-course meals with a substantial variety of culinary choices, or substantial substitutes therefore, which must be prepared on site.
8. Shall print and maintain a complete menu and furnish such printed menu to each customer, with prices which are competitive with other restaurants within the City, whether or not those restaurants engage in the business of serving alcoholic beverages.
9. The gross square footage of the dining area, serving area, kitchen, restrooms, and storage area must be a minimum of 800 square feet.

Retail consumption dealer means any person who sells alcoholic beverages for consumption on the premises at retail only to consumers and not for resale.

Retailer or retail dealer means any person who sells alcoholic beverages to consumers and not for resale.

Retail sale means the sale or offer of sale of any alcoholic beverage to any member of the public.

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

Section 3-2. Sale of Alcoholic Beverages a Privilege.

The sale of alcoholic beverages within the City is declared to be a privilege and not a right. Such privilege shall not be exercised except in accordance with this Ordinance.

No person shall:

(a) Sell, or offer to sell, any alcoholic beverage in the City except to the extent permitted pursuant to a current License issued by the City;

(b) Sell or offer to sell any alcoholic beverage in the City in violation of any provisions of this Ordinance or any provision of any applicable federal or state law regulating the handling, possession, selling or offering to sell any alcoholic beverage in this state; or

(c) Assist another in violating any provision of this article, or any federal or state law regulating the selling or offering to sell any alcoholic beverage in this state.

Section 3-3. Knowledge of Ordinance

The holder of any License as well as all employees, agents and servants of any business in which such License is utilized shall be conclusively presumed, for purposes of this ordinance, to have complete knowledge of all provisions of this ordinance.

Article II. Licenses

Section 3-4. License Required.

The privilege to engage in the sale of Alcoholic Beverages in the City shall only be granted to a Person by issuance of a License as provided for in this Ordinance, and the privilege shall be held and enjoyed by the Licensee only so long as such Licensee shall comply fully with the requirements of this Ordinance and shall promptly pay all charges provided for in this article.

Section 3-5. Activities Allowed.

The holder of a License issued by the City, as well as the employees of such holder, shall be authorized - subject to the provisions of this ordinance, the laws of the State of Georgia and the rules, regulations, and requirements of the Georgia Department of Revenue relative thereto - to engage only in the activities specifically authorized with the classification(s) of License issued to the holder.

Section 3-6. License Classifications.

Licenses authorized to be issued by the City and required pursuant to the provisions of this article to be held for the sale of Alcoholic Beverages are classified as follows:

(a) *Retail Malt Beverage Package License*: Retail sale only of malt beverages in original unbroken and sealed containers to consumers for take-out only and not for consumption upon the licensed premises;

(b) *Retail Wine Package License*: Retail sale only of wine in original unbroken and sealed containers to consumers for take-out only and not for consumption upon the licensed premises;

(c) *Retail Malt Beverage Consumption License*: Retail sale only of malt beverages to consumers for consumption only upon the licensed premises;

(d) *Retail Wine Consumption License*: Retail sale only of wine to consumers for consumption only upon the licensed premises.

(e) *Retail Distilled Spirits Consumption License*: Retail sale only of distilled spirits to consumers for consumption only upon the licensed premises.

Section 3-7. Qualifications for License.

No License for the sale of Alcoholic Beverages shall be issued to any person or for any location unless and until it has been successfully demonstrated to the satisfaction of the City Council that:

(b) Such person is likely to operate the business in which the License will be utilized in conformity with federal, state and local laws, ordinances, rules, regulations, and requirements based upon such person's (1) business experience, (2) financial standing, (3) moral character, (4) mental capacity, (5) physical capacity, (6) trade associations, (7) lack of criminal history, and (8) reputation in the communities in which he has lived. In making such determination, the City Council shall, in addition to the other and further provisions of this section, consider all information that would be considered by the City Council if this person were being denied a renewal License pursuant to the requirements of this Ordinance or, if this person were having his License suspended or revoked pursuant to this Ordinance. Also, no License shall be issued to:

1. Any person or for any location if the location where the License shall be used is to be managed by a manager or agent, unless such manager or agent possesses and meets all of the qualifications required for the holder of a License;
2. A partnership, unless all partners, members and managers of such partnership, as well as the manager of the business location in which

- the License will be utilized, meet all of the qualifications for the holder of a License;
3. A corporation, unless all officers thereof, all directors thereof and all shareholders thereof who shall either directly or beneficially, as such word is defined and utilized in the Internal Revenue Code of the United States and regulations issued pursuant thereto, own more than 20% of the outstanding shares of stock thereof, as well as the manager of the business in which the License will be utilized, possess and meet all of the qualifications for the holder of a License;
 4. Any person who has been convicted of, has entered a plea of nolo contendere to, or has forfeited a bond with respect to any felony within 10 years prior to the filing of an application for a License;
 5. Any person who has been convicted of, has entered a plea of nolo contendere to, or has forfeited a bond with respect to any misdemeanor within 5 years prior to the filing of an application for a License, including particularly, but not being limited to, those offenses involving force or violence, prostitution, gambling, tax law, or alcohol-related violations, in the event that such conviction, plea or bond forfeiture tends to indicate, in the opinion of the City Council, that the applicant may not maintain or operate the business in which the License sought by the applicant would be utilized in conformity with federal, state or local laws, rules and regulations. The terms "felony" and "misdemeanor" as used in this subsection shall include the violation of any criminal law of the United States of America, the State of Georgia, or any other state of the United States of America; provided that the term "misdemeanor" shall not include those violations which are commonly referred to as "traffic violations". The term "conviction" as used in subsections 4. and 5. shall include an adjudication of guilt, plea of guilty, a plea of nolo contendere or the forfeiture of a bond by a person charged with a crime. Notwithstanding the foregoing, the City Council, in its sole discretion, may decide to authorize the issuance of a License to a person who has in the past been convicted of, plead guilty to, entered a plea of nolo contendere to, or forfeited a bond on any crime when, after a thorough investigation of all the facts including parole or probation officer's reports, judge's recommendations, and any other evidence bearing on the character of the applicant, it has determined, in the

- sole discretion of the City Council, that issuance of a License is in keeping with the ends of justice and the public interest and welfare;
6. Any person who, as the previous holder of any License issued by any authority or as a party interested in any business in which any License issued by any authority was utilized, conducted the business in such a manner as to cause, in the opinion of the City Council, greater than normal police action in order to prevent the violation of any law or regulation or to maintain public order;
 7. Any location that does not satisfy the conditions of Section 3-9;
 8. Any location for which there is an unpaid or unsatisfied tax obligation or other financial obligation due the City which is not then the subject of appeal or litigation;
 9. Any person who has not attained the age of 21 years;
 10. Any person who either held any License issued by any authority which was revoked by such authority within the one-year period immediately prior to the date of the filing of an application with the City of Boston or was a party interested in any business in which a License issued by any authority was revoked within the one-year period prior to the date of the filing of an application with the City of Boston;
 11. Any location at which a License has previously been suspended or revoked by either the City or the Georgia Department of Revenue and where, in the opinion of the City Council, there exists the likelihood that the utilization of such License at such location would cause or necessitate greater than normal police activity, observation or inspection in order to prevent violation of laws and regulations relating to such location or to maintain public order, due to the history of either (i) violations of the provisions of this chapter or of the laws, rules and regulations of the state relative to alcoholic beverages by the holder of the previous License at such location or agents, servants or employees thereof or (ii) activities or conduct of patrons of the business in which such previous License was utilized at such location, all as compared to the locations of other licensed premises, or would cause or tend to cause, in the opinion of the City Council, greater than normal community problems or conflict as compared to the locations of other licensed premises; and
 12. Any location at which a License has previously been suspended or revoked by either the City or the Georgia Department of Revenue and

where, in the opinion of the City Council, problems associated with the utilization of a prior License at such location were such that it would not be in the best interest of the public health, safety or welfare to grant any other License for such location.

Section 3-8. Additional Qualifications for Consumption Licenses .

In addition to the requirements set forth above, Consumption Licenses shall be issued only for Restaurant locations, and the Restaurant in which alcoholic beverages are served for consumption on the Premises must comply with the following:

Alcoholic beverages shall be served only during the hours in which printed menu items, or substantial substitutes therefore, are available to the Restaurant's customers, but in no event shall alcoholic beverages be sold at any time contrary to the hours established for the sale of alcoholic beverages by the City of Boston as set forth in Section 3-27 hereof.

Section 3-9. Location and Distance Requirements.

(a) Package Licenses.

1. Retail Malt Beverage or Wine Package Licenses shall not be issued for locations in areas classified at the time of the issuance by the City of Boston Zoning Ordinance as R-1, R-2, or M.
2. No Retail Package License shall be issued for a Premises unless it is in accordance with the distance provisions contained in O.C.G.A §3-3-21.

(b) Consumption Licenses.

1. Consumption Licenses shall not be issued for locations in areas classified at the time of issuance by the City of Boston Zoning Ordinance as R-1, R-2, or M.
2. No consumption License shall be issued for any Premises located within 100 yards of any housing authority property.

Section 3-10. Application and Application Fee.

- (a) Necessity. Prior to the issuance of any License, a person seeking a License shall file a written application with the City, in such form and substance as shall from time to time be determined by the City Council.
- (b) Fee. The application for a License shall be accompanied by a check payable to the City or cash in an amount of \$100.00 to cover the cost of processing the application and conducting necessary investigations. Such fee shall be nonrefundable upon denial of the application and shall not apply toward any license fee or excise tax payable by the Licensee if the application is approved.
- (c) Contents. Applications for Licenses submitted to the City shall be signed by the applicant if an individual, or by all partners if a partnership, or by a duly authorized agent if a corporation; shall be verified by oath or affidavit; shall contain the following statements and information; and shall otherwise meet the following requirements:
 - 1. The classification of License or Licenses applied for;
 - 2. The location where the License will be utilized and its current zoning classification;
 - 3. The name and nature of the business in which the License will be utilized, all in sufficient detail to evaluate such application;
 - 4. A scaled drawing of the building or proposed building as situated on the proposed lot showing all interior walls, doors, and passageways;
 - 5. The proposed parking facilities available to the Premises;
 - 6. A list of all religious institutions, housing authority

property, and residences within 500 feet of the location in which the License will be utilized, setting forth the distance of each property listed from the location in which the License will be utilized;

7. In the case of an individual applicant who will actually and actively be in charge of and manage the day to day operation of the business in which the License applied for will be utilized, then the

- i-name,
 - ii-age,
 - iii-sex,
 - iv-height,
 - v-weight,
 - vi-date of birth,
 - vii-social security number,
 - viii-current residence address, business addresses, and all previous such addresses of the applicant within the last 10 years;

8. In the case of an individual applicant who will not actually and actively be in charge of and manage the day to day operation of the business in which the License applied for will be utilized, then the

- i-name,
 - ii-age,
 - iii-sex,
 - iv-height,
 - v-weight,
 - vi-date of birth,
 - vii-social security number,
 - viii-current residence address, business addresses, and all previous such addresses of the applicant within the last 10 years of both the applicant and the person or persons who will actively manage such business;

9. In the case of a partnership or limited liability company, then the

i-name of the partnership or company,
ii-date and location of formation,
iii-federal tax identification number,
iv-current principal business address, and
v-all prior business addresses within the 10 years of such partnership or company,

As well as the

i-name,
ii-age,
iii-sex,
iv-height,
v-weight,
vi-date of birth,
vii-social security number,
viii-current residence address, business addresses, and all previous such addresses of the applicant within the last 10 years of all partners, members, and managers of such partnership or company and the manager or managers of the day to day operations of the business in which the License applied for will be utilized;

10. In the case of a corporation, then the
i-name of the corporation,
ii-date and location of incorporation,
iii-federal tax identification number,
iv-current principal business address,
v-name and address of registered agent for service of process, and
vi-all prior business addresses within the last 10 years of such corporation,

As well as the

i-name,
ii-age,

iii-sex,
iv-height,
v-weight,
vi-date of birth,
vii-social security number,
viii-current residence address, business addresses, and all previous such addresses of the applicant within the last 10 years of all officers thereof, all directors thereof, and all shareholders thereof who own either directly or beneficially, as such word is defined and utilized in the Internal Revenue Code of the United States and regulations issued pursuant thereto, more than 20% of the outstanding shares of stock thereof, and of the manager or managers of the day to day operations of the business in which the License applied for will be utilized;

11. A statement with respect to whether the applicant or any person with respect to whom information is required under subsection 7, 8, 9, or 10 of this section has made, at any prior time, any application to any governmental entity for any alcoholic beverage License, and, if so, the circumstances thereof, including the disposition and current status thereof, all in sufficient detail to evaluate such application;
12. A statement with respect to whether the applicant or any person with respect to whom information is required under 7, 8, 9, or 10 of this section has ever held any alcoholic beverage License issued by any governmental entity, the circumstances thereof, and the present status of such license all in sufficient detail to evaluate such application;
13. A statement with respect to whether the applicant or any person with respect to whom information is required under subsection 7, 8, 9, or 10 of this section has ever held any alcoholic beverage License issued by any governmental entity which has been suspended or revoked and, if so, the circumstances thereof, all in sufficient detail to evaluate such application;

14. A statement with respect to whether the applicant or any person with respect to whom information is required under subsection 7, 8, 9, or 10 of this section has ever been convicted of, entered a plea or nolo contendere to, or forfeited a bond on, any crime other than traffic violations and, if so, the nature and circumstances thereof, all in sufficient detail to evaluate such application;
15. A statement that both the applicant and all other persons with respect to whom information is required under subsection 7, 8, 9, or 10 of this section are fully qualified in all respects under this chapter to be the holder of a License issued by the City and that all such persons are entitled to have the License requested issued in accordance with the provisions of this chapter;
16. A head and shoulder photograph, such as is contained on a state driver's license, taken within the past 2 years of the applicant and all persons with respect to whom information is required under subsection 7, 8, 9, or 10 of this section;
17. Written consents of the applicant and all persons with respect to whom information is required under subsection 7, 8, 9, or 10 of this section that the City has continuing permission and authority of all such persons to monitor the public records of the City, County, State, and United States to ensure on-going compliance with the statements set forth in subsections 14 and 15 of this section;

Section 3-11. Designation of Agent.

All applicants for Licenses shall name in the application one person who resides in Thomas County, Georgia, as the agent and representative to receive all communications, notices, service of process, or other papers or documents in connection with any matter arising out of or connected with the issuance, holding, suspension, revocation or other action with respect to any such License. The applicant shall provide the physical and mailing address of such

agent, and the mailing of any notice to such agent via registered or certified U.S. Mail at the address furnished will be sufficient notice. If any such person shall cease to be the agent and representative of the Licensee, another person shall immediately be appointed by the Licensee, and written notice shall be given the City stating the name and physical and mailing addresses of such new agent.

Section 3-12. Investigation of Application.

Upon receipt by the City Clerk of a completed application for a License, such application shall be forwarded to the Chief of Police for investigation, who, following such investigation, shall report his findings in writing to the City Clerk within 14 days with respect thereto of every person named in the application.

Section 3-13. Advertisement of Notice of Application; Signage.

(a) Advertisement. All applicants for original Licenses must give notice that an application has been filed by publication of an advertisement once a week for 2 consecutive weeks in the newspaper published in the county in which legal advertisements are published. The first publication of such advertisement shall occur within 10 days of the applicant's submission of application for a License. The notice shall contain the location of the proposed business, the name of the applicant, the name of the agent appointed by the applicant pursuant to Section 3-11; and the date on which the applicant submitted the application for a License. The advertisement also shall contain a statement that any objections to the issuance of the License applied for must be in writing and must be received by the City Clerk within 30 days of the date on which the application was filed. The applicant shall bear the cost of publication, and it shall be the responsibility of the applicant for an original license to advertise the notice required as follows and to provide tear sheets to the City Clerk as proof that the advertisements were published as required:

" AN APPLICATION FOR AN ALCOHOLIC BEVERAGE LICENSE WAS FILED ON _____(date) WITH THE CITY OF BOSTON, GEORGIA, BY THE FOLOWING PARTY AT THE FOLLOWING LOCATION, TO WIT:

APPLICANT: _____

AGENT: _____

LOCATION: _____

A DECISION ON WHETHER TO GRANT OR DENY THE ALCOHOLIC BEVERAGE LICENSE WILL BE MADE BY THE CITY COUNCIL OF THE CITY OF BOSTON. MEMBERS OF THE PUBLIC ARE INVITED TO NOTE ANY OBJECTIONS THAT THEY MAY HAVE TO THE GRANTING OF THE LICENSE BY FILING WRITTEN OBJECTIONS WITH THE CLERK OF THE CITY OF BOSTON WITHIN 30 DAYS OF THE DATE ON WHICH THE APPLICATION FOR A LICENSE WAS FILED.”

(b) Signage. The applicant shall cause to be placed upon the location of the for which a License was applied a sign or signs stating the following:

“AN APPLICATION WAS FILED WITH THE CITY CLERK ON _____ (date) FOR AN ALCOHOLIC BEVEARGE LICENCE FOR THIS LOCATION. A DECISION ON WHETHER TO GRANT OR DENY THE ALCOHOLIC BEVERAGE LICENSE WILL BE MADE BY THE CITY COUNCIL OF THE CITY OF BOSTON. MEMBERS OF THE PUBLIC ARE INVITED TO NOTE ANY OBJECTIONS THAT THEY MAY HAVE TO THE GRANTING OF THE LICENSE BY FILING WRITTEN OBJECTIONS WITH THE CLERK OF THE CITY OF BOSTON WITHIN 30 DAYS OF THE DATE ON WHICH THE APPLICATION FOR A LICENSE WAS FILED.”

(c) The sign or signs required by paragraph (b) shall be not less than 24 inches by 36 inches and shall face toward all public streets, alleys, sidewalks, or other public property adjoining the proposed location, so as to be clearly visible by persons using these public areas. The sign or signs shall be weather resistant and shall posted on the property for a period of at least 2 weeks beginning on the date of the first publication of the legal advertisement required under paragraph (a) above.

Section 3-14. Grant or Denial of Application; Right to Hearing.

(a) Following receipt by the City Council of an application for a License together with the written report of the Chief of Police and the written recommendations relative thereto, the City Council shall either grant such application and direct issuance of a License in connection therewith subject to compliance with the provisions of this ordinance or;

(b) Direct written notice to be forwarded to the applicant by certified mail, informing the applicant of why his application was not immediately approved

and advising him of his right to have a hearing before the City Council to show cause why the application should be approved. If the applicant desires a hearing, he shall submit a written request for same which must be received by the Office of the City Clerk, P.O. Box 370, 109 North Main Street, Boston, Georgia, 31626, within 10 days of the notice. The hearing shall take place at a time and place specified therein which shall not be less than 5 days nor more than 30 days from the date of applicant's service of the notice upon the City Clerk. At the hearing, the applicant shall be given the opportunity to present evidence, to present witnesses, to cross examine witnesses presenting evidence against granting approval of the application, to be represented by an attorney, and to have the proceedings transcribed or recorded at the applicant's expense, all in accordance with such rules and procedures as may be adopted from time to time.

(c) Following the conclusion of such hearing, or within 10 days of the conclusion of the hearing, the City Council shall render its decision regarding the grant or denial of the application.

(d) If the applicant does not invoke a hearing in the timeframe provided by this section, the City Council shall make its decision without the necessity of a hearing and forward written notice via certified mail to the applicant.

Section 3-15. Issuance of License.

- (a) Upon the approval of an application for a License, the City Council shall cause to be issued to the applicant the License applied for with respect to the location listed in the application upon payment of all fees and charges required therefore and subject to the conditions and limitations imposed in this chapter relative thereto.
- (b) All holders of licenses under this Chapter must open for business within 3 months after issuance of the licenses at the establishment referred to in the license. Failure to open the licensed establishment within such time frame shall automatically forfeit and cancel the unused license, and no refund of license fees shall be made to the license holder.

- (c) Any holder of a license under this Chapter who shall begin the operation of the business as authorized in the license, but who shall cease to operate the business as authorized in the license for a period of three consecutive months shall, upon completion of the three-month period, automatically forfeit his license. Such license shall, by virtue of such failure to operate, be cancelled by the City Council.

Section 3-16. Conditions and Limitation of License.

The grant and issuance of a License to an applicant shall be conditioned upon:

- (a) Payment of all fees, charges and taxes applicable thereto;
- (b) Obtaining and maintaining a license issued by the Georgia Department of Revenue to the applicant for the location listed in the application for the same type activity which is authorized in the License issued by the City;
- (c) Obtaining and maintaining an Occupational Tax Certificate issued by the City with respect to the business in which such License is to be utilized;
- (d) All statements, representations and information contained in the application for such License and all renewal and amended applications relative thereto continuing to remain materially unchanged except to the extent said changes are approved in accordance with the provisions of this Ordinance; and
- (e) Compliance with all requirements and provisions of this Ordinance and all laws, rules, and regulations of the State of Georgia relative to the sale of alcoholic beverages.
- (f) Allowing unrestricted access to the Boston Police Department for inspection of the licensed Premises to insure compliance with this Ordinance.

Section 3-17. License Fees.

- (a) In addition to all other charges, taxes, and fees relative thereto, the following annual License fees shall be paid prior to the issuance of or renewal of any License:

1. Retail Package License Fees:

Malt Beverages: \$ 500
Wine: \$ 500

2. Consumption License Fees:

Malt Beverages: \$ 400
Wine: \$ 350
Distilled Spirits: \$1,800

- (b) Any License issued at any time during a calendar year but before March 1 shall require payment in full for an annual License. Licenses issued after March 1 shall be prorated accordingly.
- (c) All license fees payable under this section shall be paid either in cash or by a cashier's check payable to the City.

Section 3-18. Duration & Expiration of License.

No License shall be issued for a period of time less than the remainder of such calendar year. In the event of revocation, suspension, termination, lapse or surrender of a License before the expiration of a calendar year, there shall not be any refund therefore. All Licenses shall expire at midnight on December 31 of the year in which issued, with all applications for a renewal of the License for the ensuing year to be treated as applications for new Licenses except to the extent otherwise provided in this chapter.

Section 3-19. Renewal

Any Licensee who desires to renew such License shall annually file with the City Clerk an application for renewal (in such form and content as shall be determined from time to time by the City Council) on or before 12:00 noon on November 1 of the year preceding the year for which the application for renewal is made. Such application for renewal shall be accompanied by the applicable annual license fee for the ensuing year and a statement under oath that the licensee is still entitled to possess said License under this article. Failure of any Licensee to file such application for renewal by such time and to pay together therewith the required applicable annual license fee for the

ensuing year shall render the License void, lapsed, and non-renewed effective as of the last minute of December 31 of that year; provided however, that for providential cause shown to the satisfaction of the City Council, the City Council may, in its sole discretion, extend the time for filing of such application for renewal and payment of such license fee for a period of time not later than January 31 of such ensuing year. If the Licensee fails to renew his License in accordance with this section, he shall immediately cease and desist any and all activity granted by said License, including but not limited to the sale and/or dispensing of alcoholic beverages.

Section 3-20. Operation Pending Renewal.

Upon the timely filing of an application for renewal of any License and the payment of the required license fee therefore pursuant to the provisions of Section 3-17, a Licensee shall be entitled to continue to engage in the activity authorized pursuant to the License issued for the previous year, subject to the provisions of this article, pending action on the application for renewal of such License.

Section 3-21. Grant or Denial of Renewal.

- (a) On or before December 31, the City Council shall grant a timely filed application for License renewal; or
- (b) Direct written notice to be forwarded to the applicant by certified mail or personal service informing him that his License has not been renewed, why it has not been renewed as of yet and advising him of his right to have a hearing before the City Council to show cause why the application for renewal should be approved. If the applicant desires a hearing, he shall submit a written request for same which must be received by the Office of the City Clerk, 109 N. Main Street, P.O. Box 370, Boston, Georgia within 10 days of the notice. At said hearing, which shall take place at a time and place specified therein which shall not be less than 5 days nor more than 30 days from the date of applicant's service of the notice upon the City Clerk, the applicant shall be given the opportunity to present evidence, to present witnesses, to cross examine witnesses presenting evidence against renewing the applicant's License, to be represented by an attorney, and to have the proceedings transcribed or recorded at the

- applicant's expense, all in accordance with such rules and procedures as may be adopted from time to time.
- (c) Following the conclusion of such hearing, or within 10 days of same, the City Council shall, render his decision regarding the approval or denial of said application for renewal.
 - (d) If the applicant does not invoke a hearing in the timeframe provided by this section, the City Council shall make his decision without the necessity of a hearing and forward written notice via certified mail to the applicant.

Section 3-22. Grounds for Denial of Application for Renewal.

The City Council shall be entitled to deny renewal of any License for any of the following reasons:

- (a) Any violation by the Licensee, by any other person required under this chapter to meet the qualifications required for the issuance of said License, or by any employee, agent, or servant of the Licensee or the business in which such License is utilized, of any of the following:
 - 1. Any federal or state law, rule or regulation relative to the manufacture, sale, distribution or possession of alcoholic beverages;
 - 2. Any provision, condition, requirement, or limitation contained in this article;
 - 3. Any other ordinance of the City; or
 - 4. Any ordinance, rule, regulation or law of any governmental entity otherwise regulating the business in which such License is utilized;
 - 5. Any criminal law which is classified as a felony; or
 - 6. Any criminal law involving moral turpitude.
- (b) The initial application for issuance of such License, any application for renewal thereof, or any amended application relative thereto contained, as of the time made, material false or misleading statements or information or was otherwise misrepresentative or misleading;

- (c) Failure of the applicant for renewal, or any other person required under this chapter in connection with such License to meet the qualifications required for the issuance of such License, to meet, as of the time of the application for renewal, the requirements established in this chapter for the initial issuance of such License;
- (d) Suspension or revocation by the Georgia Department of Revenue of any License issued for the location of the business in which License issued by the City is utilized;
- (e) Failure of the Licensee or any employee or agent of the business in which such License is utilized to promptly report to the police department of the City any of the following which occurred on the licensed premises:
 - 1. Any violation of this article;
 - 2. Any other violation of law;
 - 3. Any violation of any other City ordinance; or Any breach of the peace, disturbance or altercation.
- (f) Repeated failure of the Licensee or the employees, agents, or servants of the business in which such License is utilized to promptly control and prevent upon the premises of such business any of the following activities or conduct:
 - 1. Fighting;
 - 2. Disorderly conduct;
 - 3. Utilization of controlled substances;
 - 4. Gambling;
 - 5. Indecent conduct;
 - 6. Excessive noise;
 - 7. Documented negative impact to adjacent private property owners (such as litter, parking, noise, property damage, etc.);
 - 8. Adequate on-premise parking based on actual attendance at business;
- (g) Failure of the Licensee or any other person required under this chapter in connection with such License to meet the qualifications required for the

issuance of such License to promptly pay and satisfy all taxes and other financial obligations due the City which are not the subject of appeal or litigation.

(h) Failure to allow unrestricted access to the Boston Police Department for inspection of the Premises.

Section 3-23. Transfer of Licenses.

(a) All Licenses issued by the City shall be personal to the Person to whom issued and are applicable only to the Premises for which application therefore is made, and, accordingly, no License shall be transferable to any other Person or entity or to any other Premises.

(b) Notwithstanding the provisions of subsection (a) of this section, in the event of the death of any Licensee, or any Person holding interest in a License, then upon application and approval by the City Council subject to the terms of this section, a License may be utilized by the administrator, executor or personal representative of such deceased person, or by the heirs at law of the deceased person, in the event that such administrator, executor, personal representative or heirs meet all of the qualifications contained in this chapter for the issuance of such License, with the License of such deceased person to be so utilized by the administrator, executor, personal representative, or heirs of such deceased person only for the time necessary to complete the administration of the estate of such deceased person, but in no event longer than 6 months from the date of the death of such deceased person, with such

License to lapse upon the earlier of the end of such six-month period, or completion of such administration.

(c) Notwithstanding the provisions of subsection (a) of this section, in the event that the Licensee certifies under oath in writing to the City Council that the business served by such License is relocating to another physical location within the City, the City Council may, upon payment to the City of an application amendment fee of \$100.00, provide for an amended License specific to the new location if such new location meets all of the requirements of this article. In no event shall any Licensee operate under a License at more than one location within the City at any time.

(d) Notwithstanding any other provision of this article, any change in the ownership interests of a partnership or corporation which holds a License, as reflected in the initial application for such License, shall cause the immediate cessation of sales or disbursement of any Alcoholic Beverages. No sales or disbursement of alcoholic beverages shall be made until such change in the ownership interests is approved by the City Council based upon the qualification of all persons then interested therein in accordance with the provisions hereof or until the issuance of another License to such corporation or partnership upon a new application therefore; provided, however, that this provision shall not apply in a situation in which one or more individuals who have existing interest in the entity which holds the License cease to have such interest and the remaining ownership interest in such entity remains unchanged except as to the division of the remaining interests therein.

Section 3-24. Suspension or Revocation of License; Hearing.

(a) Upon a preliminary determination by the City Council that a ground or grounds may exist for the suspension or revocation of a License pursuant to the provisions of this article, then the City Council shall either (1) temporarily suspend the License; or (2) advise the Licensee that, although the License is still in effect, suspension or revocation is being considered.

(b) The preliminary decision by the City Council as set forth in the preceding paragraph shall be reduced to writing and a notice shall be issued to the Licensee informing him of the grounds and advising him of his right to a hearing to show cause why the License should not be suspended, revoked or reinstated. If the applicant desires a hearing, he shall submit a written request for same which must be received by the Office of the City Clerk, 109 N. Main Street, P.O. Box 370, Boston, Georgia 31626 within 10 days of the notice. If the applicant does not invoke a hearing in the timeframe provided by this subsection, the City Council shall make his decision without the necessity of a hearing and forward written notice to the applicant.

(c) The date, time and location of the hearing shall be forwarded to the Licensee and shall not be less than 5 days nor more than 30 days from the date of service of the notice. At said hearing, the Licensee shall be given the opportunity to present evidence, to present witnesses, to cross examine

adverse witnesses, to be represented by an attorney, and to have the proceedings transcribed or recorded at the applicant's expense, all in accordance with such rules and procedures as may be adopted from time to time. Continuances may be granted for good cause shown but in no event longer than 30 days from the original hearing date.

(d) Following the conclusion of such hearing, or within 10 days of same, the City Council shall render its decision regarding whether the License should be suspended or revoked. If suspended, then the duration of such suspension shall not exceed 90 days and the amount of License reinstatement fee, if any, shall not exceed \$500.00, as the City Council shall determine in its sole discretion to be appropriate under the circumstances. Such License reinstatement fee shall be paid as a condition to reinstatement of the License following suspension.

(e) Upon the suspension or revocation of such License, the City Council shall cause the Licensee to be notified in writing within 10 days of such decision of the nature of such decision and the grounds therefore. The License shall immediately become suspended or terminated in accordance with such decision, and the Licensee shall immediately upon receipt of such notice cease and desist from all activity authorized under such License in accordance with such decision and physically surrender such License to the City Council.

(f) If the City Council determines that grounds do not exist to suspend or revoke a License or decides to not suspend or revoke such License notwithstanding the existence of grounds therefore, then the City Council shall notify the Licensee in writing within 10 days of such decision.

Section 3-25. Grounds for Suspension or Revocation.

The City Council shall be entitled, in its sole discretion, to either suspend or revoke any License upon a finding by the City Council, of any of the following:

(a) Any violation by the Licensee, by any other person required under this chapter to meet the qualifications required for the issuance of said License, or by any employee, agent, or servant of the Licensee or the business in which such License is utilized, of any of the following:

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

(b) That the initial application for issuance of a License, any application for renewal thereof, or any amended application relative thereto contained, as of the time made, material false or misleading statements or information or was otherwise misrepresentative or misleading;

(c) Failure of the Licensee or any other person required under this chapter to meet the qualifications required for the issuance of said License, to meet, as of the time of the notice of hearing relative thereto, the requirements established in this chapter for the initial issuance of such License;

(d) Suspension or revocation by the Georgia Department of Revenue of any License issued for the location of the business in which License issued by the City is utilized;

(e) Failure of the Licensee or any employee or agent of the business in which said License is utilized to promptly report to the Boston Police Department:

1. Any violation of this chapter;
2. Any other violation of law;
3. Any other violation of any other City ordinance; or
4. Any breach of the peace, disturbance or altercation which occurs

within or upon the premises of the business in which such License is utilized;

(f) Repeated failure of the Licensee or the employees, agent and servants of the business in which said License is utilized to promptly control and prevent within or upon the premises of such business any of the following activities or conduct:

1. Fighting;
2. Disorderly conduct;
3. Utilization of controlled substances;
4. Gambling;
5. Indecent conduct; or
6. Excessive noise.

(g) Failure of the Licensee or any other person required under this chapter to meet the qualifications required for the issuance of said License to promptly pay and satisfy all taxes and other financial obligations due the City which are not the subject of appeal or litigation.

(h) Failure to allow unrestricted access to the Boston Police Department for inspection.

Section 3-26. Termination.

All rights and privileges conveyed by a License issued by the City shall terminate upon the first to occur of the following:

- (a) Death of the Licensee, except to the extent on any right to continue to utilize such License as provided in Section 3-23
- (b) Dissolution of a corporation or partnership that is a holder of such License;
- (c) The filing of any voluntary bankruptcy proceedings under the bankruptcy code by the Licensee or the failure of the Licensee to, within 60 days of the date of filing thereof, obtain dismissal of the involuntary proceeding filed under the bankruptcy code against the Licensee;

- (d) Lapse of such License pursuant to the provisions of this article;
- (e) Denial by the City Council of an application for renewal of such License;
- (f) Revocation thereof by the City Council;
- (g) Surrender of License;
- (h) Automatically without any action on the part of the City upon revocation by the Georgia Department of Revenue of any alcoholic beverage license issued by the Georgia Department of Revenue to the Licensee in issue with respect to such location; or
- (i) The Licensee ceases to be engaged in the sale of alcoholic beverages permitted by such License.

Article III. Operations

Section 3-27. Hours of Operation.

- (a) Retail Consumption Dealers may sell alcoholic beverages only during the following time periods:

Monday – Saturday: 11:00 am until 11:00 pm

Consumption of alcoholic beverages poured prior to 11:00 pm may continue until midnight, at which time all persons other than employees must completely vacate and clear the premises. The premises must be completely vacated and cleared of all persons no later than 1:00 am.

- (b) Retail Package Dealers may sell alcoholic beverages only during the following time periods:

Monday – Saturday: 7:00 am until 11:00 pm

Section 3-28. Signage Restricted.

Not more than 1 sign advertising or announcing the sale of alcoholic beverages may be affixed to the exterior of the premises where alcoholic beverages are sold for consumption on the premises, and not more than 2 signs advertising or announcing the sale of alcoholic beverages shall be affixed

to or displayed within the premises. No sign may be erected unless it has been submitted to and approved by the City Council. NO sign shall be approved unless it meets the following minimum criteria:

1. No sign shall be larger than 2 feet by 3 feet.
2. All signs must comply with zoning ordinance regulations.

Section 3-29. Brownbagging.

(a) No person shall be permitted to carry or otherwise take an alcoholic beverage of any kind into a business or establishment licensed under this ordinance to sell or dispense beer, wine, liquor, or other spirited beverages by the drink nor shall any business licensee of the City allow patrons to carry or otherwise take beer, liquor, or spirited beverages of any kind into a business in the City.

Article IV. Minimum Age

Section 3-30. Consumption by Persons Not of Legal Age.

No person, who is the holder of any alcoholic beverage license issued by the City nor any agent, servant or employee of the business in which any such license is utilized, shall in connection with the operation of the business in which such license is utilized, permit or allow any person who has not attained Legal Age to consume any alcoholic beverage upon the licensed premises.

Section 3-31. Possession by Persons Not of Legal Age.

No person, who is the holder of any alcoholic beverage license issued by the City nor any agent, servant, or employee of any business in which any such license is utilized, shall in connection with the operations of the business in which such license is utilized, permit or allow any person who has not attained Legal Age to possess any alcoholic beverage upon the premises licensed. Notwithstanding the above, employees of alcoholic beverage license holders who have not obtained the Legal Age may engage in such activities described in O.C.G.A. 3-3-23(e) or O.C.G.A. 3-3-24(b) without violating this

section.

Article V . Employment.

Section 3-32. Employment of Persons by Retail and Retail Consumption Licensees.

(a) No holder of a License nor any agent, servant or employee of any business in which such License is utilized shall permit or allow any person who has not attained 18 years of age and who is employed by any business operated upon premises for which a License is issued by the City to engage in the sale, distribution, or acceptance of orders for alcoholic beverages.

(b) It shall be unlawful for any person licensed for the retail sale of beer or liquor in the City to employ any person upon the premises where beer is sold at retail or is consumed any part of whose wages or compensation is computed on the basis of a percentage of moneys deposited upon such premises and music playing machines, pinball machines or other coin-operated devices.

(c) It shall be unlawful for any such Licensee to employ any person upon such premises whose duties are to encourage or induce customers to operate coin machines upon the premises.

(d) It shall be unlawful for any such Licensee to employ any person who has been convicted of a felony within the previous 5 years, unless approval is granted in written form by an appropriate judicial officer or as approved terms of any probation requirements.

Article VI. Taxes.

Section 3-33. Imposition, Rate, Remittance of Tax on Distilled Spirits Sold for Consumption on Premises.

There is hereby levied and imposed, in addition to all other excise taxes now imposed by law, a tax on the retail purchase of distilled spirits by the drink for consumption on the Premises, including fortified wine, but excluding the sales of fermented beverages made whole or in part from malt, or any similar

fermented beverage, to be collected at the rate and in the manner set forth in this article.

- (1) Every purchaser of distilled spirits by the drink at retail in the city shall pay a tax thereon at the rate of 3 percent of the sale price or charge for such beverages. Such tax shall be paid by the purchaser to the Licensee making such sales, and such Licensee shall remit such tax to the City Clerk on or before the 10th day of the succeeding month, to be delinquent if remitted thereafter, with a summary of the Licensee's gross sales derived from the sale of distilled spirits by the drink and the amount of taxes collected by Licensee from Licensee's purchasers, on such form as may be required by the City Clerk.
- (2) Gross sales shall include all credit sales to the extent permitted by the laws of the state and shall be reported and the taxes collected thereon remitted to the city clerk to the same extent as required of cash sales. The fact that the licensee may receive payment from such credit sale or sales in a later reporting period shall not relieve or excuse the licensee's responsibility for collecting and remitting the taxes as provided in this division.
- (2) The tax so levied is and shall be in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

Section. 3-34. Persons liable for tax.

(a) The taxes imposed by this division are upon the purchaser and shall be collected by the Licensee from the purchaser. Therefore, the Licensee shall collect the tax imposed by this division from the purchaser and shall pay such taxes over to the city as provided in this division.

(b) The Licensee shall, as far as practicable, add the amount of the tax imposed to the sales price or charge, which shall be a debt from the purchaser to the Licensee, until paid, and shall be recoverable at law in the same manner as other debts. Any Licensee who shall neglect, fail, or refuse to collect the tax upon any, every and all retail sales made by him, or his agents, or employees,

of alcoholic beverages, as defined in this division, which are subject to the tax imposed by this division, shall be liable for and pay the tax himself.

(c) A licensee shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the purchaser of the payment of all or any of the tax.

(d) If any licensee liable for any tax levied shall sell out his business or stock of goods, or shall quit the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business.

Section 3-35. Deduction from payment of tax due.

In reporting and paying the amount of tax due under this division, each licensee shall be allowed a deduction equal to that rate authorized for deductions from state tax under O.C.G.A., Title 48, chapter 8; provided that the tax due is not delinquent at time of payment.

Section 3-36. Failure to pay tax.

(a) The tax imposed by this division shall for each month become delinquent on the 11th day of each succeeding month. The City Clerk is empowered and it shall be her duty when any tax becomes delinquent under this division to pursue any remedy or right allowed by law for the enforcement of the collection and payment of taxes lawfully levied by the city as may be allowed under the laws of the state and this Code.

(b) Any default or delinquency of the tax levied by this division shall constitute cause for suspension or revocation of alcoholic beverage licenses.

(c) No license shall be issued by the governing authority to any applicant who at the time of application is in default or is delinquent in any amount as to any tax imposed by this division.

(d) When the governing authority determines that a licensee has been chronically delinquent or chronically in default under this division, the governing authority when acting upon the application of such Licensee for

renewal of his license, may in the exercise of its discretion deny such application upon the grounds of such chronic delinquency.

(e) Any licensee who fails to pay the tax imposed by this division to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof at a rate of 1 percent per month from the twentieth day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until date of payment.

Section 3-37. Retention of records.

It shall be the duty of every licensee required to make a report and pay any tax levied by this division to keep and preserve suitable records of the sales taxable by this division, such other books of account as may be necessary to determine the amount of tax due, and any other information as may be required by the city clerk; and it shall be the duty of every such licensee, moreover, to keep and preserve, for a period of 3 years, all invoices and other records of such alcoholic beverages which are taxable by this division, and the sales of such alcoholic beverages. All such books, invoices, and other records shall be open to examination by the City Council or its duly authorized agents at all reasonable hours.

SO ORDAINED, this 14th day of January, 2013.

Danny Groover
Mayor, City of Boston

ATTEST:

Cindy Richards
City Clerk