

ALCOHOLIC BEVERAGES

ARTICLE 1: General Provisions

Section 1: Sale in city; license a privilege.

- (a) Alcoholic beverages may be sold at retail and for consumption on the premises in the City of Toccoa under a license reviewed by the Alcoholic Beverage Control Board (hereinafter "ABCB") granted by the City Commission upon the terms and conditions provided in this section.
- (b) All licenses in this chapter shall be a mere grant of privilege to carry on the business during the term of the license, subject to all terms and conditions imposed by this Code and state law.
- (c) All licenses pursuant to this chapter shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any further ordinances which may be enacted."
- (d) Any holder of a license issued pursuant to this chapter is required to apply for and obtain an alcoholic beverage license from the state before any sales commence. Additionally, City licensees are required to abide by all applicable state regulations and laws.

Section 2: Definitions.

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

- (a) "*Alcohol*" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "*Alcoholic beverage*" means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine as defined in this section.
- (c) "*Applicant*" means the person, partner, firm, or corporation, as owner, or other entity authorized to represent the business making application for the license.
- (d) "*Beer or malt beverage*" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other product, or any combination of such products in water containing not more than 9.5 percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer, and strong beer. Also included are beverages known as "non-alcoholic" beer," which is made by fermentation of any

infusion or decoction of barley, malt, hops, or other products, and containing less than three percent, but more than 0.1 percent alcohol by volume. The term “malt beverage” does not include sake, known as Japanese rice wine.

- (e) “*Church*” means a permanent building where persons regularly assemble religious worship and shall be publicly designated as a church, but shall not include a residence also used for religious purposes.
- (f) “*Distilled spirits or spirituous liquor*,” means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume including, but not limited to, all fortified wines and any ready to drink beverages which are made from or contain distilled spirits or spirituous liquors.
- (g) “*Eating establishment*” or “*restaurant*,” means any public place, including a place available for rental by the public, selling prepared food for consumption by the public on the premises with a full service kitchen. A full service kitchen will consist of a three-compartment pot sink, a stove or grill permanently installed, and refrigerator all of which must be approved by the health and fire departments. An eating establishment will be prepared to serve food every hour they are open and will derive as least thirty (30) percent of its annual gross food and beverage sales from the sale of prepared meals or food. A restaurant shall provide at least fifty (50) seats for customers.
- (h) “*Fortified wine*” means any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. Fortified wine includes, but is not limited to, brandy.
- (i) “*License*” means an authorization granted by the City to operate as a retail consumption dealer or retail package dealer.
- (j) “*Licensee*” means the individual to whom a license is issued or, in the case of a partnership or corporation, all partners, officers, and directors of the partnership or corporation.
- (k) “*Liter*” means metric measurement currently used by the United States.
- (l) “*Manufacturer*” means any maker, producer, or bottler of an alcoholic beverage. Manufacturer also means: in the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; in the case of malt beverage, any brewer; in the case of wine, any vintner.
- (m) “*Minor*” is defined pursuant to O.C.G.A. § 3-3-23, as enacted or amended.
- (o) “*Owner*” means any person, corporation, or partnership or any other entity having a financial interest in the income of the business. Owner shall also include any person, corporation, or partnership operating a business under a management contract.

- (p) “*Package*” means a bottle (to include a mini bottle), can, keg, barrel, or other original consumer container. Retail package alcoholic beverages shall include all alcoholic beverages in their original container, sold at retail to the final consumer, and not for resale.
- (q) “*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.
- (r) “*Premises*” means the space or area owned, leased and/or controlled by the licensee and used by him for the purpose of operating under the license; except that in the case of hotels and motels, “premises” shall include only the portion of the property where alcoholic beverages are sold. “Premises” is further defined as one physically identifiable place of business consisting of one room or patio, or two or more contiguous rooms operating under the same trade name where alcoholic beverages are sold. Any premises outlets which cannot be determined as one identifiable place of business shall require additional licenses regardless of such establishment having the same trade name, ownership, or management.
- (s) “*Private Club*” means a corporation organized and existing under the laws of the State of Georgia, like fraternal or veterans’ organizations, having bylaws and being a part of a national organization in existence for at least one (1) year immediately prior to the application for any license hereunder, having at least 75 members, regularly paying dues, organized and operated exclusively for fraternal brotherhood, pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any stockholder or member, and owning, hiring or leasing a building or space herein for the reasonable use of its members with suitable kitchen and dining space and equipment, and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided, that no member or officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the sale of distilled spirits or any beverage licensed hereunder to the club or its members or guests beyond the amount of such salary as may be fixed by its members at any annual meeting or by its governing board out of the general revenue of the club.
- (t) “*Purchase*” price means the consideration received for the sale of alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.
- (u) “*Purchaser*” means any person who orders and gives present or future consideration for any alcoholic beverages by the drink.

- (v) “*Retail consumption dealer*” means any person who sells alcoholic beverages for consumption on the premises, at retail, only to consumers and not for resale.
- (w) “*Retail package dealer*” means any person who sells unbroken packages, at retail, only to consumers and not for resale.
- (x) “*Tax*” means the tax imposed by this ordinance.
- (y) “*Wholesaler or wholesale dealer*” means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.
- (z) “*Wine*” means any alcoholic beverage containing not more than 21 percent alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. Wine includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term “wine” does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at the point in the manufacturing process when it conforms to the definition of wine contained in this section.

Section 3: Alcoholic Beverages Control Board.

- (a) There shall be established an ABCB in and for the City. This board shall be composed of citizens of the City appointed by the City Commission. The board shall consist of no fewer than five members. These members shall serve three-year terms or until their successors in office are appointed.
- (b) It shall be the duty of the ABCB to review all applications for alcoholic beverage licenses and to make recommendations to the City Commission as to whether or not alcoholic beverage licenses shall be issued. It shall also be the responsibility of the ABCB to hear complaints from any person to include law enforcement personnel or code enforcement personnel concerning any violation of this chapter. The Board will informally try to resolve or adjudicate any complaints with recommendations to the City Commission as to how to treat any complaints regarding violation of this chapter. The ABCB will make recommendations to the City Commission regarding whether or not an alcoholic beverages license will be issued and whether or not any alcoholic beverage licensee will continue to hold an alcoholic beverage license. The ABCB shall make no recommendations concerning the guilt or innocence of any person accused of violating an ordinance of the City or of a state law.
- (c) Complaints regarding violation of this ordinance shall be heard by the ABCB at the earliest possible date but no later than fourteen days from the occurrence of the alleged violation or complaint unless the time is extended by written agreement of the license holder and the ABCB. If there is no hearing as set forth within the fourteen (14) day period or any agreed upon extended period, the City Commission shall hear the alleged complaint at the next regular or called meeting of the City commission.

- (d) The ABCB may act in any capacity designated by the Commission that is consistent with this ordinance.

Section 4: Penalty for violations.

- (a) The violation of any of the provisions of this chapter by a holder of a license, or his agents or employees, shall be unlawful, and shall be punishable as provided in this Code and shall also subject the holder of such license to suspension or revocation of such license as the Commission deems proper.
- (b) The violation of any of the provisions of this chapter by a holder of any alcoholic beverages license shall be subject to the following punishment:
 - (1) *First violation.* Minimum fine of \$500.00 and possible license suspension of up to 30 days.
 - (2) *Second violation.* Minimum fine of \$1,000.00 and minimum license suspension of not less than 10 days or more than 30 days.
 - (3) *Third violation.* Minimum fine of \$1,000.00, permanent license revocation and minimum waiting period of 90 days for any new owner/applicant at that location.

“*Violations*” used in this section refers to cumulative violation during the period of time the license is issued to the licensee.

- (c) The provisions of this section are in addition to and not in lieu of other provisions of this chapter, specifically including the provisions of section 5.

Section 5: Reporting, and acting on violations.

- (a) The chief of police shall have the authority to close any location holding a license issued hereunder for a period not in excess of 24 hours in the event there shall occur on the premises any violation of law or municipal ordinance, breach of peace, disturbance or altercation resulting in violence, or other occurrence which is contrary to the public health, welfare, safety or morals, when in the judgment of the chief of police such action is necessary to protect the public health, welfare, safety, or morals.
- (b) The City Commission shall have the right to suspend any alcoholic beverage license pending the hearings provided for in Section 3 of the ordinance where in the judgment of the City Commission, such action is necessary to protect the public health, safety, welfare, and morals.

Section 6: Classification of licenses.

The following classifications of licenses shall be issued pursuant to this chapter.

- (a) Malt beverages – Package.
- (b) Wine – Package.

- (c) Distilled spirits – Package.
- (d) Malt beverages – Consumption on the premises.
- (e) Wine – Consumption on the premises.
- (f) Distilled spirits – Consumption on the premises.

A package license prohibits consumption on the premises. A consumption on the premises license prohibits package sales.

Section 7: Application for License, disclosure of interest.

- (a) No license shall be granted under this chapter to any applicant who is not a citizen or resident legal alien of the United States.
- (b) Corporations shall apply for a license in the name of the corporation, and the license shall be issued to the corporation. Corporate applicants shall attach to the application a certificate showing compliance with the annual registration requirements from the secretary of state, corporate division, and showing the name and address of a registered agent for service within the state. Partnerships shall apply for a license in the name of one of the partners, who is a resident of this state, and the license shall be issued in the name of the applicant. In the case of corporate applicants whose primary business is the operation of an alcoholic beverage package store, the majority stockholder must meet the requirements of individual applicants under this subsection at the time application is made and at all times during which the license is in effect. Where the applicant is a corporation whose primary business is other than the operation of an alcoholic beverage package store, an agent involved in the active management of the business to be licensed, as designated by corporate resolution, shall meet the requirements of individual applicants under this subsection at the time application is made and at all times during which the license is in effect.
- (c) In addition to meeting all qualifications of a license under state law, all applicants for licenses, whether original or renewal, must attach to their applications evidence of their good character. In addition to meeting state qualification standards, no license, whether original or renewal, shall be issued to any person, partnership, or corporation organized for pecuniary gain if any individual having an interest either as owner, partner or stockholder, directly or indirectly, beneficial or absolute, or such person's spouse shall have been convicted of or shall have taken a plea of guilty or nolo contendere to, once, within five years immediately prior to filing, or twice, within ten years immediately prior to the filing of the application, any felony or any violation of any law or administrative regulation regulating the sale, manufacture, or distribution of alcoholic beverages, gambling or narcotics. Where the application, whether original or renewal, is for a license to sell alcoholic beverages for on-premises consumption, conviction of an offense for or the taking of the plea of guilty or nolo contendere to, once, within five years immediately prior to filing, or twice, within ten years immediately prior to the filing of the application, any sex offense shall also disqualify the applicant for license under this section. No license, whether original or renewal, shall be issued to any person, partnership or corporation where an individual having an interest as owner, partner or stockholder, directly or indirectly, beneficial or absolute, shall have been convicted of or

shall have taken a plea of guilty or nolo contendere to, once within five years immediately prior to the filing of the application, or twice within ten years immediately prior to the filing of the application, the offense of driving a motor vehicle under the influence of intoxicating liquor or drugs. The restrictions of this subsection as to stockholders shall apply only to stockholders of privately owned corporations and to stockholders of publicly owned corporations who hold in excess of ten percent of outstanding stock.

- (d) On-premises consumption licenses shall be issued only to applicants who meet the definition of a publicly owned golf course, restaurant, or private club.
- (e) Applicants for renewal licenses must meet all qualifications of applicants for original licenses. Loss of qualifications during the term of a license shall be grounds for revocation or for denial of renewal.
- (f) Any license issued under the charter must be in the exact name as contained on the State of Georgia license and the manager/licensee must be the same as the manager/licenses on the State of Georgia license.

Section 8: Application submission; basic information.

- (a) Every applicant for a license under this chapter shall make written application to the city manager on forms furnished by the ABCB. The applicant shall answer all questions on the application, under oath, and shall supply all information and furnish all certificates, affidavits, bonds and other supporting data or documents as required by this chapter.
- (b) Each application shall state the name and address of each application; the place where the proposed business is to be located; and the type license applied for, whether for malt beverages, wine or distilled spirits; and whether for wholesale, package sale or on-premises consumption. The application shall also contain a beginning balance sheet showing the proposed original capitalization of the business and its source. If an applicant is a corporation whose primary business is the operation of an alcoholic beverage package store, the application shall state the names of all officers and stockholders of the corporation and the percentage ownership of each. If the applicant is a partnership, the application shall state the names of all partners therein, whether general or limited. All applications shall include the names of all persons that have or will have a direct financial interest in the business for which the license is sought. Each application shall also contain such additional information as the ABCB prescribes, shall be verified as true by the applicant before filing and shall be accompanied by a nonrefundable deposit of \$100.00 to cover the cost of investigating the applicant and processing the application. If granted, the application fee shall apply against the license fee.
- (c) In reviewing an application under this chapter, the ABCB may utilize the chief of police and other city officials with respect to matters within their areas of expertise. All applicants shall furnish such additional data, information and records as may be requested of them by the ABCB, chief of police or other city officer such as would be useful in

determining whether to approve or reject such application. By filing an application, the applicant agrees to produce for oral interrogation any person who is to have a financial interest in the business for which the license is sought or who is to be employed by such business. The failure to provide requested data, information and records or to make those persons specified available for interrogation within a reasonable time shall be grounds for denial of an application.

Prior to reviewing any application for an alcoholic beverage license, the ABCB shall give notice of the date, location, and time when said application will be reviewed. (This notice requirement does not apply to a license renewal.)

- (d) Unless the applicant under this chapter will own the premises from which the business will be conducted, the application shall also disclose the name of every person owning a beneficial interest in the premises and shall state the amount of rental to be paid, the manner in which the rental is to be determined, and to whom and at what intervals the rent is to be paid. The applicant shall also attach a copy of the lease or proposed lease with the verified statement of the applicant that such lease contains the entire agreement between the parties. No license shall be issued to an applicant who leases premises under a variable rent system whereby the landlord shares in the profits from selling alcoholic beverages.

Section 9: Licensing qualifications and Initial Licensing.

- (a) All applicants for alcoholic beverage licenses must be lawful citizens of the United States or legal resident aliens. If the applicant is a foreign corporation (a corporation not organized under the laws of Georgia), the corporation must be authorized to do business in the State of Georgia.
- (b) If the alcoholic beverage license applicant is not a legal resident of Stephens County, Georgia, the applicant must designate one or more residents of Stephens County as a managing officer or managing agent. In addition the managing officer or managing agent must be a lawful citizen of the United States or a legal resident alien.
- (c) Every applicant for a city alcoholic beverage license shall be at least 21 years of age.
- (d) No person shall be granted any alcoholic beverage license unless it appears to the satisfaction of the City Commission that such person, partners in the firm, or officers and directors of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere, and have been released from parole or probation, for any crime involving moral turpitude, tax law violation, illegal gambling, illegal possession, manufacture, or sale of controlled substances, the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexually related crime within a period of ten years immediately prior to the filing of such application, whether a misdemeanor or felony. At the time an application is submitted for any alcoholic beverage license, the

applicant may be required to submit a sworn affidavit certifying to this information. Notwithstanding the foregoing, an applicant's first time conviction for illegal possession of alcohol as a misdemeanor or violation of a City ordinance shall not, by itself, make an applicant ineligible for an alcoholic beverage license. Notwithstanding the above, the Commission may also deny a license for any other misdemeanor conviction, except traffic violations, if the conviction tends to indicate that the application will not maintain the operation for which he is seeking a license in conformance with all applicable laws.

- (e) No license for the sale of alcoholic beverages shall be granted to any person convicted under any federal, state or local law of any felony, within ten years prior to the filing of application for such license.
- (f) All applications required by this chapter shall be investigated by the Police Department or code enforcement officer of the City of Toccoa, which shall report its recommendation to the ABCB by attaching the report to the license application. As a prerequisite to the issuance of such permit or license, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instances of criminal activity during ten (10) years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The Federal record, if any, shall be obtained and returned to the governing authority submitting the fingerprints.
- (g) Any application shall have attached thereto a fee in addition to the license fee, in the amount of \$100 for the investigation of the application and the proposed location and the processing of the application.
- (h) All applicants for licenses shall furnish plans and renderings of the proposed premises. Such premises shall be constructed, renovated, or built so as to be equal to or compatible with surrounding neighborhoods, or better and shall comply with any and all state, county and city laws. The exterior shall be of finished building materials. No alcoholic beverage license shall be issued to any person unless the building in which the business will be located is complete, and detailed plans of the building and outside premises are attached to the application, or unless proposed plans and specifications and a building permit of a proposed building to be built are attached to the application.

The proposed building shall also be subject to final inspection and approval, by the building inspector, when completed. Each building in which the business will be located shall contain sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all times from the front of the street on which the building is located so as to reveal all of the outside premises of such building. Each applicant for an alcoholic beverage license shall attach to the application evidence of ownership of the building or proposed building, or a copy of the lease if the applicant is leasing the building, unless applicant is a franchisee, then such applicant shall attach a copy of the franchise agreement or contract with the application.

All premises for which an alcoholic beverage license shall be issued for consumption on the premises shall afford adequate sanitary toilet facilities and shall be adequately illuminated so that all hallways, passageways, and open areas may be seen by the customers.

- (i) It shall be unlawful for any City employee, or his spouse or minor child, directly involved in the issuance of alcoholic beverage licenses under this chapter to have any whole, partial, or beneficial interest in any license to sell alcoholic beverages in the city.
- (j) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued under the police powers of any jurisdiction within the State of Georgia previously revoked within two years prior to the filing of the application.
- (k) All licensed establishments must have and continuously maintain in Stephens County a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. The licensee shall file the name of such agent, along with the written consent of such agent, with the Commission.
- (l) A license application may be denied to any applicant for any alcoholic beverage license where it appears that the applicant would not have adequate financial participation in the proposed business to direct and manage its affairs, or where it appears that the application is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license.
- (m) A license application may be denied where there is evidence that an individual who fails to qualify is using his or her spouse or any other person as a guise or dummy to obtain a license.
- (n) A license may be denied if the licensee or his or her immediate family already hold two licenses in the City of Toccoa. No person may hold or have beneficial interest in more than two licenses in the City of Toccoa.
- (o) The ABCB and City Commission, in its discretion, may consider any extenuating circumstances which may reflect favorably or unfavorably on the applicant, application, or the proposed location of the business, and if in its judgment, circumstances are such that granting of the license would not be in the best interest of the general public, such circumstances may be grounds for denying the application. Such circumstances may include, but are not limited to effect on property, whether there is difficulty in police supervision, whether adequate parking exists, the number of existing licenses, etc.
- (p) For purposes of this chapter, a conviction or plea of guilty of nolo contendere shall be ignored as to any offense for which a defendant who was allowed to avail themselves of the Georgia First Offender Act, as amended. Except, however, that any such offense shall not be ignored where the defendant violated any term of probation imposed by the court granting first offender treatment or committed another crime, and the sentencing

court entered an adjudication of guilt as to the crime for which the defendant previously had been sentenced as a first offender.

Section 10: Separate application and separate license for each location of sale.

Separate applications must be made, and separate licenses must be issued for each sales location.

Section 11: Withdrawal of application.

Any license application made pursuant to this chapter may be withdrawn by the applicant at any time. If the application is withdrawn before the license is issued, any sums deposited as license fees will be refunded. After issuance of the license, no refunds will be made. No refunds shall be made under any circumstances for incurred investigative and administrative expenses required in this chapter.

Section 12: Period of coverage.

- (a) All new licenses issued prior to July 1 of any calendar year shall be effective for the entire calendar year. If a new license is issued after July 1, it shall be effective for the remainder of the calendar year in which issued, and shall be subject to a ½ fee proration.

Section 13: License Fees.

- (a) The applicant for a malt beverages-package license, a wine-package license, wine-consumption license, a malt-beverage consumption license, distilled spirits-package license, or an distilled spirits-consumption license shall pay to the clerk of the city, at the time his application is submitted, the currently required sum as authorized by the City Commission as an annual license fee for operation for one year at one location or business where the products will be sold. The license fees shall be in addition to any excise tax lawfully imposed and in addition to the fee imposed for investigation of the application.
- (b) Notwithstanding any provision to the contrary, posts, charters, and clubs of nationally chartered veterans and fraternal organizations shall be eligible to apply for alcoholic beverage licenses for consumption on the premises. The annual license fees for these organizations shall be as follows:

- (1) On the premises consumption of malt beverages \$200.00
- (2) On the premises consumption of wine \$100.00
- (3) On the premises consumption of distilled spirits \$300.00

Provided however, the posts, chapter, and clubs of nationally chartered veterans and fraternal organizations must submit with the annual request for on the premises consumption licenses a summary of its annual charitable contributions and activities for the previous year.

Section 14: Performance bond.

In addition to the requirements set forth in this chapter, all persons obtaining a distilled spirits-package license or a license for the consumption of distilled spirits on the premises shall post a performance bond in an amount set by the Commission to insure compliance with the provisions of this chapter.

Section 15: Transfer.

- (a) No city license issued under this chapter may be transferred from one licensee to another or from one location to another without first requesting in writing to the ABCB followed by consideration of the City Commission. Approvals as to any change shall be at the discretion of the City Commission.
- (b) Any licensee desiring to discontinue business at one location and commence business at some other location must make a new application for such new location.

Section 16: Termination of business.

All licenses issued pursuant to this chapter shall be valid only so long as the licensee is actively engaged in such business, with the exception of holidays, vacations, and periods of redecoration, and in the event the licensee shall cease to be actively engaged in such business, for a period of three months or in the event of the sale of the business, the license shall be invalid and the licensee of such business shall immediately notify the city commission and return the license.

Section 17: Expiration; non-renewability of license.

All licenses granted under this chapter shall be valid only for the calendar year indicated thereon and shall expire on December 31 of each year at 12:00 midnight. All renewals must be approved by the City Commission. Licensees seeking renewal shall be required to file a renewal application, with the license requisite fee(s) with the City on the form provided for a renewal license for the ensuing year. Such application must be filed on or before November 15 of each year. Any applications received after November 30 shall pay in addition to the annual fee, a late charge of 20 percent. If an application for renewal of a license application is received after January 1, it shall be treated as a new application subject to all the provisions of this ordinance. Investigative and administrative costs will be assessed as may be prescribed from time to time by the Commission.

Section 18: Suspension or revocation of license.

- (a) A license may be suspended or revoked by the Commission where the licensee furnishes fraudulent or untruthful information in the application for a license and for failure to pay all fees, taxes or other charges imposed under the provisions of this chapter.
- (b) Whenever the state shall revoke any permit or license to sell alcoholic beverages, the City license shall thereupon be revoked. The chief of police, upon notice of this revocation

from the Commission, shall take the necessary steps to see that signs are removed and that all alcoholic beverage sales cease.

- (c) The City shall revoke the license of any licensee whose license has been suspended three or more times in any consecutive 12-month period.
- (d) The City shall revoke the license for any premises where alcoholic beverages have been sold or distributed during a period of suspension.
- (e) The City may suspend or revoke the license of any establishment which does not meet the licensing qualifications or any term, condition, or provision set forth in this chapter at any time such knowledge becomes known.
- (f) A license may be suspended or revoked whenever the licensee has defaulted in any obligation of any kind whatsoever, lawfully owing to the City.
- (g) Unless otherwise provided herein, a license may be suspended or revoked for the violation by the license holder or his employee of any state or federal law or regulation, or a license may be suspended or revoked for violation of any ordinance of the City or state law, other than traffic violations. For the purpose of suspension or revocation of a license, the determination of whether any such violation has occurred shall be made by the Commission, and an actual conviction in a court for such offense shall not be necessary in order to suspend or revoke the license. For misdemeanor violations, the Commission may consider whether the conviction tends to indicate that the licensee will not continue to maintain the operation for which he is licensed in conformance with all applicable laws.
- (h) A license may be suspended or revoked for the failure of the license holder or his employee to promptly report to the police department any violation of law or municipal ordinance, breach of the peace, disturbance, or altercation resulting in violence occurring on the premises.
- (i) A license may be suspended or revoked for any conduct on the part of the license holder or his employee contrary to the public welfare, safety, health, or morals.
- (j) A license may be suspended or revoked for operating or conducting the business in a manner contrary to the public welfare, safety, health, or morals, or in such a manner as to constitute a nuisance.
- (k) A license may be suspended or revoked for the violation of any state law or regulation or municipal ordinance pertaining to alcoholic beverages.
- (l) Wherever this chapter permits the Commission to suspend any license issued under this chapter but does not mandate the period of such suspension, such discretion shall be exercised within the guidelines of this subsection.

- (1) No suspension shall be for a period of time longer than the time remaining on such license.
- (2) The following factors shall be considered on any revocation or suspension as set out above:
 - a. Consistency of penalties mandated by this chapter and those set by the City.
 - b. Likelihood of deterring future wrongdoing.
 - c. Impact of the offense on the community.
 - d. Any mitigating circumstances or remedial or corrective steps taken by licensee.
 - e. Any aggravating circumstances or failure by the licensee to take remedial or corrective steps.

Section 19: Hearings.

- (a) Except as might otherwise be authorized by this ordinance, no license shall be denied, suspended, or revoked without the opportunity for hearings as provided in this ordinance to include a hearing before the ABCB followed by a hearing before the Toccoa City Commission.
- (b) In addition to the hearing before the ABCB, the Commission shall provide written notice to the applicant or licensee of the proposed denial suspension. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant or licensee of the right to a hearing under the provisions of this ordinance. The hearing shall be not less than ten days nor more than thirty days from the date of service of the notice.

At the hearing before the ABCB, the City Commission, the applicant, or licensee shall have an opportunity to show cause why such application should not be denied or why such license should not be revoked or suspended, after which the ABCB and the City Commission shall take such action as provided in this ordinance that it in its judgment shall be deemed warranted by the facts. The parties may be represented by an attorney and may present evidence and cross examine witnesses.

- (c) The findings of the Commission shall not be set aside unless found to be (1) contrary to law or ordinances, or (2) unsupported by substantial evidence on the records as a whole, or (3) unreasonable.
- (d) The findings of the City Commission shall be final unless appealed within 30 days of the date of said finding by certiorari to the superior court of the county.

Section 20: Notice.

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

Section 21: Distance requirements.

- (a) No person may sell or offer to sell any distilled spirit in or within 100 yards of a church building or within 200 yards of any school building, educational building, school grounds, or college campus.
- (b) No person may sell or offer to sell any wine or malt beverage within 100 yards of any school building, school grounds, or college campus.
- (c) No person may knowingly and intentionally may sell or offer to sell any distilled spirits, wine, or malt beverages within 100 yards of an alcoholic treatment center owned and operated by this State or any County or municipal government therein.
- (d) No person knowingly and intentionally may sell or offer to sell any alcoholic beverages for consumption on the premises within 100 yards of any housing authority property.
- (e) As used in this section, the term “school building” or “educational building” shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools and private schools as defined in O.C.G.A. § 20-2-690(b). The term “school building” includes only those structures in which instruction is offered.
- (f) The term “church building” as used in this section shall mean the main structure used by any religious organization for purposes of worship.
- (g) For purposes of this section, distance shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:
 - (1) From the property line of the tract on which is located the business regulated under this title; and
 - (2) To the property line of the tract on which is located the church, school ground or college campus; and
 - (3) Along a straight line which describes the shortest distance between the two property lines.
- (h) No location which is licensed to sell alcoholic beverages on the effective date of the ordinance from which this ordinance derives shall be denied continued operation under an existing license, nor shall any new owner of the previously existing location be denied a new license based upon the measurements set forth in this Section.
- (i) As to any location licensed in the future, if the distance requirements in this section are met at the time of issuance of any license, the subsequent opening and operation of a church or school within the distance prohibited in this section shall not prevent the continuance of an existing license or the issuance of a new license to any subsequent owner of such property. The distance requirements herein shall not apply at any location

for which a new license is applied for, if the sale of alcoholic beverages was lawful at such location at any time during the 12 months immediately preceding such application.

Section 22: Signs; display of license.

- (a) Retail package licensees shall indicate plainly by tags or labels on the bottles or containers or on the edge of the shelf immediately below or above where the containers are placed, the price of an alcoholic beverage exposed or offered for sale. No other sign may be exposed within or without the retail establishment showing prices or indicating that alcoholic beverages are for sale on the premises.
- (b) All licensees shall post in a conspicuous place a sign which clearly reads: "WARNING: Drinking alcoholic beverages during pregnancy can cause birth defects".
- (c) Each licensee shall also post in a conspicuous place a sign with letters at least two (2) inches in size stating: "The sale of alcoholic beverages to persons under the age of 21 years is strictly prohibited". Each licensee shall post the provisions of the laws of this state which deal with the unlawful sale of such items to underage persons and the penalties for violating such laws as is required by state law.
- (d) Each licensee shall also post in a conspicuous place a sign of no less than 8 ½ x 11 inches in size stating: "The City Commission of the City of Toccoa requires proof (identification) of age for all alcohol purchases regardless of age".
- (e) Any license obtained under this chapter shall be displayed on the licensed premises in public view.

Section 23: Audits of licensees.

- (a) If the City deems it necessary to conduct an audit of the records and books of the licensee, the licensee shall be notified of the date, time and place of the audit. The City may designate the city's internal auditor or other designated person to perform any audit authorized in this ordinance. The licensee shall cooperate with the audit or an license(s) issued under this chapter will be subject to suspension or revocation.
- (b) All licensed establishments must maintain the following records for a three-year period and make them available for audit at the licensed premises:
 - (1) monthly income or operating statements;
 - (2) daily sales receipts showing liquor, beer, wine and food sales separately (this requirement does not apply to package beer and wine licensees);
 - (3) daily cash register receipts such as Z tapes or guest tickets;
 - (4) monthly state sales and use tax reports; and
 - (5) federal income tax return with all Form 1099s.

Section 24: Storage.

All alcoholic beverages shall be stored only on the premises for which the license is issued. No licensee shall be permitted to enter into any type of arrangement whereby alcoholic beverages ordered by a licensee are stored by a licensed wholesaler.

Section 25: Addition to contents of alcoholic beverages or misrepresentation prohibited.

No one shall add to or permit the adding to any alcoholic beverage or refill any alcoholic beverage manufacturer's container in any manner or to misrepresent the quantity, quality, or brand name of any beverage licensed hereunder.

Section 26: Licensees to maintain a copy of this chapter; employees to be familiar with terms; licensee responsible for violations.

Each alcoholic beverage dealer licensed under this chapter shall keep a copy of this chapter in the licensed premises and shall instruct any person working there with respect to the terms of this chapter, and each licensee, the licensee's agents and employees selling alcoholic beverages shall at all times be familiar with the terms of this chapter.

Section 27: Employment of underage persons prohibited; exceptions.

- (a) No person shall allow or require a person in his/her employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverage.
- (b) The provisions of this section shall not prohibit persons under 18 years of age who are employed in supermarkets or convenience stores from selling or handling alcoholic beverages which are sold for consumption off the premises.
- (c) Any person under the age of 18 years of age may not work as an entertainer in any establishment licensed under this chapter without written consent from parents or guardian.
- (d) No licensee shall employ on any premises for the retail package sale of malt beverage, wine, or distilled spirits, or premises for the retail sale of malt beverages or wine at restaurants for consumption on the premises any person in any capacity whatsoever who has been convicted in this or any other city or state of any felony within five years immediately prior to the application for employment or during the period of employment.

Section 28: Failure to require and properly check identification.

It shall be a violation not to require and properly check identification to ensure that an underage person is not sold, served, or does not have in his possession alcoholic beverages while in a licensed establishment. Identification in this section shall mean any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth and shall include, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.

Section 29: Prohibited activities.

No holder or employee of the holder of a license authorizing the sale of alcoholic beverages, shall do any of the following upon the licensed premises:

- (a) Sell or offer to sell any distilled spirits, wines, beer or malt beverages, or any other alcoholic beverage to any person under the age of 21 years.
- (b) The prohibition in subsection (a) of this section shall not apply with respect to the sale of distilled spirits to a person when such person has furnished proper identification showing that the person to whom the distilled spirits are being sold is 21 years of age or older. For the purposes of this subsection, proper identification means any document issued by a government agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth, including but not limited to, a passport, military identification card, driver's license, or identification card authorized under an act to require the department of public safety to issue identification cards to persons who do not have a motor vehicle driver's license. Proper identification shall not include a birth certificate.
- (c) Sell or offer to sell any alcoholic beverages to any person who is noticeably intoxicated.
- (d) Sell alcoholic beverages upon the licensed premises, or permit alcoholic beverages to be consumed thereon, on any day or at any time when the sale or consumption is prohibited by law.
- (e) Every licensee or any employee of any licensee has a duty and responsibility to request identification in each and every instance of sale of alcoholic beverage in order to verify the age of such person and the failure to make such request and verification in any case may be considered by the ABCB and the City Commission in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.
- (f) No person who holds a license to sell alcoholic beverages by the drink shall allow any minors to be in, frequent, or loiter about the licensed premises of the establishment unless such minors are accompanied by a parent, legal guardian, or custodian; provided, however, that such minors shall be permitted in eating establishments, or private clubs as defined in this chapter without being accompanied by a parent, legal guardian, or custodian and provided further that this section shall not apply to minors who are employees under the terms of this chapter.
- (g) No holder of a license issued under this chapter, nor any agent or employee of the licensee, shall do any of the following upon the licensed premises:
 - (1) Sell individual cans or bottles of malt beverages in containers of less than 20 ounces, unless the licensee has a license for consumption of malt beverages on the premises. Individual cans or bottles of malt beverages containing less than 20 ounces shall only be sold as packaged by the manufacturer.

- (2) Permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practice on the licensed premises. Such misconduct shall be immediately reported to the city police department.
 - (3) Sell or offer for sale alcoholic beverages by use of vending machines.
 - (4) Receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a conveyance owned and operated by a wholesale dealer with a permit from the city to make such deliveries. Transportation of alcoholic beverages by any other means shall be grounds for revocation of all licenses concerned.
 - (5) Permit the sale of alcoholic beverages through a drive-in window or permit the sale of alcoholic beverages to a purchaser who has not actually entered the premises. The intent of this provision is to prohibit drive-through sales of all alcoholic beverages.
 - (6) Curb service sales of alcoholic beverages is prohibited.
- (h) No licensee under this chapter may make deliveries of any alcoholic beverage by the package beyond the boundaries of the premises covered by this license.

Section 30: Open area and patio sales.

- (a) Alcoholic beverage sales can be made by a consumption on the premises licensee in a patio/open area type environment.
- (b) The patio/open area must be enclosed by structure providing for public ingress/egress only through the main licensed premises, and through an approved fire-exit, not for public use unless an emergency exists. An alarm should sound in case of unauthorized use.
- (c) The height of such structure shall be a minimum of three feet above ground level. The structure does not have to be solid nor does it have to restrict visibility into or out of the patio/open sales area. The structure must be permitted and approved by the city's building inspection department and the city's fire department as required by governing regulations or codes.
- (d) If a licensee desires a patio/open sales area inside an existing structure, plans will be reviewed and approved on an individual basis by the Commission. Interior type patio/open sales areas must also meet the requirements of the city's building and fire codes.

Section 31: No consumption outside premises.

- (a) Customers may not leave the premises of a licensed facility or licensed premise with open alcoholic beverages, and the licensee has responsibility to ensure that no open beverages are sold and carried out.

- (b) Customers are prohibited from gathering outside an alcoholic beverage establishment to consume alcoholic beverages, and the manager or employees of the establishment shall not allow such gathering and outside consumption.

Section 32: Inspection of licensed establishments by the police department.

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

Section 33: Establishment can be closed in cases of emergency.

The Chief of Police, or his designee, may immediately suspend the sales of all alcoholic beverages licensed under this chapter in case of emergency, for the safety of the public or to investigate a crime, for a reasonable period of time.

Section 34: Bring your own bottle (brown bagging) prohibited.

No person may bring his own alcoholic beverage (brown bag) in any establishment either licensed or unlicensed to serve alcoholic beverages

Section 35: Types of entertainment, attire and conduct prohibited.

The purpose of this article is to regulate activities on premises licensed for the sale of alcohol, including, but not limited to, adult entertainment establishments. This article is not a defacto prohibition of legal expression but requests a balancing of the rights of the community and the adult entertainment establishments. This article does not allow any business or activity that is otherwise unlawful.

Pursuant to The Constitution of the State of Georgia, Article 3, Section 6, Paragraph VII:

- (a) No person shall perform on a premise licensed hereunder acts of or acts which constitute or simulate:
 - (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;
 - (2) The touching, caressing, or fondling of the breast, buttocks, anus, or genitals; or
 - (3) The displaying of any portion of the female breast below the top of the areola or the displaying of any portion of any person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.
- (b) No person shall use on licensed premises artificial devices or inanimate objects to perform, simulate, or depict any of the prohibited conduct or activities described in subsection (a) of this section.

- (c) It shall be unlawful for any person to show, display, or exhibit, on licensed premises, any film, still picture, electronic reproduction, or any other visual reproduction or image of any act or conduct described in subsection (a) or (b) of this section.
- (d) No erotic entertainment/dance establishment business shall serve, sell, distribute or offer for consumption or possession any alcoholic beverages or controlled substances on the premises.

Section 36: Hours, days of operation.

- (a) The hours of sale of alcoholic beverages are as follows:
 - (1) Retail sales not for consumption on premises: 7:00 a.m. to 11:00 p.m. Monday through Saturday, except where contrary to state regulations for the sale of alcoholic beverages.
 - (2) Consumption on the premises: 8:00 a.m. to 12:00 midnight Monday through Thursday; 8:00 a.m. to 1:00 a.m. Fridays, and from 8:00 a.m. to 12:00 midnight on Saturdays.
 - (3) Businesses, including restaurants and private clubs, issued an alcoholic beverage license for consumption on the premises shall close and have all patrons out of the premises within 30 minutes after the times specified in this paragraph.
- (b) No alcoholic beverages shall be sold on Sundays or Christmas Day.
- (c) The sale of alcoholic beverages at any other time other than described herein is prohibited.

Section 37: Happy hour prohibited.

No holder of any license for consumption on the premises shall engage in any one of the following practices in connection with the sale or other disposition of alcoholic beverages.

- (a) The sale of alcoholic beverages during any special period of the day at prices lower than customarily charged at the premises for alcoholic beverages during the remainder of the day.
- (b) The giving away of any alcoholic beverages in conjunction with the sale of any other alcoholic beverages.
- (c) The sale of two or more alcoholic beverages for a single price, including the sale of all alcoholic beverages a customer can or desires to drink at a single price.
- (d) The sale or serving of two or more alcoholic beverages at substantially the same price customarily charged for one.

- (e) Requiring or encouraging the purchase of a second alcoholic beverage at the same time another alcoholic beverage is purchased or before the first such beverage has been consumed.
- (f) The sponsoring, conducting or allowing of contests or other promotions on the premises which have as their primary purpose the increasing of the consumption of alcoholic beverages on the premises.
- (g) Allowing alcoholic beverages purchased on the premises to be removed from the premises without having been consumed.
- (h) Selling alcoholic beverages in pitchers or in jumbo or extra-large containers for less than the normal retail price charged for an equivalent volume of alcoholic beverages in a normal size glass or pitcher.
- (i) This section shall not apply to private functions not open to the public. "Private function not open to the public" shall mean any function wherein the licensee has agreed to the use of the licensee's establishment by a person, firm or organization for a set period of time for valuable consideration.

The intent of this section is to prohibit activities typically associated with promotions referred to as "happy hour."

Section 38: Type of retail establishment where permitted.

- (a) No beer or malt beverages, wine or distilled spirits shall be sold for consumption on the premises where sold except:
 - (1) At a restaurant as defined in this ordinance; or
 - (2) At a publicly owned golf course; or
 - (3) At a private club as defined herein.
- (b) All consumption on the premises license holders in the city including the consumption on the premises of malt beverages, wine and distilled spirits shall maintain at least 30 percent of their annual gross income from the sale of foods. Authorized officials of the city may examine the records of businesses licensed hereunder at any reasonable time to ascertain that the requirements of this and other provisions of this chapter are met; or
- (c) Within 120 days after having been issued a consumption on the premises license, the licensee shall submit to the city a statement from a certified public accountant or a registered public accountant that the income requirements set forth in the above provision have been met for the first 90 days after the applicant received his license for on the premises consumption. Thereafter, at the time of the license renewal, each consumption on the premises license holder shall submit, to the city an annual statement from a

certified public accountant or a registered public accountant that the income requirements set forth in the above provision have been met.

Section 39: Products offered for sale restricted.

No retail dealer who has a license for the package sale of distilled spirits shall sell or offer for sale or display or keep in stock at his place of business where distilled spirits are offered for sale:

Products or commodities not authorized by the regulations of the Department of Revenue of the State of Georgia.

No retail dealer who has a license for the package sale of distilled spirits, packaged malt beverages, or packaged wine shall permit on the licensed premises any paid video or electronic games of chance played for prizes or any type of electronic gaming which would be defined as gambling by the laws of the State of Georgia.

Section 40: Rate of taxation – Malt beverages.

In addition to the annual license fees imposed and required by Section 13, there is hereby levied and imposed upon each wholesale dealer selling malt beverages within the city an excise tax on malt beverages so sold, as follows:

- (1) Except as provided in subsection (2) of this section, such excise tax shall be computed at the rate of \$0.4366 per ounce.
- (2) All malt beverages, sold in or from a barrel or bulk container and being commonly known as tap or draft beer, shall not be subject to the excise tax provided for in subsection (1) of this section, but there is hereby imposed upon each wholesale dealer selling such malt beverages within the city an excise tax of \$6.00, for each barrel or bulk container having a capacity of 15½ gallons sold by such wholesale dealer within the city and at a like rate for fractional parts thereof.

Section 41: Wine.

In addition to the annual license fees imposed and required by Section 13, an excise tax is hereby levied computed at the rate of \$0.22 per wine liter, which shall be paid to the city on all wine sold, displayed or stored in the city. Such tax shall be prorated on miniatures, half pints, fifths, half gallons and other quantities and on wine gallons so that each bottle shall be taxed on the basis of \$0.22 per wine liter.

Section 42: Distilled spirits by the drink.

An excise tax hereby is levied upon the sale of distilled spirits by the drink in the amount of three percent of the charge for the beverage to the public.

Section 43: Package sale of distilled spirits.

An excise tax hereby is levied on all package sales of distilled spirits in the amount of \$0.22 per liter.

Section 44: Method of payment.

The tax levied by this article shall be paid to the city by each wholesale dealer on all beverages coming under this article sold within the city by each wholesale dealer selling, shipping or in any way delivering malt beverages or wine to a retailer in the city, who shall collect the excise tax at the time of delivery, and shall remit the same together with a summary of all such deliveries on or before the 10th day of the month next succeeding the calendar month in which such sales were made.

Section 45: Payment of tax; report.

The summary report made by each wholesale dealer in the city shall show the exact quantities of taxed beverages, by size and type of container and the amount of excise tax collected.

Section 46: 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 each retailer so supplied.

Section 47: Failure to make timely report; penalty.

- (a) The failure to make a timely report and remittance shall render a wholesale dealer liable for a penalty equal to ten percent of the total amount during the first 30-day period following the date such report and remittance were due and a further penalty of five percent of the amount of such remittance for each successive 30-day period or any portion thereof, during which such report and remittance are not filed. The filing of a false or fraudulent report shall render the wholesale dealer making such report liable for a penalty equal to 25 percent of the amount of the remittance which would be required under an accurate and truthful report.
- (b) Such failure to make a timely report or remittance, or the filing of a false or fraudulent report shall also constitute grounds for the revocation of the business license issued by the city to the wholesale dealer.

Section 48: Sale prohibited when tax not paid.

It shall be unlawful for any person to sell at retail or otherwise within the City any beverage taxed by this article on which the required tax has not been paid.

Section 49: Catering

Notwithstanding anything to the contrary the City of Toccoa does hereby adopt by reference the state statute pertaining to sale off premises for catered functions. In this regard, the City of Toccoa adopts current O.C.G.A. §§ 3-11-1 through 3-11-5 as amended or as may be amended. The fee for an off premises catering license shall be \$50 or such other fee currently authorized by the City Commission as a license fee for one catered event.