

AN ORDINANCE**No. 2022-31**

AN ORDINANCE TO AMEND SECTIONS 6-4-2, 6-4-63, 6-4-82, 6-4-83, 6-4-84, 6-4-87 AND 1-7-2 OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:

SECTION I.

Section 6-4-2 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

Sec. 6-4-2. 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) *Alcoholic beverage* means any beverage containing alcohol and shall include but shall not be limited to, malt beverages, wines and distilled spirits.
- (b) *Alcoholic beverage caterer* means any retail dealer who has been licensed by the city to sell alcoholic beverages by the drink or the unopened package.
- (c) *Art Shop* means a retail business devoted exclusively to providing art education that is limited to instruction in painting, sculpture and similar crafts. An art shop may also sell and display portraits, paintings, sculptures, art supplies and similar art work and crafts. An art shop shall not allow activities that would cause the business to be an "adult entertainment establishment" as defined in Chapter 6-10 of this Code.
- (d) *Authorized catered event* means an event at a location not otherwise licensed for consumption of alcoholic beverages by the drink at which alcoholic beverages are furnished, for consideration, and sold, dispensed or provided free of charge to persons present at the event, by the drink, pursuant to a permit obtained under this section.
- (e) *Business* means any person, corporation, partnership, or other legal entity which exerts substantial efforts within the city, engages in, causes to be engaged in, and/or represents or holds out to the public to be engaged in any occupation or activity with the object of gain or benefit, either directly or indirectly.
- (f) *Brewery* means a place where malt beverages are manufactured. In addition to manufacturing, malt beverages may be sold for consumption on the premises, and/or sold by the package for consumption off the premises in accordance with State law.

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- (g) *Brewpub* means any restaurant in which malt beverages are manufactured, subject to the barrel production limitation prescribed in O.C.G.A § 3-5-36. Barrels of malt beverage sold to licensed wholesale dealers for distribution or to the public for consumption off the premises as authorized by State law shall not be used when determining the total annual gross food and beverages sales.
- (h) *BYOB* or *brown bagging* means possession of an open glass bottle, can, or other container containing an alcoholic beverage or consumption of an alcoholic beverage on premises:
 - 1. For which a city business/occupation tax certificate has been issued; and
 - 2. Which occurs at a location different from where said alcoholic beverage was purchased.
- (i) *Church* means a body of communicants gathered into church order: united under one (1) form of government by the profession of the same faith and the observance of the same ritual and ceremonies, place where persons regularly assemble in a facility for worship, congregation, or organization for religious purposes.
- (j) *College Campus* means a collection of two or more buildings used for educational purposes, on either one parcel or contiguous parcels that are under the same ownership by either a public or private institution of higher learning.
- (k) *Distilled spirits* mean any alcoholic beverage obtained by distillation or containing more than twenty- four (24) percent alcohol by volume.
- (l) *Distillery* means a facility that manufactures distilled spirits.
- (m) *Downtown Pub/Wine Lounge* means an establishment which is located within a downtown dining district as defined by Section 6-4-87(f)(1) that may sell beer and/or wine as set forth in Section 6-4-84(a).
- (n) *Establishment* means any physical location or section thereof for the operation of a business.
- (o) *Food caterer* means any person who holds a valid business license and for consideration, prepares food for consumption off the premises.
- (p) *Fortified wine* means any alcoholic beverage containing not more than twenty-four (24) percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentations with brandy added. The term includes, but is not limited to “brandy.”
- (q) *Georgia Farm Winery* means a farm winery which is licensed by the state to manufacture wine in Georgia.
- (r) *Growler* means a reusable, resealable, and professionally sanitized glass jug used to transport malt beverages or wine for off-premises consumption that is not to exceed 64 ounces and is filled with malt beverages or wine from a keg by a licensee, or an employee of a licensee, with a malt beverage and/or wine license for consumption off premises issued by the City of Gainesville.

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- (s) *Hard cider* means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than six (6) percent alcohol by volume, including, but not limited to flavored or carbonated cider. For purposes of this chapter, hard cider shall be deemed a malt beverage.
- (t) *Importer* means any person who imports an alcoholic beverage into this state from a foreign country and sells the alcoholic beverage to another importer, broker or wholesaler and who warehouses a stock of the alcoholic beverage.
- (u) *Licensed alcoholic beverage caterer* means any person licensed for the sale of alcoholic beverages by the state and who possesses a license by a local government in the state authorizing such person to sell or dispense alcoholic beverages by the drink off licensed premises and in connection with an authorized catered function.
- (v) *Licensee* means any person who holds a license from the city to engage in the selling, manufacturing, distributing or importing at retail or wholesale, of any alcoholic beverages.
- (w) *Lounge* means a separate room connected with a part of and adjacent to a restaurant with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least forty (40).
- (x) *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 fourteen (14) percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, also known as Japanese rice wine.
- (y) *Managed Amenity Area* means an area that is developed for the active or passive recreation and enjoyment of the residents and guests of a housing development within the common gathering space boundaries of the housing development and may include landscaped open space areas, patios, balconies, communal lounges and/or meeting space, swimming pools, grilling areas, recreation facilities and any other area which may be open to residents and guests of residents and is intended to be used for common gathering space.
- (z) *Managing Agent* means an individual that is at least twenty-one (21) years of age, is a U.S. citizen or an alien lawfully admitted for permanent residency, is a resident of the State of Georgia, has day-to-day managerial authority over the business conducted on the licensed premises including the sale of alcoholic beverages, and is employed full-time by the licensed business.
- (aa) *Manufacturer* means any maker, producer or bottler of an alcoholic beverage. The term also means:
 - 1. In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits;
 - 2. In the case of malt beverages, any brewer; and

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3. In the case of wine, any vintner
- (bb) *Minor* means any person less than twenty-one (21) years of age.
 - (cc) *Multi-use facility* means a structure containing three or more retail or office establishments and one or more eating establishment, which has a court area for pedestrian use.
 - (dd) *Non-profit, charitable and civic organization* means a bona fide nonprofit civic organization which is exempt from federal income tax pursuant to the provisions of subsection (c), (d), or (e) of 26 U.S.C. Section 501.
 - (ee) *Nonprofit botanical garden or nature science center* means a facility primarily used to develop and maintain animals or plant collections, including flowers, shrubs and trees, for public display, education, research, conservation and enjoyment, though, without limitation, horticultural gardens, public and private programs, exhibitions and special events, having not less than 75 acres of outdoor gardens or land preserved for conservation, containing a documented collection of living plants, shrubs and trees, having meeting event space with a capacity for not less than 100 people, that is owned by a corporation that is exempt from federal income taxes pursuant to section 501(c) of the Internal Revenue Code, as amended.
 - (ff) *Open air café* means a premise located within the pedestrian court area and adjacent sidewalk of a multi-use facility where food is available for purchase during all hours of operation and where alcoholic beverages may be purchased from a restaurant contained within the multi-use facility for consumption within the open-air café.
 - (gg) *Person* means any individual, firm, partnership, cooperative, nonprofit membership corporation, social club, joint venture, association, company, corporation, limited liability company, limited liability partnerships, agency, syndicate, estate, trust, business trust, receiver, fiduciary or other group or combination acting as a unit, body politic or political subdivision, the plural as well as the singular member, whether public, private or quasi-public.
 - (hh) *Premises* means one physically identifiable place of business operated by the same ownership and/or overall management consisting of one or more contiguous rooms with only one address registered as a single place of business with the local licensing authority and the state. "Premises" is further defined to include the following areas:
 - 1. In the case of hotels, motels or private clubs, the swimming pool which is owned by said hotel, motel or club.
 - 2. Outdoor areas or patios approved pursuant to this chapter.
 - 3. In the case of a malt beverage and/or wine licensee where a golf course is located adjacent to and contiguous with a restaurant, the playing area of the golf course.
 - 4. In the case of a nonprofit botanical garden or nature science center, the geographic grounds.

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5. In the case of an open-air café, the pedestrian court area and sidewalk in front of the building in which the multi-use facility is contained.
 6. In the case of the Gainesville Civic Center, the geographic grounds of the Gainesville Civic Center and the Martha Hope Cabin.
 7. In the case of a brewery or distillery, an adjacent outdoor area, contained on the same property utilized by the licensee. If the adjacent outdoor area is a parking lot that is shared and utilized by more than one business, the outdoor consumption area must be controlled to limit public access.
 8. In the case of a temporary limited license permit holder, the sidewalk café, deck, lawn and parking lot adjacent to the licensed premises during the hours for which the temporary limited license is valid. In the case of a parking lot that is shared and utilized by more than one business, the outdoor consumption area must be controlled to limit public access.
- (ii) *Private club* means any nonprofit association organized under the laws of this state which:
1. Has been in existence at least one (1) year prior to the filing of its application for a license to be issued pursuant to this chapter;
 2. Has at least seventy-five (75) regular dues-paying members;
 3. Owns, hires or leases a building or space within a building for the reasonable use of its members, which building or space:
 - i. Has suitable kitchen and dining room space and equipment; and
 - ii. Is staffed with a sufficient number of employees for cooking, preparing and serving meals for its members and guests; and
 4. Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary as defined by state law.
- (jj) *Private function* means any affair where attendance is by invitation only, where no business transactions are conducted during the private function and there is no cost to attend or to consume the food or alcohol either by donations or by any other means.
- (kk) *Residence* means the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit or the place where one actually lives as distinguished from his domicile or place of temporary sojourn.
- (ll) *Resident* means a person whose primary residence is within the territorial limits of the county.
- (mm) *Restaurant* means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment, air conditioned, having employed therein a sufficient number

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and kind of employees to prepare, cook and serve suitable food for its guests for every hour they are open. At least one (1) meal per day shall be served at least five (5) days a week, except that restaurants that open for business more than five (5) days a week, shall be required to serve at least one (1) meal per day each day that the restaurant is open, with the exception of holidays, vacation and periods of redecoration, and the serving of such meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall provide at least thirty (30) seats for customers.

- (nn) *School* means an organized source of education or training whether public or private for the teaching of children in which the traditional subjects and learning processes associated with the Pre-K - 12 grades of school are taught.
- (oo) *Tasting room* means an outlet for the promotion of a Georgia Farm Winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.
- (pp) *Wholesaler or Wholesale Dealer* means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers. This shall include any person that transports or delivers alcoholic beverages from a manufacturer for sale at retail by the package.
- (qq) *Wine tasting* means an event as defined in the rules and regulations of the department of revenue.
- (rr) *Wine* means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

SECTION II.

Section 6-4-63 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to add subsections (b)(4) and (b)(5) to read as follows:

- 4. For establishments that do not sell gas, but sell food prepared fresh on the premises daily, hold the applicable food permits, hold a consumption on premise license for beer and/or wine only and meet the criteria outlined in Section 6-4-83, with the exception of Section 6-4-83 (4).
- 5. For a Downtown Pub/Wine Lounge as outlined in Section 6-4-84.

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SECTION III.

Subsections (a) and (c) of Section 6-4-82 of the Code of Ordinances of the City of Gainesville, Georgia are hereby amended to read as follows:

- (a) Restaurants that sell distilled spirits shall maintain at least fifty (50) percent of their business volume from the sale of food, private clubs exempted. Food sales shall include all consumable items sold on the premises except alcoholic beverages. The fifty-percent ratio shall apply to distilled spirits only and be determined on a calendar quarter basis by review of the monthly report submitted by each licensee.
- (c) In the event food sales fall below fifty (50) percent of the distilled spirits sales of the licensee for one quarter, then the city manager or designee may request a hearing for the suspension or revocation of such license in accordance with section 6-4-11. Nothing herein provided shall prevent the city manager or designee from suspending or revoking such license for any other violations of this chapter.

SECTION IV.

Section 6-4-83 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to delete subsection (5) and to relabel subsection (6) as subsection (5).

SECTION V.

Section 6-4-84 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

Sec. 6-4-84. – Volume ratio select exemptions.

- (a) A Downtown Pub/Wine Lounge may obtain a consumption on premises license subject to the following conditions:
 - 1. The sale of alcoholic beverages shall be limited to beer and/or wine only.
 - 2. Hours of sale shall be in accordance with the provisions of Section 6-4-81.
 - 3. To qualify for a license, an establishment must be open to the public at least five days a week for a minimum of 32 hours per week.
 - 4. Prepared or packaged food may be offered as an amenity. There shall be no requirement to maintain a commercial kitchen.
 - 5. No gaming devices, including coin-operated amusement machines shall be permitted.
 - 6. The consumption on the premises license provided for a Downtown Pub/Wine Lounge shall be exempted from the food sale requirements provided for in Section 6-4-82.
 - 7. A Downtown Pub/Wine Lounge may also seek the issuance of a package license.

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- (b) A Managed Amenity Area may obtain a consumption on premises license subject to the following conditions:
1. Hours of sale shall be in accordance with the provisions of Section 6-4-81.
 2. Liquor sales shall be prohibited on Sunday in accordance with O.C.G.A. § 3-3-7.
 3. The consumption on the premises license provided for a Managed Amenity Area shall be exempted from the food sale requirements provided for in Section 6-4-82.
 4. Must be in compliance with all other applicable provisions of this Chapter.

SECTION VI.

Subsection (f)(4) of Section 6-4-87 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

4. It shall be unlawful within a downtown dining district for any person to drink, attempt to drink or possess any alcoholic beverage in a can, glass or metal container, on the streets, sidewalks, rights-of-way, parking lots and parking decks, whether public or private. This section shall not prohibit the possession of containers of alcoholic beverages with unbroken seals.

SECTION VII.

Subsection (5) of Section 1-7-2 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

(5) Sell, possess or consume alcoholic beverages on park property that is not otherwise licensed for the sale of alcoholic beverages unless an official request has been made to and approved by the parks and recreation board and upon approval thereof the requestor shall make application to the city manager or designee for the applicable permits for the event as specified in Chapter 6-4 of this Code. This Section shall not apply to the consumption of alcoholic beverages within a downtown dining district, as established by the governing body of the City in accordance with Section 6-4-87 (f).

SECTION VIII.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION IX.

If any portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

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SECTION X.

The effective date of this ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

W. Samuel Couvillon, Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk