

ORDINANCE NUMBER 2011-1790

AN ORDINANCE FURTHER AMENDING CHAPTER 6 OF THE CITY CODE, RELATING TO ALCOHOLIC BEVERAGES

WHEREAS, the City Council of the City of Athens desires to exercise its police powers, set forth in § 11-45-1 of the *Code of Alabama* and elsewhere, to further regulate the location and manner of the sale of alcoholic beverages in the City;

WHEREAS, the City Council enacts this Ordinance for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, to a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values. This article shall be construed as an exercise by the city of the police power of the state delegate to the city, in the regulation of traffic in alcoholic beverages within the city as provided by state law; and

WHEREAS, with respect to those provisions of this Ordinance that deal with adult oriented businesses, the City Council finds that, based on evidence concerning the adverse secondary effects of adult uses on the community in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *California v. LaRue*, 409 U.S. 109 (1972); *Flanigan's Enterprises, Inc. v. Fulton County*, 596 F. 3d 1265 (11th Cir. 2010); and on studies in other communities including, but not limited to, St. Marys, Georgia; Manatee County, Florida; Rome, Georgia; Newport News, Virginia; Dallas, Texas; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota) and the March 31, 1996 Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses by the Environmental Research Group, there is convincing documented evidence that such businesses, because of their very nature, have a deleterious effect on both existing businesses and the surrounding residential areas, causing adverse secondary effects, including increased crime and downgrading of property values; the use of alcoholic beverages, in connection with the operation of a adult oriented business, is an explosive combination that enhances and amplifies the negative secondary effects of such businesses; the City Council desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizens; the provisions herein related to such businesses are a legitimate and reasonable means to reduce the negative secondary effects of such businesses; it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of such businesses; and the Council recognizes that state and federal law (such as the Alabama Anti-Obscenity Enforcement Act) prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA while in regular session on February 14, 2011 at 5:30 p.m., as follows:

Section 1. Section 6-32 of the Code of Ordinances of the City of Athens is hereby amended to state as follows:

This Article is enacted for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, to a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values, and to the prevention of undesirable persons from engaging in or having any interest in alcoholic beverages. This Article shall be construed as an exercise by the city of the police power of the state delegate to the city, in the regulation of traffic in alcoholic beverages within the city as provided by state law.

Additionally, with respect to those provisions in this Article dealing with adult oriented businesses, the City Council makes the following findings: (a) it is the purpose of such provisions to regulate such businesses so as to promote the health, safety, morals, and general welfare of the City's citizens. Such provisions have neither the purpose nor effect of imposing a limitation/restriction on the content of any communicative materials, including adult oriented materials; and (b) the Council finds that: (i) adult oriented businesses lend themselves to ancillary unlawful and unhealthy activities; (ii) adult oriented businesses, because of their very nature, have a deleterious effect on both existing businesses and the surrounding residential areas, causing adverse secondary effects, including increased crime and downgrading of property values; (iii) adult oriented businesses, due to their nature, have serious objectionable operational characteristics, thereby contributing to crime, lower property values, urban blight and downgrading of the quality of life in the adjacent area; (iv) the use of alcoholic beverages, in connection with the operation of an adult oriented business, is an explosive combination that enhances and amplifies the negative secondary effects of adult oriented businesses; (v) these findings raise substantial governmental concerns; and (vi) adult oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

Section 2. Section 6-33 of the Code of Ordinances of the City of Athens is hereby amended to add the following definitions to the subdivision list of definitions set forth therein, as follows:

Adult oriented businesses are those businesses defined as follows:

(1) *Adult bookstore, adult novelty store, or adult video store* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

a. Books, magazines, periodicals or other printed matter, photographs, compact discs, floppy diskettes, films, motion pictures, video cassettes, slides or other

visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and

b. Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one (1) of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.

(2) *Adult cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a. Persons who appear nude or in a state of nudity or semi-nudity;
- b. Live performances which are characterized by the performance of specified sexual activities or exposure of specified anatomical areas, or
- c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(3) *Adult theater* means (i) a commercial establishment where films, motion pictures, video cassettes, slides or other similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown or offered to be shown to patrons; or (ii) a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by exposure of specified anatomical areas or specified sexual activities.

Semi-Nude means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Specified anatomical areas, as used in this chapter means and includes any of the following:

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities, as used in this chapter, means and includes any of the following: (1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) Masturbation, actual or simulated;

(4) Human genitals in a state of sexual stimulation, arousal or tumescence; or (5) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

Section 3. Section 6-33 of the Code of Ordinances of the City of Athens is hereby further amended to alter the following definitions in the list of definitions set forth as subdivisions therein, as follows:

(a) The definition of “City alcoholic license fee” shall be changed as follows:

City alcohol license fee, license fee or license tax means a fee charged by the city to a person that has been granted approval by the state alcoholic beverage control board for the privilege of selling alcoholic beverage within the city limits as herein enumerated and defined.

(b) The definition of “Convenience store” shall be changed to read as follows:

Convenience store means an establishment that sells convenience items, snacks, grocery items, gasoline, and other motor fuels. No more than 25 percent of the floor space, excluding coolers and dry storage area, is dedicated to the public display of alcoholic beverages.

(c) The definition of “License” shall be changed to read as follows:

License means a license for the sale of alcoholic beverages issued by the state alcoholic beverage control board

(d) The definition of “Licensee” shall be changed to read as follows:

Licensee means any person holding a License.

(e) The definition of “Opened Container” shall be changed to read as follows:

Open container means a container containing alcoholic beverages, which has been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

(f) The definition of “Person in Charge” shall be changed to read as follows:

Person in charge (PIC) means a person, whether owner, partner, officer, or employee of the licensee, who is designated by the licensee as a responsible party for the licensee in ensuring compliance with the law and regulations of the Code of Alabama, state alcoholic beverage control board, and the ordinances of the city as apply to the operation of a business having retail sales of alcoholic beverages.

(g) The definition of “Privilege license” shall be changed to read as follows:

Business license means a business license issued by the city pursuant to Chapter 18 of the Code.

(h) The definition of “Public place” shall be changed to read as follows:

Public place means any (i) school building or school property, (ii) public library, (iii) public park, (iv) governmental facility regularly held open to the general public for the transaction of business during normal business hours, (v) outdoor recreational area regularly held open to the general public, and (vi) athletic facility/field regularly held open to the general public. Public place shall also mean, unless such premises is being used for a private gathering or such premises is otherwise licensed for the sale of alcoholic beverages, any theater, auditorium, show, skating rink, dance hall, or other place of amusement.

- (i) The definition of “Restaurant class I” shall be changed to read as follows:

Restaurant, class I, means a reputable place licensed as a restaurant, operated by a responsible person of good reputation, in which a diversified selection of food, refreshments and alcoholic beverages are offered for sale for consumption on the premises in which the establishment is located, and which meets the following additional requirements:

(1) A dining space containing 1,000 square feet or more on one floor in one room shall have a mandatory class I designation.

(2) The dining room shall be equipped with tables and chairs accommodating at least 50 persons at one time and adequately air conditioned and heated as appropriate.

(3) All spaces of a class I restaurant must comply with the adopted building code occupancy requirements.

(4) A kitchen separate and apart from said dining area, but adjoining the same, in which food is prepared for consumption by the public and which the food or meals served in said dining area are prepared.

(5) At least two meals per day shall be served at least five days a week, with the exception of holidays, vacations and periods for redecorating.

(6) Such place shall meet the minimum requirements for a state alcoholic beverage control board on-premises license.

(7) The serving of food or meals shall constitute the principal business of such establishment, with the serving of liquor, malt or brewed beverages, wines or other alcoholic beverages being only an incidental part of the business. During any 90-day period, the gross receipts from the serving of meals and food shall constitute at least 60 percent of the total gross receipts of the business. The licensee of such establishment shall maintain separate cash register receipts, one for food and one for liquor, malt or brewed beverages, wine or other alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the city clerk-treasurer, or duly authorized representative, may request.

(8) Any sales or consumption of alcoholic beverages on the premises that are not within an enclosed structure may be in an area that is (i) adjacent to the structure wherein the sale is provided, (ii) of less square feet than the serving area inside the structure wherein the sale is provided, and (iii) divided from the area's exterior by a fence, barricade, or other obstacle.

- (j) The definition of “Restaurant class II” shall be changed to read as follows:

Restaurant, class II, means a reputable place licensed as a restaurant, operated by a responsible person of good reputation, in which a diversified selection of food, refreshments and alcoholic beverages are offered for sale for consumption on the premises in which the establishment is located, and which meets the following requirements:

- (1) A dining space of less than 1,000 square feet on one floor in one room.

(2) Said dining room shall be equipped with tables and chairs accommodating a number of persons meeting with all the adopted building code occupancy requirements.

(3) The dining space shall be adequately air conditioned and heated as appropriate.

(4) A kitchen separate and apart from said dining area, but adjoining the same, in which food is prepared for consumption by the public and in which the food or meals served in said dining area are prepared.

(5) At least one meal per day shall be served for each day open.

(6) Such place shall meet the minimum requirements for a state alcoholic beverage control board on-premises license.

(7) The serving of food or meals shall constitute the principal business of such establishments, with the serving of liquor, malted or brewed beverages, wines or other alcoholic beverages being only an incidental part of the business. During any 90-day period, the gross receipts from the serving of meals and food shall constitute at least 60 percent of the total gross receipts of the business. The licensee of such establishment shall maintain separate cash register receipts, one for food and one for liquor, malt or brewed beverages, wine or other alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the city clerk-treasurer or duly authorized representative, may request. Examples, without limitation, of a class II restaurant are as follows:

a. A place of business meeting all other required criteria which may not be open for all meals of each day.

b. A place of business meeting all other required criteria which may not be open five days a week.

c. Delicatessen, dinner theaters, cafes, eateries, bistros and similar small establishments.

d. A place of business meeting all other required criteria but also presenting a minimum of nine hole golf course, public or private, who may also sell food and alcoholic beverages on the golf course, with the following exceptions:

1. No minimum meal per day requirement;

2. Food sales in any 90-day period must equal 20 percent of gross revenue of food and beverage operation.

(8) Any sales or consumption of alcoholic beverages on the premises that are not within an enclosed structure may be in an area that is (i) adjacent to the structure wherein the sale is provided, (ii) of less square feet than the serving area inside the structure wherein the sale is provided, and (iii) divided from the area's exterior by a fence, barricade, or other obstacle.

(k) The definition of "Specialty beverage store" shall be changed to read as follows:

Specialty beverage store means an establishment principally operated for the sale of a diversified selection of both domestic and imported beer and/or wine, but not liquor, in unopened containers for off-site consumption. Such establishments may apply for the following licenses: (i) Retail table wine for off-premises consumption, and (ii) Retail beer license for off-premises consumption. In addition, the owner of a specialty beverage store may apply with the city for approval to offer up to no more than two wine/beer tastings per month of their product. With respect to these tastings, no alcohol shall be served free of charge. In such case, the establishment may also apply for a retail table wine license for on-premises consumption, and (ii) Retail beer license for on-premises consumption.

Section 4. The following subdivisions of Section 6-33 of the Code of Ordinances of the City of Athens are eliminated, as follows:

- (a) The definition of “Business owner” shall be eliminated.
- (b) The definition of “Distributor” shall be eliminated.

Section 5. Section 6-34 of the Code of Ordinances of the City of Athens shall be amended to read as follows:

Sec. 6-34. Restriction of Locations and Manner of Sale

(a) **Types of Businesses Allowed to Sell for On-Premises Consumption.** In addition to all other regulations and restrictions, no facility or property in the City may be authorized for the sale of alcoholic beverages for consumption on the premises, except for the following:

- (1) Class I restaurants licensed to sell alcoholic beverages for on-premises consumption;
- (2) Class II restaurants licensed to sell alcoholic beverages for on-premises consumption;
- (3) Hotels;
- (4) Specialty beverage stores with respect to beer and/or table wine;
- (5) Merchandise store with incidental table wine sales;
- (6) Specialty wine and beer establishment;
- (7) Persons holding a special events retail license for on-premises consumption; and
- (8) An establishment holding a club liquor license from the state alcoholic beverage control board.

(b) **Types of Businesses Allowed to Sell Beer/Wine for Off-Premises Consumption.** In addition to all other regulations and restrictions, no licensee in the City with a license issued by the state alcoholic beverage control board for (a) retail table wine license for off-premises consumption; (b) retail table wine license for on-premises and off-premises consumption; (c) retail beer for on-premises and off-premises consumption; and/or (d) retail beer for off-premises consumption, shall be permitted to sell beer and wine for off-premises consumption unless the same is a convenience store, grocery store, a merchandise store with incidental table wine sales, a specialty beverage store, or a specialty wine and beer establishment, as defined in this Article.

(c) **Limits of Types of Businesses Allowed to Sell Alcohol in a B-4 Zone.** In addition to all other regulations and restrictions, no facility or property located in a B-4 zone shall be authorized for on-premises sale or off-premises sale of alcoholic beverages, except for the following:

- (1) Class I restaurants licensed to sell alcoholic beverages for on-premises consumption;
- (2) Class II restaurants licensed to sell alcoholic beverages for on-premises consumption;
- (3) Convenience stores licensed to sell beer and/or table wine for off-premises consumption;
- (4) Grocery stores licensed to sell beer and/or table wine for off-premises consumption;
- (5) Specialty beverage stores with respect to beer and/or table wine;
- (6) Merchandise store with incidental table wine sales;
- (7) Specialty wine and beer establishment; and
- (8) Persons holding a special events retail license for on-premises consumption.

(d) Restrictions on Clubs. In addition to all other regulations and restrictions, no club in a residential zone or in a planned development district shall be authorized for on-premises sale or off-premises sale of alcoholic beverages unless the same has been approved as a conditional use by the Athens Planning Commission, as may be required by the Athens Zoning Ordinance.

(e) Distance Limitations for Alcohol Sales. In addition to all other regulations and restrictions, and subject to exceptions contained in this section, no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the facility or property is less than 500 feet from any church, public or private elementary, intermediate, middle or junior high, high school or child development facility.

(1) The aforesaid distance restriction in this section shall not apply in the following enumerated cases:

(i) Where the facility or property is located in a B-4 zoning district, and the facade on the lot frontage of the facility or property is not less than 50 feet from the church, school, or child development facility.

(ii) Where (i) the facility or property is separated from the church, school, or child development facility by a street or highway having four or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four of the traffic lanes that separate the licensed premises from the church, school, or child development facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the licensed premises and the church, school, or child development facility building is at least 200 feet;

(iii) Where the church, school, or child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 12 months; or

(iv) Where the establishment upon the facility or property is a grocery store as defined herein.

(2) When measuring from a church, school, or child development facility, the closest exterior wall of the closest building in the church, school, or child development facility complex wherein an essential function or activity of the church, school, or child development facility is carried on shall constitute the beginning point for measurement. When measuring from the facility or property, the closest point on the exterior wall of the building occupied by the person seeking to sell alcoholic beverages shall be used for measurement purposes if the building is occupied solely by that person; otherwise, such measurement shall be made from the closest point of the person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points.

(3) In instances where the council has delegated the authority to make such a determination to an agent, any person aggrieved by the decision of the agent may appeal the agent's decision to the council. Such an appeal must be filed in writing within ten days of the date of the agent's decision and must specify the details of the reason for the appeal. The council shall hold a public hearing on such appeal at its next regularly scheduled meeting which is at least 14 days after the appeal is received by the clerk. The aggrieved party shall have the right to address the council and present any relevant evidence and testimony at said hearing. The decision of the council shall be final.

Section 6. Section 6-36 of the Code of Ordinances of the City of Athens is hereby

amended to read as follows:

Section 6-36. Offenses in public.

(a) It shall be unlawful for any person to drink, sell, serve, dispense or give away, or attempt to drink, sell, serve or give away, any liquor, wine or malt or brewed beverages, while upon any street, alley, sidewalk, public easement, rights-of-way, parking lots designed for use by the general public, or while in any public place in the city.

(b) It shall be unlawful for patrons, customers, invitees or guests to bring alcoholic beverages onto premises licensed to do business by the city, whether or not the business is licensed to sell or furnish alcohol, except in the case of private gatherings.

Section 7. Section 6-40 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Section 6-40. Adult Oriented Businesses.

It shall be unlawful for any person, whether a licensee or not, to serve, sell, distribute or suffer the consumption or possession of any alcoholic beverages upon the premises of an adult oriented business.

Section 8. Section 6-41 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Section 6-41. Records; reports

It shall be the duty of each person subject to the license tax imposed by this article to keep full and complete records of all purchases, sales and deliveries of alcoholic beverages, from which records can be readily obtained information as to the correct amount of license tax due the city. As a part of such records, each wholesaler shall keep an individual ledger or card account for each records, each wholesaler shall keep an individual ledger or card account for each of his customers, and said ledger or card account shall show the correct name and address of each person to whom any alcoholic beverages are delivered, together with the dates thereof and the number of cases sold or delivered, and each wholesaler shall also keep, as evidence of the foregoing, a receipted delivery ticket signed by each purchaser or by his authorized agent. Each retailer shall keep an individual ledger or card record showing the correct name and address of each person from whom he purchased alcoholic beverages, a delivery ticket showing each such purchase, the date thereof and the number of cases purchased. The aforesaid records shall be kept posted currently and shall be preserved for not less than three years succeeding said calendar year. All of such records shall be open for inspection and audit at the licensed premises within the city during such regular business hours as the city clerk-treasurer, or duly authorized representative, may request. Failure to keep any of the records required by this section, or elsewhere in this article, or by any amendment thereto, or refusal to make the same available to the city clerk-treasurer, or duly authorized representative, shall constitute grounds for revocation of any license issued under this article.

Section 9. Section 6-44 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-44. Discrimination prohibited.

It shall be unlawful for any licensee to discriminate against any person with respect to the sale of any food, beverage, product, cover charge, or admission charge based upon race, color, creed, or sex. It is specifically provided that no alcoholic beverage licensee shall have or permit any entertainment, show, or presentation on the licensed premises to which any person is excluded based upon race, color, creed, or sex. This section shall apply to the licensee, manager, to any person in charge of any licensed premises, and to any employee of the licensee authorizing, permitting, or committing any violation hereof.

Section 10. Section 6-45 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-45. City alcohol license review committee created; powers and procedures.

(a) There is hereby created for the purpose of assisting and advising the city council in the review of applications hereunder, and inquiry and recommendation concerning complaints or disciplinary action of a licensee, a committee to be known and designated as the city alcohol license review committee to be composed as follows: The city clerk-treasurer, or designated representative; the chief of police, or designated representative; the fire chief, or designated representative; the city planner, or designated representative; and three other members to be appointed by the city council. The city clerk-treasurer, or designated representative, shall act as liaison to the city council on behalf of the committee. The committee shall hold meetings as are necessary to consider appeals by applicants hereunder, resolve matters of public concern, or make inquiry into the compliance of a current licensee with this article and other provisions of the Code.

(b) The committee shall review the information contained within the application and shall submit a written recommendation to the city council concerning the approval or disapproval of the application before the applicant is submitted to the board.

(c) The committee shall investigate complaints, or initiate its own inquiry, into conditions which may violate provisions of this article and/or state law concerning the operation of any licensee.

(d) The committee shall have the authority to require the licensee to produce records for its review as related to the operation, ownership, or management of the licensed establishment. The committee may promulgate procedures for documenting and investigating complaints concerning the operation of an alcoholic beverage establishment as well as establishing a method of documenting violations of this article by a licensee or its employees.

(e) The review committee shall operate under bylaws that are not inconsistent with this Article.

Section 11. Section 6-46 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-46. Alcohol license tax bond.

(a) It shall be the duty of each person subject to a license fee, privilege tax, or excise tax imposed by this article to deliver to the city a bond conditioned to promptly pay to said city all such amounts as are required to be paid to said city under the terms of this article, or any amendment hereto, and any other amount which may become due to the city for any license fee, privilege tax, excise tax, sales tax, ad valorem tax, or any other tax/fee/charge pursuant to state or local law/ordinance becoming due after the date of the bond. The amount of the bond shall be \$10,000.00 for each location of the person's business that is engaging in activity with respect to which a license or excise tax under this article is imposed. Such a bond must remain in place continuously during the entire period that the person is subject to a license fee, privilege tax, or excise tax imposed by this article.

(b) With respect to those instances where the consent and approval of the city council is required with respect to the issuance of an alcoholic beverage license, such consent and approval will not be granted where the bond described in this section has not been delivered to the city clerk-treasurer, or the clerk-treasurer's designated representative. Moreover, where such a bond is required by this section, no business license shall be granted, renewed, maintained, or allowed to be transferred where the city clerk-treasurer, or his authorized representative, has not received or does not hold a valid and binding bond as required by this section.

Said bond shall be posted in substantially the same manner and form as shown below:

CITY OF ATHENS

ALCOHOL ORDINANCE TAX OR FEE BOND

That _____, hereinafter called Principal, and _____, as Surety, are held and firmly bound unto the City of Athens, Alabama, a municipal corporation, in the sum of _____, for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing is such, however, that WHEREAS, as one of the conditions precedent to the consent and approval of the City Council with respect to the issuance of an alcoholic beverage license, or to the granting, renewal, maintenance, transfer or allowance of a business license, the Principal is required to deliver to the City of Athens, Alabama, a bond conditioned to promptly pay to said City all such amounts as are required to be paid to said City under the terms of Ordinance No. _____, or any amendment thereto, and any other amount which may become due to the City of Athens, Alabama for any license fee, privilege tax, excise tax, sales tax, ad valorem tax, or any other tax/fee/charge pursuant to state or local law/ordinance becoming due after the date of the bond.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal shall faithfully comply with all the laws and ordinances of the City of Athens now in force, or that may hereafter be adopted, and will promptly pay to said City of Athens, Alabama all such amounts as may become due as required pursuant to state or local law/ordinance, then this obligation is to become null and void; otherwise to remain in full force and effect.

If the Surety shall so elect, this bond may be cancelled by providing notice through certified mail to the City clerk-treasurer of the City of Athens, or his designated representative. This notice shall provide for 30 days' notice to the City of Athens and this bond shall be deemed cancelled at the expiration of said 30 days; the Surety remaining liable, however, subject to all the terms, conditions, and provisions of this bond, for any acts covered by this bond which may have been committed by the Principal up to the date of such cancellation.

IN WITNESS WHEREOF, the said Principal and the said Surety have hereunto set their hands and seals at Athens, Alabama on this the _____ day of _____, 20 _____.
_____(Seal)

Principal
BY _____
SEAL
_____(Seal)
Surety
BY _____
TITLE _____

Section 12. The title of Section 6-47, Section 6-47(b)(1), Section 6-47(b)(2), and Section 6-47(b)(3) of the Code of Ordinances of the City of Athens shall be amended to read as follows:

Sec. 6-47. Additional regulations concerning the sale of retail liquor

(b)(1) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the same is situated in any zoning district other than a B-3 zone. The sale of retail liquor for on-premises consumption shall only be permitted in a B-3 zone subject to such other rules and regulations as prescribed by law, such as conditional use regulations prescribed by the city zoning ordinance. This subsection (b)(1) shall not apply to limit the location of class I or class II restaurants, hotels, clubs, or to events that are the subject of a special events retail license for on-premises consumption.

(b)(2) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the facility or property is less than one thousand (1,000) feet from another facility or property that (i) has previously been authorized for the sale of retail liquor for on-premises consumption and (ii) is currently licensed for the sale of retail liquor for on-premises consumption. When measuring from these facilities or properties, the closest point on the exterior wall of the buildings occupied by the persons selling or seeking to sell alcoholic beverages shall be used for measurement purposes. If a building is not solely occupied by that person, then the measurement shall be made from the closest point of that person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points. This subsection (b)(2) shall not apply to limit the location of class I restaurants, class II restaurants, hotels, or to events that are the subject of a special events retail license for on-premises consumption (although these types of establishments shall be included in an application of the subsection's distance rule for types of establishments that do not qualify for this exception).

(b)(3) In addition to all other regulations and restrictions, and subject to exceptions contained in this subsection, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the building in which the premises are located is less than 1,000 feet from any church, public or private elementary, intermediate, middle or junior high, high school, or child development facility. The method of measurement shall be the same method as found in section 6-34. The aforesaid distance restriction in this subsection shall not apply where (i) the premises is separated from the church, school, or child development facility by a street or highway having four (4) or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four of the traffic lanes that separate the premises from the church, school, or child development facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the premises and the church,

school, or child development facility building is at least 200 feet. The aforesaid distance restrictions in this subsection shall also not apply where the church, school, or child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 12 months. This subsection (b)(3) shall not apply to limit the location of class I restaurants, class II restaurants, hotels, or to events that are the subject of a special events retail license for on-premises consumption.

Section 13. Section 6-71 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-71. Applicability.

The application provisions of this article shall apply where the consent and approval of the City Council is required for an alcoholic beverage license. In all other cases related to alcoholic beverage sales, the application provisions of this article shall apply in connection with the City's determination of whether the proposed location or operation with respect to the alcoholic beverage sales is prohibited by municipal ordinance and with respect to any related City recommendation to the State Alcoholic Beverage Control Board.

Section 14. Section 6-72(a), (c), (d), (f), and (g) of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

(a) It shall be unlawful for any person to have in such person's possession any alcoholic beverages, within the city, for the purpose of sale, or to sell, or keep for sale, or offer for sale, any alcoholic beverages, without having first procured a license and a business license. Licenses relating to the sale of alcoholic beverages may not be assigned or transferred. The city is hereby authorized to allow the address for the business licensed premises to be changed from one place to another within the city, as the city may determine appropriate; but shall not allow the sale of alcoholic beverages at a place for which the license could not originally have been issued lawfully.

(c) It shall be unlawful to sell alcoholic beverages, and the City's consent and approval for such sale shall be deemed to expire, terminate, or otherwise be void when there is a substantial change in ownership in a licensed establishment, or when a licensed establishment is leased, rented, or abandoned, or when possession is otherwise surrendered to another party. Provided, however, that an applicant for a new license at a currently licensed establishment may be allowed to operate the establishment for a period not to exceed 60 days if said applicant is in compliance with subsection (b) of this section. In such case, the original licensee shall continue to be responsible for the conduct, operation and city tax liabilities of the establishment until such time as the city, in the new licensee's name, issues its approval.

(d) Upon the death of an individual licensee, sale of the licensed establishment, or temporary closing of the licensed establishment for a period in excess of 30 days, it shall be unlawful to sell alcoholic beverages, and the City's consent and approval for such sale shall be suspended, pending the reopening of the business. In the event the temporary closing is due to any renovation, remodeling, or repair to the licensed premises, the licensee shall provide written evidence of compliance with applicable building, fire, and health codes to the city clerk-treasurer, or designated representative, prior to the release of the license.

(f) The city shall have the right to revoke any business license issued by the city for any violation of this article or the state alcoholic beverage control board rules and regulations, after notice and opportunity for a hearing before the city council.

(g) Every business license issued by the city to conduct normal and routine business and license issued by the state alcoholic beverage control board shall be conspicuously and constantly exposed under a transparent substance in an area visible to the general public on the licensed premises.

Section 15. Section 6-73 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-73. Application for lounge, club, restaurant, etc., license; deposit.

Each applicant pursuant to Section 6-71 shall make application to the city council as required in this article. Said application shall be upon an appropriate form supplied by the city clerk-treasurer, or duly authorized representative, and shall be signed and verified by oath or affirmation by the applicant, if a natural person, or in the case of a partnership, association or unincorporated enterprise, by a partner, limited liability company (LLC) or managing member thereof, or in the case of a corporation, by an executive officer thereof. The applicant shall deposit with the city clerk-treasurer the required application fee that includes the background check with the Alabama Bureau of Investigation and the amount of publication costs to be incurred hereunder upon filing the application.

Section 16. Section 6-74 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-74. Application Procedures.

Applications shall be made in accordance with procedures generated by the City Clerk in accordance with this Article.

Section 17. Section 6-76 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-76. Public notice.

(a) Upon receipt of an application, together with the results of the investigation and recommendations made thereon, the city clerk-treasurer shall cause notice to be published one time in a newspaper of general circulation published in the city, stating that the application will be considered at the next regular meeting of the city council, which notice must be published as aforesaid at least three days in advance of the next regular meeting of the city council, and further stating the time and place that same is to be considered and that at such time and place all interested persons may appear at said meeting and be heard for or against the application. Such publication shall be at the applicant's expense.

(b) All applicants seeking consent and approval for a license shall certify to the city that notice of the application stating the day and time it is to be heard and considered at said public

hearing by the city council has been circulated to residents, real property owners and businesses within 500 feet of the property sought to be licensed by either mailing the same to, or leaving a copy of said notice with, each such resident or business or with some person over 18 years of age at the home of such resident or at each business at least one week before the public meeting at which it is expected to be heard and considered by the city council.

Section 18. Section 6-77(1) of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-77. Consideration of application.

In rendering a decision on each application for a license under this article, the city council may consider, among other things, the following factors:

(1) The effects upon residents, real property owners and businesses within 500 feet of the property for which a license is sought (or a greater distance if otherwise required by this Article).

(2) The character and reputation of the applicant, each partner, member, officer, member of board of directors, landlord, bartender and manager.

(3) The criminal court records of the applicant, each partner member, officer, and member of the board of directors, landlord, bartender and manager.

(4) The location of the premises for which a license is sought and the number of establishments presently holding licenses that are within 500 feet of the property for which a liquor license is sought.

(5) The compliance by applicant, each partner, member, officer, member of the board of directors, landlord and manager with the laws of the state and ordinances for the city.

(6) The recommendation of the city alcohol license review committee. Any recommendation factor must be grounded in the protection of the health, safety, and public welfare of the community.

Section 19. Section 6-78 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-78. Filing fee.

There is hereby required, as a filing fee to cover the costs of processing and investigating each application filed with the city, the sum of \$300.00, and the city clerk-treasurer or duly authorized representative shall not accept any application not accompanied by said payment to the city along with the payment of the publication costs, as required in this article. The city shall retain the filing fee to cover the expenses of processing and investigating said application, whether or not said application results in approval or denial, provided, however, that the filing fee for a special events license applications shall be \$75.00.

Section 20. Section 6-79(a) of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

(a) Each person licensed by the state alcoholic beverage control board, who shall engage in the alcoholic beverage, liquor, beer or wine business within the corporate limits, prior to

engaging in such business shall pay to the city, for the privilege of so engaging in business, city alcohol license fees, including an annual privilege/ license fee and further privilege/license fees as established below:

(1) *Beer wholesale license.* Each person licensed as a beer wholesaler under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of 50 percent of the amount charged for state beer license by the state. In addition, each licensee will remit to the city clerk-treasurer, on forms provided by such clerk-treasurer, each month, the privilege or excise tax levied on the sales of beer by Code of Ala. 1975, title 28, ch. 3, art. 5B (Code of Ala. 1975, § 28-3-190 et seq.). Wholesale beer dealers and distributors will not sell to any retail outlet that is in violation of this Article.

(2) *Wine wholesaler license.* Each person licensed by the state alcoholic beverage control board as a wine wholesaler under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of 50 percent of the amount charged for state wine license by the state. In addition, each licensee will remit to the city clerk-treasurer, on forms provided by such clerk-treasurer, each month, the privilege or excise tax levied on the sales of table wine by the Alabama Table Wine Act (Code of Ala. 1975, § 28-7-1 et seq.). Wholesale wine dealers will not sell to any retail outlet that is in violation of this Article.

(3) *Beer and wine wholesale license.* Each person licensed as a beer and wine wholesaler under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of 50 percent of the amount charged for state wine and beer license by the state. In addition, each licensee will remit to the city clerk-treasurer, on forms provided by such clerk-treasurer, each month, the privilege or excise tax levied on the sales of beer by Code of Ala. 1975, title 28, ch. 3, art. 5B (Code of Ala. 1975, § 28-3-190 et seq.). In addition, each licensee will remit to the city clerk-treasurer, on forms provided by such clerk-treasurer, each month, the privilege or excise tax levied on the sales of table wine by the Alabama Table Wine Act. Wholesale beer and wine dealers will not sell to any retail outlet that is in violation of this Article.

(4) *Warehouse license.* Each person licensed by the state alcoholic beverage control board to receive, store or warehouse alcoholic beverages within the state for transshipment inside and outside the state shall pay to the city an annual license fee of \$500.00.

(5) *Club retail liquor license.* Each person licensed by the state alcoholic beverage control board to operate a club, class I or II, under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of \$1,500.00 if a class I club, and \$2,000.00 for a class II club. In addition, to said stated license fee, each person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of having engaged in such business in the subject month, an additional license tax of 15 percent of gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(6) *Lounge retail liquor license (Class I).* Each person licensed by the state alcoholic beverage control board to operate a Class I Lounge Retail Liquor License under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1, et seq.) shall pay to the city an annual license fee of \$2,000.00. In addition to said stated license fee, each person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of having engaged in such business in the subject month, an additional license tax of 15 percent of gross receipts of such

business derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(7) *Lounge retail liquor license (Class II).* Each person licensed by the state alcoholic beverage control board to operate a Class II Lounge Retail Liquor License (which includes, but is not limited to private package stores with such license) under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1, *et seq.*) shall pay to the city an annual license fee of \$2,000.00. In addition to said stated license fee, each person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of having engaged in such business in the subject month, an additional license tax of 15 percent of gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(8) *Restaurant retail liquor license.* Each person licensed by the state alcoholic beverage control board to sell alcoholic beverages in connection with a restaurant retail liquor license under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city an annual privilege license fee of \$1,500.00 if the establishment is a Class I Restaurant, or in the case of a Class II Restaurant, in the amount of \$750.00. In addition to the stated license fee, each such person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of so engaging in such business in the subject month, an additional license tax of 15 percent of the monthly gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(9) *Retail table wine license for off-premises consumption.* Each person licensed by the state alcoholic beverage control board to sell table wine for off-premises consumption under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city an annual license fee of 50 percent of the amount charged for state wine license by the state.

(10) *Retail table wine license for on-premises and off-premises consumption.* Each person licensed by the state alcoholic beverage control board to sell table wine at retail for on-premises and off-premises consumption under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city an annual license fee of 50 percent of the amount charged for state wine license by the state, unless such person shall have paid for an on-premises liquor license.

(11) *Retail beer for on-premises and off-premises consumption.* Each person licensed by the state alcoholic beverage control board to sell beer for on-premises and off-premises consumption under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city an annual license fee of 50 percent of the amount charged for state beer license by the state.

(12) *Retail beer for off-premises consumption.* Each person licensed by the state alcoholic beverage control board to sell beer for off-premises consumption under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city an annual license fee of 50 percent of the amount charged for state beer license by the state.

(13) *Special retail liquor license for on-premises consumption.* Each person who has obtained a special retail liquor license from the state alcoholic beverage control board under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 *et seq.*) shall pay to the city a license fee of \$250.00 when the period of use is 30 days or less. Such person shall pay to the city

a license fee of \$350.00 when the period of use is more than 30 days. In addition to said stated license fee, each such person shall pay to the city 50 percent of the amount charged for state wine license by the state. In addition to the stated license fee, each such person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of so engaging in such business in the subject month, an additional license tax of 15 percent of the monthly gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(14) *Special events retail license for on-premises consumption* Each person who has been recommended by the city and obtained a special events retail liquor license from the state alcoholic beverage control board under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq., as amended) shall pay to the city a license fee of \$200.00. In addition to the stated license fee, each such person shall pay to the city, on or before the 15th day of the next calendar month, for the privilege of so engaging in such business in the subject month, an additional license tax of 15 percent of the monthly gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such subject calendar month.

(15) *Manufacturer license.* Each person who has obtained a manufacturer license from the state alcoholic beverage control board under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of \$350.00.

(16) *Importer license.* Each person who has obtained an importer license from the state alcoholic beverage control board under the Alcoholic Beverage Licensing Code (Code of Ala. 1975, § 28-3A-1 et seq.) shall pay to the city an annual license fee of \$350.00.

(17) *Liquor wholesale license.* Each person who has obtained a liquor wholesale license from the state alcoholic beverage control board under Code of Ala. 1975, § 28-3A-1 et seq. shall pay to the city an annual license fee of \$750.00.

Section 21. Section 6-81 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Sec. 6-81. Alabama Responsible Vendor Act.

(a) Except in the case of a special events retail license, each business requesting to sell alcoholic beverages within the city must obtain business certification through the Alabama Responsible Vendor Program within 30 days of license approval by the state alcoholic beverage control board.

(b) Upon a licensee becoming decertified from the Alabama Responsible Vendor Program, it shall be unlawful for such licensee to sell, or offer for sale, any alcoholic beverage, and the City's consent and approval for such sale shall be deemed to expire, terminate, or otherwise be void until such licensee is reinstated to the Alabama Responsible Vendor Program.

Section 22. Section 6-82 of the Code of Ordinances of the City of Athens is hereby added to read as follows:

Sec. 6-82. Special events retail license.

All applications relating to special event retail licenses shall be filed with the city clerk at least 25 days in advance of the event for which a license is sought. An applicant for a special event retail liquor license must receive the approval of the city council pursuant to § 6-71 (and applicable provisions referenced thereby, including review and recommendation by the city alcohol license review committee), but shall not be required to deliver the bond discussed in § 6-46. Moreover, in such case, a background check with the Alabama Bureau of Investigation shall not be required.

Section 23. This ordinance shall become effective upon its adoption and publication as required by law.

Section 24. If any provision of this ordinance, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this ordinance that can be given effect without the invalid provisions or application, and to this end, the provisions of this code and such amendments and statutes are declared to be severable.

Section 25. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Athens as an addition or amendment thereto, and shall be appropriately renumbered as necessary to conform to the uniform numbering system of the Code.

ADOPTED this the 14th day of February, 2011.

JIMMY W. GILL, CITY COUNCIL PRESIDENT

APPROVED this the 14th day of February, 2011.

WILLIAM R. MARKS, MAYOR

ATTEST:

JOHN HAMILTON, CITY CLERK

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
LIMESTONE COUNTY)

I, John Hamilton, City Clerk of the City of Athens, Alabama, do hereby certify that the above and foregoing is a true and correct copy of the Ordinance duly adopted by the City Council of the City of Athens, on the 14th day of February, 2011.

Witness my hand and seal of office this the ____ day of _____, 2011.

John Hamilton, City Clerk