

## **EXHIBIT "A" TO ORDINANCE NO. 504**

### **Chapter 8**

#### **ALCOHOLIC BEVERAGES**

##### **ARTICLE I. GENERALLY**

###### **Sec. 8-1. – Sale of alcoholic beverages.**

- (a) Alcoholic beverages may be manufactured or sold within the incorporated areas of the City of Flowery Branch under a license granted by the city council as governed by the terms and conditions hereafter provided.
- (b) All licenses issued hereunder shall be a mere grant or privilege to carry on the business during the term of the license subject to all terms and conditions imposed by the City of Flowery Branch and State of Georgia law.
- (c) All licenses hereunder shall have printed on the front these words: "THIS LICENSE IS A MERE PRIVILEGE SUBJECT TO BEING REVOKED AND ANNULLED AND IS SUBJECT TO ANY FUTURE ORDINANCES WHICH MAY BE ENACTED."
- (d) Any holder of a license issued hereunder shall apply for and obtain any necessary alcoholic beverage license from the State of Georgia before any manufacture or sales commence.
- (e) In addition to the rules and regulations set out in this chapter, each licensee under this chapter shall comply with all statutory laws of the State of Georgia, all federal statutory laws, and all rules and regulations of the State Revenue Commissioner relating to the manufacture and sale of malt beverages, distilled spirits and/or wine in Georgia; and any violation of same shall subject said licensee to suspension or revocation of his license and also may subject said licensee to criminal prosecution by the proper authority as provided by law and the ordinances of The City of Flowery Branch, Georgia.

*(Ord. No. 54, § 5, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 287, § 2, 10-22-2002; Ord. No. 424, Ex. A, 8-19-2009)*

###### **Sec. 8-2. - Definitions**

The definitions set forth in O.C.G.A. § 3-1-2 ("Alcoholic Beverages- General Provisions- Definitions"), shall be effective as definitions of the words, terms and phrases used in this chapter. All words, terms and phrases used herein, other than those specifically defined elsewhere in this chapter, shall have the respective meanings ascribed to them in O.C.G.A. § 3-1-2, and shall have the same scope and effect that the same words, terms and phrases have where used in O.C.G.A. § 3-1-2.

*Agent* means the person designated by the licensee in his application for permit to sell alcoholic beverages by the drink.

*Alcohol* means ethyl alcohol, hydrated oxide of ethyl or spirits of wine, from whatever source or by whatever process produced.

*Alcoholic beverage* means and includes all alcohol, distilled spirits, beer, malt beverage, wine or fortified wine.

*Amenity permit* means an authorization granted by the City for a non-eating establishment to offer alcoholic beverages as an act of hospitality, where it is clearly a secondary function of the business.

*Authorized catered function* 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.

*Bar or tavern* means

*Beer or 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 percent (14%) alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

*Brew pub* means an eating establishment in which beer or malt beverages are manufactured or brewed for retail consumption on the premises and solely in draft form.

*Building code* means and includes all building, plumbing and electrical codes and any other similar technical code of the city.

*City Clerk* means the clerk of the City of Flowery Branch, Georgia or his designee.

*Church* means any permanent, primary building set apart for the regular assembly of religious worship.

*College* means only such state, county, city, church or other colleges that teach the subjects commonly taught in the common colleges of this state and shall not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

*Distance* means the measurement in linear feet from the front entrance of the proposed structure to the nearest structural wall of the private residence, church, school college classroom or alcohol treatment center along the nearest practical street route.

*Distilled spirits or spirituous liquor* means any alcoholic beverage obtained by distillation or containing more than twenty-one percent (21%) alcohol by volume including, but not limited to, all fortified wine and including all porter, brown, stout, lager beer, shall beer and strong beer.

*Eating establishment* 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, prepared to serve food every hour they are open and deriving at least as much gross receipts annually from the sale of prepared meals or food as it derives from the sale of distilled spirits.

*Election day* means that period of time beginning with the opening of polls and ending with the closing of polls.

*Fortified wine* means any alcoholic beverage containing more than twenty-one percent (21%) alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added.

*Gender* – for convenience in construction, the masculine pronouns “he” or “his” may be sometimes used; however, such usage shall, where appropriate, imply the feminine gender and may be construed as “she”, “here” or any other feminine usage as may be necessary.

*Governing authority* means the city council of the City of Flowery Branch.

*Growler* means a bottle made of glass or other material customary to the industry provided that the bottle is capable of being sealed with a screw cap and then sealed with a plastic collar over the screw for the purpose of complying with open container laws,

*Hotel or motel* means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where sleeping accommodations are offered for adequate pay to travelers and guest whether transient permanent or residential. Hotels and motels shall have the privilege of granting franchises for the operation of a lounge or restaurant in their premises and the holder of such franchise shall be included in the definition of hotel thereunder.

*Indoor commercial recreational establishment* is limited to an establishment regularly serving prepared food, with a full-service kitchen, prepared to serve food every hour they are open and deriving at least seventy percent (70%) of its total annual gross sales from the sale of prepared meals or food and recreation activities; and wherein the sale of food and alcoholic beverages is incidental to its primary enterprise and activity on the premises. The primary activity on the premises of the indoor commercial recreational establishment shall be family-oriented in nature, generally meaning a use that attracts a range of individuals from all age groups. Uses may specifically include, but are not limited to, dinner theaters, bowling centers, and other similar uses. Outdoor commercial recreation is not included, nor shall concession sales of alcoholic beverages be permitted in an outdoor commercial recreational establishment. Bingo parlors, dance halls, nightclubs, taverns, billiard parlors, video arcades, adult entertainment and/or sexually related entertainment

activities, and similar uses are specifically excluded from this definition of indoor commercial recreational establishments.

*License* shall mean the authorization by the city to engage in the service or sale of alcoholic beverages as described in this chapter.

*Licensee* shall mean the individual to whom a license is issued or in the case of a partnership, corporation or limited liability company, all partners, officers, directors and members of said partnership, corporation or company.

*Liter* means a metric measurement currently used by the United States.

*Lounge* means a separate room connected with a part of and adjacent to a restaurant as defined herein 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 twenty (20).

*Manufacturer* means any maker, producer, or bottler of an alcoholic beverage. Manufacturer also means:

- (1) in the case of distilled spirits, any person engaged in distilling, rectifying or blending any distilled spirits; and
- (2) in the case of malt beverages, any brewer.

*Minor* means any person below the age at which alcoholic beverages may be legally purchased in Georgia.

*Package* means any 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.

*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.

*Pouring permit* means an authorization granted by the City to dispense, sell, serve, take orders, or mix alcoholic beverages in establishments licensed as a retail consumption dealer.

*Premises* means the space or area owned, leased and/or controlled by the licensee and used by him for the purposes 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; except further, that in the case of private clubs, "premises" shall include any swimming pool which is in the immediate vicinity of the main building of the private club and which is open to members only and their guests and not the general public. Said swimming pool must have a minimum of two thousand five hundred (2,500) square feet of water surface and with required lifeguards. Premises is further

defined as one physically identifiable place of business consisting of one room, or two (2) or more contiguous rooms operating under the same trade name, ownership, or management; provided nothing herein shall require additional licenses for service bars, or portable bars used exclusively for the purpose of mixing or preparing drinks when such bars are accessible only to employees of the licensed establishment and from which drinks are prepared to be served in the licensed premises.

*Private club* means any non-profit association organized under the laws of the State of Georgia complying with Internal Revenue Code Section 501; and

- (1) has been in existence at least one year prior to its filing of an application for a license to be issued according to this ordinance;
- (2) has a least 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 is equipped with suitable kitchen and dining room space and equipment and is staffed with a sufficient number of employees for cooking, preparing and serving meals for its members and guest; 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.

*Private residence* means a house or dwelling wherein not less than one (1) nor more than three (3) families customarily reside and shall not include a mobile home, a boarding house where there are five (5) or more boarders or roomers, or any residence which has been unoccupied for a period of six (6) consecutive months immediately prior to the filing of an application.

*Registered Agent* shall mean a natural person residing in the City of Flowery Branch or Hall County who is empowered to act for and represent the licensee in all matters with the City of Flowery Branch relating to an establishment licensed or making application for a license to sell alcohol upon whom any process, notice or demand required or permitted by law or under this ordinance may be served. The Registered Agent may be the licensee if the qualifications set forth in this chapter are met.

*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.

*Resident* means a person whose primary residence is within the territorial limits of Hall County, Georgia.

*Restaurant* shall mean 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, with employees

there in a sufficient number and kind to prepare, cook and serve suitable food for its guests. At least one meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of remodeling and the serving of meals shall be the principal business conducted (deriving at least forty percent (40%) of its annual gross food and beverage sales from the sale of prepared meals or food), with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall provide at least fifty-five (55) seats for customers.

*Retail* means retail sales packaged to go and not for consumption on the premises.

*School* means only such state, county, city, church or other schools that teach the subjects commonly taught in the common schools of this state and shall not include private schools providing primarily daycare or where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

*Wine* means any alcoholic beverage containing not more than twenty-one percent (21%) alcohol made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. The term "wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverage, 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 that point in the manufacturing process when it conforms to the definition of wine contained in this section.

*(Ord. No. 47, § 2, 9-11-1986; Ord. No. 54, § 2, 10-22-1987; Ord. No. 54-A, § 1, 4-6-1998; Ord. No. 170, § 1, 5-18-1999; Ord. No. 287, §§ 3, 6, 10-22-2002)*

### **Sec. 8-3. - Penalties.**

Any person who violates any provisions of this chapter, may upon conviction, be punished as set forth in section 1-12, unless a different penalty is set forth in this chapter. No such penalty shall prevent the city from suspending or revoking any license issued under this chapter, and any person violating any of the provisions of this chapter may, in addition to the other penalties and liabilities provided for herein, have his license or permit revoked as provided for herein.

*(Ord. No. 424, Ex. A(2), 8-19-2009)*

### **Sec. 8-4 --- 8-20. – Reserved.**

## **ARTICLE II. LICENSING**

### **DIVISION 1. GENERALLY**

### **Sec. 8-21. - Unauthorized sale or delivery prohibited.**

It is unlawful for any person to serve, manufacture, sell or possess for the purpose of sale any alcoholic beverages where the person does not have a

license or permit from the City to serve, manufacture, sell or possess for sale alcoholic beverages, or to manufacture, sell or make deliveries beyond the boundaries of the premises covered by the license.

*(Ord. No. 287, § 4, 10-22-2002; Ord. No. 424, Ex. A(21), 8-19-2009)*

**Sec. 8-22. - Distance requirements.**

- (a) No person, knowingly and intentionally, may sell or offer to sell:
  - (1) Any distilled spirits in or within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds or college campus;
  - (2) Any wine or malt beverages within 100 yards of any school building, school grounds, or college campus or college campus;
  - (3) Any alcoholic beverages within 100 yards of an alcoholic treatment center owned and operated by the state of Georgia or any county or municipal government therein;
  - (4) Any alcoholic beverages within 100 yards of any housing authority property.
- (b) 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 the state of Georgia and which are public schools or private schools as defined in O.C.G.A. § 20-2-690(b).
- (c) As used in this section, the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by the Housing Authorities Law of the state of Georgia.
- (d) No person, knowingly and intentionally, may sell or offer to sell any packaged distilled spirits within a distance of two thousand six hundred (2600) feet of any business licensed to sell package distilled spirits unless other such business is a hotel.
- (e) 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 front door of the structure from which alcoholic beverages are sold or offered for sale;
  - (2) In a straight line to the nearest public sidewalk, walkway, street, road or highway;
  - (3) Along such public sidewalk, walkway, street, road or

- highway by the nearest route;
- (4) To the front door of the church building, or to the nearest portion of the school grounds, whichever is applicable.
- (f) No location which is licensed to sell alcoholic beverages on the effective date of the ordinance codified in this chapter shall be denied continued operation under an existing license, or denied any renewal of such license, nor shall any new owner of said location be denied a new license based upon the measurements set forth in this section.
- (g) As to any location licensed in the future, if the distance requirements herein are met at the time of issuance of any license, the subsequent opening and operation of a church or school within the distance prohibited herein shall not prevent the continuance of an existing license or the renewal thereof or the issuance of a new license to any subsequent owner of such property. However, notwithstanding any other provisions of this section and chapter, said use shall not be reestablished after discontinuance of 12 months, unless it shall meet the requirements of subsection (a).

*(Ord. No. 170, § 7, 5-18-1999; (Ord. No. 54, § 2, 10-22-1987; Ord. No. 54-A, § 1, 4-6-1998; Ord. No. 170, § 7, 5-18-1999; Ord. No. 287, § 14, 10-22-2002; Ord. No. 424, Ex. A(36), 8-19-2009)*

#### **Sec. 8-23. - Separate license.**

A separate application must be made for each license location sought by the applicant.

*(Ord. No. 287, § 21, 10-22-2002; Ord. No. 424, Ex. A(22), 8-19-2009)*

#### **Sec. 8-24. - Application for new license in existing license location.**

An application for a new license in an existing license location shall meet and qualify under all requirements of this chapter for granting of a new license.

*(Ord. No. 287, § 28, 10-22-2002; Ord. No. 424, Ex. A(23), 8-19-2009)*

#### **Sec. 8-25. ----- 8.40. - Reserved.**

### **DIVISION 2. APPLICATION**

#### **Sec. 8-41. - Contents; guidelines.**

- (a) All persons desiring to serve, manufacture or sell alcoholic beverages shall make application on a form prescribed by the City Clerk.
- (b) In the case of a limited liability company, the applicant(s) shall be the member(s) who own(s) at least twenty percent (20%) of the company or if no member owns twenty percent (20%) of the company, then the managing member or the member with the



greatest ownership shall be the applicant.

- (c) In the case of a partnership, the applicant(s) shall be the partner(s) who own at least twenty percent (20%) of the partnership or if no partner owns twenty percent (20%) of the partnership, then the general partner, managing partner or the partner with the greatest ownership shall be the applicant.
- (d) In the case of a corporation, the manager of the proposed licensed premises shall be the applicant.
- (e) The application shall include, but not be limited to:
  - (1) the name, address and length of residency of the applicant;
  - (2) the proposed business to be carried on;
  - (3) if a limited liability company, the name and address of the member(s) and the name and address of any person owning twenty percent (20%) of the company; if no member of the company owns twenty percent (20%), the name and address of the member with the greatest ownership;
  - (4) if a partnership, the name and address of the partners and the name and address of any person owning twenty percent (20%) of the partnership; if no partner owns twenty percent (20%), then the partner with the greatest ownership;
  - (5) if a corporation, the name and address of the manager(s), and the name of all shareholders holding more than twenty percent (20%) of any class of corporate stock;
  - (6) the name and address of the registered agent;
  - (7) the name and address of the manager;
  - (8) a statement of the applicant's financial condition;
  - (9) evidence of ownership of the building, a copy of the lease if the applicant is leasing the building, a copy of a purchase contract if the applicant is in the process of purchasing the building, or a copy of a contract demonstrating the applicant has exclusive control over the premises from which the alcoholic beverages will be manufactured or sold; and
  - (10) detailed plans of the building and outside premises where the business will be located.

- (f) All applicants shall furnish such additional data, fingerprints, financial responsibility, survey, survey affidavit, scaled drawings, business records and other information as required by the City Clerk or his designee, to ensure compliance with the provisions of this chapter and any other provisions of state or local law. Fingerprinting required hereunder shall be by a participating Georgia Application Processing Service, which shall forward said fingerprints to the GBI/GCIC or any other designated agent of the City for a background check to be performed. Surveys or survey affidavits must be prepared by a registered land surveyor. Failure to furnish any of the information as requested hereunder shall automatically serve to dismiss the application with prejudice.
- (g) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths. The making of any untrue or misleading statement in the application for a license hereunder shall be cause for the denial, suspension or revocation of such license.
- (h) All applications shall be accompanied either by lawful money of the U.S., or by a certified check or cashier's check, payable to the City of Flowery Branch, Georgia, for the proper amount of the license fee.

*(Ord. No. 54, §§ 3, 5, 8, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. 170, §§ 3, 6, 5-18-1999; Ord. No. 287, §§ 17, 19, 20, 10-22-2002; Ord. of 8-1-1994, §§ 1(8-15)(8-16), 8-1-1994; Ord. No. 54E, § 1, 5-16-2007; Ord. No. 424, Ex. A(24), 8-19-2009; Ord. No. 424a § II, 4-1-2010)*

**Sec. 8-42. - Notice of intention to secure a retail dealer license.**

- (a) No application for a retail dealer license for the sale of distilled spirits shall be acted upon until after the applicant has published in the newspaper which publishes the legal advertisements for the City a notice of his intention to secure a retail dealer license. Such notice shall be published at least once during the thirty (30) days immediately preceding the application for a license. Such notice shall be in large bold face type and state:
  - (1) the type of license for which application has been filed;
  - (2) the exact location of the place of business for which a license is sought;
  - (3) the names and addresses of each owner of the business;
  - (4) if the applicant is a company, the names and titles of all members;
  - (5) if the applicant is a partnership, the names and titles of all partners; and

- (6) if the applicant, member or partner is a corporation, the names and titles of all corporate officers.
- (b) Proof of publication of the notice required by this section shall be attached to an application for a license for a retail dealer license.
- (c) An applicant for a renewal license shall not be subject to the notice requirements of this section.

*(Ord. No. 170, § 4, 5-18-1999; Ord. No. 287, § 18, 10-22-2002)*

**Sec. 8-43. - Withdrawal of application; partial refund.**

Any application made pursuant to this chapter may be withdrawn by the applicant at any time. If the applicant withdraws the application before a license is issued, ninety five percent (95%) of the license fees deposited will be refunded.

**Sec. 8-44. – Denial.**

- (a) The City Clerk shall provide written notice to any applicant whose application is denied under the provisions of this chapter. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal under the provisions of this chapter.
- (b) In all instances in which an application has been denied, the applicant will be refunded ninety five percent (95%) of the license fees deposited.
- (c) Any applicant denied a license shall be prohibited from applying for another license for a period of one (1) year from the filing date set forth on the application. Any partnership, limited liability company, corporation, trust or other entity in which an individual applicant is a member, shareholder, director or officer, or in which such entity acts as a surrogate for such applicant, shall also be subject to the prohibition contained in this subsection.

*(Ord. No. 170, § 2, 5-18-1999)*

**Sec. 8-45 ---- 8.50. – Reserved.**

### DIVISION 3. LICENSING QUALIFICATIONS

#### **Sec. 8-51. – Age, citizenship and residency requirements.**

No license to serve, manufacture or sell alcoholic beverages shall be granted to any person, partnership or limited liability company unless the person or all partners or members shall be at least 21 years of age, a resident of the United States or an alien lawfully admitted for permanent residence, and a resident of the state of Georgia. In the event a corporation should be an applicant, said corporation shall be a Georgia corporation or registered to do business in the state of Georgia

(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. 424, Ex. A(27), 8-19-2009; Ord. No. 424a, § III, 4-1-2010)

#### **Sec. 8-52. - Limited liability company, partnership or corporation.**

- (a) If the applicant is a limited liability company, partnership or corporation, the provisions of this division shall be applicable to all its members, partners, officers, and majority stockholders. The City Clerk may decline to issue a business license when any person having any ownership interest in the operation of the place of business or control over the place of business does not meet the same character requirements set forth in this article.
- (b) In the case of a limited liability company, the license will be issued to all members owning at least 20 percent of the company or if no member owns twenty percent (20%) of the company, then the managing member or the member with the greatest ownership will be licensed.
- (c) In the case of a partnership, the license will be issued to all partners owning at least twenty percent (20%) of the partnership or if no partner owns twenty percent (20%) of the partnership, then the general partner, managing partner or the partner with the greatest ownership will be licensed.
- (d) In the case of a corporation, the manager of the proposed licensed premises must be qualified to obtain a license and must make a sworn statement of these qualifications.  
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006)

#### **Sec. 8-53. - Prohibited interests.**

It shall be unlawful for any person to hold an alcoholic beverage license who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license to accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.

(Ord. No. 54, § 8, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006; Ord. 424, Ex. A(28), 8-19-2009)

**Sec. 8-54. - Prior criminal record.**

- (a) No person, limited liability company, partnership or corporation shall be granted any alcoholic beverage license unless it shall appear to the satisfaction of the city clerk that such person, members, partners, 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, to any crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of ten (10) years immediately prior to the filing of such application. At the time an application is submitted for any alcoholic beverage license, the applicant shall, by a duly sworn affidavit, certify that the applicant, nor any of the other owners of the establishment, have been convicted or has pleaded guilty or entered a plea of nolo contendere and have been released from parole or probation to any crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of ten (10) years immediately prior to the filing of such application. Should any applicant, member, partner, or officer instrumental in the sale or dispensing of any alcoholic beverage, after a license has been granted, be convicted or plead guilty or nolo contendere to a crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime, the license shall be immediately revoked and cancelled.
- (a) 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 (10) years prior to the filing of application for such license.

**Sec. 8-55. - Previous revocation or denial.**

Each applicant shall not have had a license to sell alcoholic beverages revoked by any jurisdiction for violation of its laws or its rules within a period of five (5) years immediately preceding the filing of such application.

(Ordinance No. 170, § 2, 5-18-1999; Ord. No. 424, Ex. A(30), 8-19-2010)

**Sec. 8-56. - Adequate participation.**

A license may be denied to any applicant 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 applicant is intended to be a mere surrogate for a person who would not otherwise qualify for a license for any reason whatsoever.

(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. 424, Ex. A(31), 8-19-2009)

**Sec. 8-57. - Character; reputation.**

All applicants for any alcoholic beverage license must be of good character, and all operators, managers, clerks or other employees shall be of like character. Limited liability company, partnership or corporate applicants shall be of good business reputation.

**Sec. 8-58. - Full disclosure of participation.**

- (a) No person shall have, own or enjoy any ownership, interest in, share in the profits from, or otherwise participate in the business of any alcoholic beverage licensee in the city unless a full description of such interest shall have been furnished the City Clerk at the time such interest arose. It shall be the duty of the licensee to report to the City Clerk, within five (5) days, any change in any interest in such licensee's business including but not limited to:
  - (1) Any division of the profits;
  - (2) Any division of net or gross sales for any purpose whatsoever;
  - (3) Any change in the payment of rents or leases;
  - (4) Any change in the ownership of any lease of building or land used in such business;
  - (5) Any change in the ownership of any limited liability company, partnership, or corporation that has any interest in such business or the change of management of such limited liability company, partnership or corporation.
- (b) After receipt of such notice, the City Clerk shall notify such person

within a reasonable time of any objection to the ownership or interest set forth therein, and it shall then be incumbent upon such person to dispose of such interest within thirty (30) days after the mailing of the notice to do so by the city clerk to such person at his address as shown on such notice of interest.

- (c) The report required by this section shall be in a form required by the city and shall be an amendment to the licensee's permanent license application on file with the city and as such shall be under oath and verified as otherwise required of license applications.

*(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006; Ord. 424, Ex. A(32), (33) 8-19-2009)*

### **Sec. 8-59. – Payment of taxes and other debts to the city.**

No license shall be issued to any person, limited liability company, partnership or corporation that owes any tax, fee, assessment, charge or other such monies to the City until all such monies are paid in full.

*(Ord. No. 287, § 29, 10-22-2002; Ord. No. 424, Ex. A(35), 8-19-2009)*

### **Sec. 8-60. – Completed building.**

No alcoholic beverage license shall be issued to any person unless the building in which the business will be located is completed and an occupancy permit for this premise to be licensed has been issued by the City. The completed building and land use shall comply with the Code of the City of Flowery Branch, the Flowery Branch Zoning Ordinance and the Flowery Branch Subdivision Ordinance, and the regulations of the State of Georgia.

*(Ord. No. 54, § 5, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 170-C, § 3, 5-2-2007; Ord. No. 54E, § 1, 5-16-2007; Ord. No. 424, Ex. A(64), 8-19-2009)*

### **Sec. 8-61. - Completion of proposed licensed premises.**

If the building in which an applicant for a license proposes to operate under the provisions of this chapter is not, at the time of application for the license, in existence, or not yet completed, a license may be issued for the location provided the plans and specifications for the proposed building are filed with the city clerk, and show clearly a compliance with the provisions of this ordinance and other applicable provisions of this code. No sales of alcoholic beverages shall be allowed in the establishment until the building has been completed in accordance with the plans and specifications and in conformity with all other provisions of this code, as well as appropriate building codes, and a certificate of occupancy has been issued for the building.

*(Ord. No. 287, § 30, 10-22-2002; Ord. No. 424, Ex. A(65), 8-19-2009)*

### **Sec. 8-62. - License fees.**

- (a) Before a license shall be issued, each applicant shall pay a license fee in accordance with the scale fixed by resolution of the city council.
- (b) Any person who is doing business or begins to do business at any time after the first day of January and before the first day of April shall pay the full license fee. Any person who begins to do business on or after the first day of April and before the first day of July will pay three quarters (3/4) of the license fee. Any person who begins business on or after the first day of July and before the first day of October shall pay one-half (1/2) the license fee. Any person who begins doing business the first day of October and before the first day of the year shall pay one quarter (1/4) of the license fee.
- (c) No license fee or any portion thereof will be refunded after a license has been issued.

*(Ord. No. 287, § 32, 10-22-2002; Ord. No. 314, § 2, 9-23-2004; Ord. No. 424, Ex. A(39), 8-19-2009)*

**Sec. 8-63. ----- 8-80. – Reserved.**

**DIVISION 4. LICENSE**

**Sec. 8-81. - License to be exhibited.**

The city issued alcoholic beverage license shall at all times be kept plainly exposed to view, to the public, at the place of business for which the same was issued.

*(Ord. No. 287, § 34, 10-22-2002; Ord. No. 424, Ex. A(40), 8-19-2009)*

**Sec. 8-82. - Posting of signs.**

All holders of a city issued alcoholic beverage license shall post signs in a conspicuous location in their place of business which read as follows:

"It is against the law for a person under the age of 21 to have in his or her possession or under his or her control any alcoholic beverage. It is also a violation of the law for such a person to misrepresent his or her age in any manner for the purpose of obtaining any alcoholic beverages. Any person who conspires, aids, abets or assists any other person under the age of 21 to obtain an alcoholic beverage shall be guilty of violating these provisions." (O.C.G.A., § 3-3-24.2)

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

*(Ord. No. 287, § 13, 10-22-2002; Ord. No. 424, Ex. A(41), 8-19-2009)*

**Sec. 8-83. - Transferability.**



- (a) No alcoholic beverage license may be transferred from one person to another or from one location to another except as otherwise provided in this section.
- (b) In case of the death of any person owning a license, the license may be transferred to the administrator, executor or personal representative of the deceased person, or the lawful heirs of the deceased person, if such heirs make application and meet all of the other qualifications contained in this chapter. The license of such deceased person shall be held by the administrator, executor or personal representative of such deceased person only for the time necessary to complete execution of the estate and dispose of the license or interest therein, but in no event beyond the expiration of the license, unless renewed in accordance with this chapter.
- (c) In the event of the bankruptcy or in the event that any applicant shall have a receiver appointed by any court of competent jurisdiction, such license shall be transferable to such receiver or trustee in bankruptcy for such period of time as may be granted by the city clerk for the proper liquidation of such assets and stock and goods of alcoholic beverages.
- (d) Nothing in this section, however, shall prohibit one (1) or more of the members of a limited liability company or the partners of a partnership holding a license to withdraw from the limited liability company or partnership and to assign his interest in such limited liability company or partnership to one (1) or more of the members or partners who were members or partners at the time of the issuance of the license. Such a withdrawal shall not, however, serve to bring any new ownership into the limited liability company or partnership.
- (e) This section shall not prohibit transfer of stock to persons who held more than ten percent (10%) of any class of stock in the corporate ownership at the time of issuance of the license.
- (d) A change of location with no change in ownership shall be allowed for any license under this ordinance provided the licensee files with the city clerk the following information on the new location:
  - (1) proof of planning and zoning compliance;
  - (2) proof of building code compliance;
  - (3) a legal description of the property upon which the new premises is located;
  - (4) an affidavit from a registered surveyor stating that the establishment complies with any distance or location requirements contained in this chapter; and

- (5) proof or ownership, or control, of the premises of the new location in accordance with this chapter.
- (f) Should a transfer of location be approved the license fee paid for the old location shall be applied to the new location.
- (g) Any change of location allowed under this section may be denied or revoked on the same basis as for an application for license.
- (h) In the event of the total sale of a business which holds a valid license pursuant to this chapter, the purchaser of said business may continue to operate said business pursuant to this ordinance so long as the purchaser completes the application process described herein prior to assuming responsibility for operating said business. No additional licensing fee shall be due from purchaser until the expiration of the license in existence at the time of the sale of said business.
- (i) At the time a transfer application is filed, a transfer fee shall be paid in an amount as established by resolution of the city council.

*(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 5, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. 287, § 27, 10-22-2002; Ord. No. 424, Ex. A (42), (78), 8-19-2009)*

#### **Sec. 8-84. – Term; renewal.**

- (a) All alcoholic beverage licenses shall be valid only for the calendar year indicated thereon and shall expire at midnight on December 31<sup>st</sup> of the year in which issued.
- (b) No licensee shall have any vested right to renewal of any city issued license. A licensee that desires to continue in business during the next or subsequent calendar year must submit to the city clerk a complete renewal application for such year on or before December 1<sup>st</sup> of the preceding year.
- (c) All applications for the renewal of licenses shall be treated as applications for new licenses, except that applicants for a retail dealer license for the sale of distilled spirits need not publish notice of intent.
- (d) All applicants who fail to submit an application for renewal as required by this section must pay a penalty equal to ten percent (10%) of all license fees prior to the issuance of a renewed license.

*(Ord. No. 54, §§ 3,5, 10-22-1987; Ord. No. 170, § 5, 5-18-1999; Ord. No. 287, §§ 17, 32, 10-22-2002; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. Ex. A(45), 8-19-2009)*

**Sec. 8-85. - Automatic license forfeiture for nonuse.**

- (a) Failure to open for business within six (6) months immediately following the issuance of an alcoholic beverage license shall result in the automatic forfeiture of the license without the necessity of any further action.
- (b) Failure to operate the business authorized by a license under this chapter for a period of three (3) consecutive months after the business has begun operating, shall result in the automatic forfeiture of the license without the necessity of any further action.

*(Ord. No. 170, § 5, 5-18-1999; Ord. No. 287, § 15, 10-22-2002; Ord. No. 424, Ex. A(43), 8-19-2009)*

**Sec. 8-86. - Suspension or revocation of license.**

- (a) Whenever the state revokes any permit or license to manufacture or sell alcoholic beverages, the city issued license shall thereupon be immediately revoked.
- (b) The city clerk shall revoke any license where:
  - (1) any licensed establishment is in violation of section 8-115 of this code;
  - (2) the license of any licensee has been suspended three (3) or more times in any consecutive twelve (12) month period;
  - (3) alcoholic beverages have been manufactured, sold or distributed during a period of suspension;
- (c) The city clerk may suspend or revoke any license where:
  - (1) the licensee furnishes fraudulent or untruthful information on the license application;
  - (2) the licensee fails to pay all fees, taxes or other charges imposed under the provisions of this chapter;
  - (3) the city clerk learns the licensee did not meet or no longer meets the licensing qualifications;
  - (4) Any act or omission of a licensee, owner of more than twenty percent (20%) interest in the licensed establishment, agent or employee of the licensee or licensed establishment which constitutes a violation of federal or state law or any provision of this chapter regardless of whether any criminal prosecution or conviction ensues;

- (5) The licensee no longer maintains adequate financial responsibility upon which issuance of the license was conditioned;
- (6) The licensee has defaulted in any obligation of any kind whatsoever, lawfully owing to the city;
- (d) Whenever the city clerk is granted discretion to suspend or revoke a city issued license, he shall exercise such discretion within the following guidelines:
  - (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 regarding any suspension or revocation:
    - (a) consistency of penalties;
    - (b) likelihood of deterring future wrongdoing;
    - (c) impact of the offense on the public welfare, safety, health;
    - (d) any mitigating circumstances or remedial or corrective steps taken by the licensee; and
    - (e) Any aggravating circumstances or failure by the licensee to take remedial or corrective steps.
- (e) When a license is suspended or revoked, the city shall not be required to refund any portion of any business tax or license fee to the holder of such suspended or revoked license.
- (f) When a license is revoked, the former licensee is not permitted to make application for a new license under this chapter for one (1) year after the date of revocation.

*(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 11, 5-18-1999; Ord. No. 287, § 38, 10-22-2002; Ord. No. 424, Ex. A(46) , (47), 8-19-2009)*

#### **Sec. 8-87. - Hearing.**

- (a) No license shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided. This section does not apply to employee pouring permits.
- (b) The City Clerk shall provide written notice to any applicant or licensee of his decision to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such denial, suspension or revocation, and shall advise the applicant of the right to appeal under the provisions of this chapter. Any applicant or licensee who is aggrieved or

adversely affected by the decision of the city clerk may have a review thereof by appeal to the city council. Such appeal shall be by written petition, filed in the office of the city clerk within fifteen (15) days after the decision of the city clerk.

- (c) A hearing shall be conducted on each appeal within thirty (30) days of the date of filing with the city clerk unless a continuance of such date is agreed to by the appellant and the city clerk. The appellant at such hearing shall have the right to be represented by an attorney, and to present evidence and cross-examine witnesses.
- (d) Within fifteen (15) days after the conclusion of the hearing, the city clerk shall notify the appellant in writing of the city council's decision with the reasons therefore stated.
- (e) The decision of the city council shall be final unless appealed within thirty (30) days of the date of said decision by certiorari the Hall County Superior Court.

*(Ord. No. 424, Ex. A(48), (49) 8-19-2009)*

**Sec. 8-88. ---- 8-100. – Reserved.**

**ARTICLE III. REGULATION**

Division No. 1 Generally

**Sec. 8-101. - Copy of ordinance.**

The holder of every alcoholic beverage license hereunder shall have available in his place of business at all times a copy of this ordinance and shall be responsible for compliance herewith by persons on the premises.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999)*

**Sec. 8-102. - Registered agent.**

All licensed establishments must have and continuously maintain in Hall County a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter may be served. This person must be a resident of Hall County. The licensee shall file such forms as required by the City Clerk to provide the name and address of the registered agent and consent of such agent to serve in said capacity. The registered agent shall submit a release permitting the Flowery Branch Police Department to perform an investigation to verify his residency.

*(Ord. No. 54, § 3, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006; Ord. No. 170, § 6, 5-18-1999; Ord. No. 287, § 24, 10-22-2002; Ord. No. 424, Ex. A(35), 8-19-2009)*

### **Sec. 8-103. - Service of notice generally.**

For the purpose of this chapter, notice shall be deemed delivered three days after the date of deposit to the United States Post Office by certified mail.

*(Ord. No. 424, Ex. A(49) 8-19-2009)*

### **Sec. 8-104. - Lighting**

Each building in which the business is to be located shall contained sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all time form the front on the street on which the building is located so as to reveal the inside retail area of the building and so as to reveal all of the outside of the premises of the building.

*(Ord. No. 424, Ex. A(65), 8-19-2009)*

### **Sec. 8-105. - Management and operation.**

The licensee shall be responsible for the management and operation of the business for which the license is granted and shall be responsible for all violations of this chapter by the licensee's agents and employees.

*(Ord. No. 54, § 8, 10-22-1987)*

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 424, Ex. A(82), 8-19-2009)*

### **Sec. 8-106. Advertising.**

All advertising for consumption of alcoholic beverages on the premises is hereby prohibited except as provided for in the following:

- (1) Licensees shall not advertise, directly or indirectly, the sale of alcoholic beverages other than in the principal building for which the license is issued, on a website owned by the licensee or on a social media account owned by the licensee. Advertising displayed within the principal buildings shall not be displayed within view of the general public from the doors or windows of such principal building.
- (2) Wholesale and consumption on the premises licensees shall be permitted to advertise by means of radio, T.V. or newspaper provided that prices and brand names of alcoholic beverages shall not be used.
- (3) Notwithstanding the foregoing, no trade name, corporate name, or name of a business shall be allowed to use the words "Beer", "Wine", or "Beer and Wine" in such name.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 424, Ex. .A(69), 8-19-2009)*

**Sec. 8-107. - Retailer to purchase from licensed wholesaler.**

- (a) No retailer shall purchase alcoholic beverages from any person, firm or corporation other than a wholesaler licensed under this chapter.
- (b) The city clerk or his designee may request, from time to time, information concerning purchases and sales of alcoholic beverages from retailers and wholesalers.
- (c) Amenity Permits are exempt from section 8-107.

*(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999; Ord. No. 287, § 12, 10-22-2002; Ord. No. 424 Ex. A(51), 8-19-2009)*

**Sec. 8-108. - Inventory of alcoholic beverages.**

- (a) All alcoholic beverages shall be stored only on the premises for which the license is issued.
- (b) It shall be unlawful for any person or corporation not holding an alcoholic beverage license granted by the City to store any alcoholic beverages on the grounds of any retail establishment excluding alcoholic beverages for personal consumption in accordance with all applicable provisions of law.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 287, § 16, 10-22-2002; Ord. No. 424, Ex. A(52), 8-19-2009)*

**Sec. 8-109. Adding to containers prohibited.**

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

*(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999; Ord. No. 424, Ex. A(53), 8-19-2009)*

**Sec. 8-110. - Malt beverage and wine tastings.**

- (a) An ancillary license is required for any malt beverage or wine tasting where samples are offered to the public as a promotion for the sale of malt beverage or wine at retail for consumption on the premises or in closed packages for consumption off the premises.
- (b) A request by a licensee to conduct a malt beverage or wine tasting may be approved by the city manager when such request is made in writing on an application furnished by city clerk at least ten (10) days prior to the event and under the following conditions:
  - (1) A malt beverage or wine tasting must comply with all local and state laws and regulations pertaining to the sale and distribution of alcoholic beverages in the state and the city;

- (2) All malt beverages or wines secured for a wine tasting must be obtained through a wholesale dealer or brew pub possessing a valid current license to distribute malt beverage or wine issued by the city;
- (3) Samples shall not exceed six (6) ounces nor shall any individual be offered more than four (4) samples within a calendar day.
- (4) A bona fide nonprofit charitable or civic organization that seeks to conduct a wine tasting shall comply with all requirements set forth in O.C.G.A. §§ 3-9-3, 3-9-4, and 3-9-5 and must make application at least ten (10) business days prior to the proposed event on forms supplied by the city clerk; the city manager may waive a portion of such waiting period and/or permit fee upon good cause being shown.
- (5) A for-profit organization that seeks to conduct a malt beverage tasting and is not licensed shall comply with all requirements set forth in O.C.G.A. §3-5-20 and must make application 10 business days prior to the proposed event on forms supplied by the city clerk;
- (6) A for-profit organization that seeks to conduct a wine tasting and is not licensed shall comply with all requirements set forth in O.C.G.A. § 3-6-20 and must make application 10 business days prior to the proposed event on forms supplied by the city clerk;
- (7) A nonrefundable fee in an amount established by resolution of the city council will be charged for the processing of an application for a malt beverage or wine tasting."

**Sec. 8-111. – Minors; exemptions.**

- (a) It is unlawful for any person to knowingly, directly or through another person, furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any minor.
- (b) It is unlawful for any minor to purchase or knowingly possess any alcoholic beverage.
- (c) It is unlawful for any person to knowingly or intentionally act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age.
- (d) It is unlawful for any minor to misrepresent his age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage.



- (e) The prohibition contained in paragraph (a) of this section shall not apply with respect to the sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverages is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, or driver's license. "Proper identification" shall not include any traffic citation, complaint form, birth certificate, or social security card.
- (f) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such alcoholic beverage to request to see and to be furnished with proper identification as provided for in paragraph (e) of this section in order to verify the age of such person; and the failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.
- (g) Any attempt to commit any act made unlawful by this section shall be itself unlawful and subject to punishment in the municipal court.
- (h) Violation of any provisions of this section shall constitute an offense hereunder and shall be punishable in the municipal court; provided, violation of this section by persons who have not yet reached the age of 17 years shall be handled as provided by the juvenile court system.
- (i) The sale, purchase or possession of alcoholic beverages for consumption to minors shall be allowed under the following circumstances:
  - (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state.
  - (2) At a religious ceremony.
  - (3) In the home with parental consent.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 10, 13, 5-18-1999; Ord. No. 287, § 6, 10-22-2002; Ord. No. 424, Ex A(56), 8-19-299)*

### **Sec. 8-112. - Employment of minors.**

- (a) Nothing contained in this article shall be construed to prohibit any minor from:
  - (1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishment.
  - (2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured.
  - (3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.
  - (4) Purchasing, drinking or possessing any alcoholic or malt beverage or wine if such person is at the time acting for and on behalf of law enforcement agencies conducting bona fide investigations of license holders and/or their employees.
- (b) Except, no person shall allow or require a person in their employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverage.
- (c) The provisions of this section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenient stores, breweries, manufacturing facilities or drug stores from selling or handling alcoholic beverages which are sold for consumption off premises.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 13, 5-18-1999; Ord. No. 424, Ex. A(57), 8-19-2009)*

### **Sec. 8-113. - Prohibited sales.**

- (a) No licensee nor any agent or employee of a licensee shall furnish, sell or offer to sell any malt beverage and/or wine to any person who is confined in any jail, penal institution, correctional facility, prison camp, penitentiary or other lawful place of confinement, or to any person who is a patient or inmate of the Central State Hospital, or to any person who is noticeably intoxicated, or is of unsound mind, or is a habitual drunkard whose intemperate habits are known to the licensee or the agent or employee.
- (b) No licensee nor any agent or employee of a licensee shall sell any alcoholic beverage through or by means of a drive-in window.
- (c) No licensee nor any agent or employee of a licensee shall sell or offer for sale alcoholic beverages by use of vending machines.
- (d) No licensee nor any agent or employee of a licensee shall sell, offer for sale possess or permit the consumption on the licensed

premises of any kind of alcoholic beverages the sale, possession or consumption of which is not authorized under his license.

- (e) It shall be unlawful for any licensee hereunder to make deliveries of any alcoholic beverages by the drink beyond the boundaries of the premises covered by the license. The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms and provided further that this prohibition shall not apply to the consumption hereunder by the registered guests of any hotel or motel in their designated rooms.

*(Ord. No. 54, §§ 7, 8, 10-22-1987; Ord. No. 170, §§ 10, 12, 5-18-1999; Ord. No. 287, § 9, 10-22-2002; Ord. No. 424, Ex. A(50), (60), 8-19-2009)*

**Sec. 8-114. - Consumption in public; possession or consumption on city property; exemption.**

- (a) No person shall consume any alcoholic beverage from any open container while in or upon any area open to the public, whether public or private.
- (b) This section shall not apply in the following instances:
  - 1. The city manager, or his designee, may allow consumption of alcoholic beverages during special events that are open to the public or are on city property by approval of a written application made to the city manager or his designee upon forms provided by the city under the following conditions:
    - i. *One drink limit.* No person shall hold in his possession more than one alcoholic beverage in a paper or plastic cup.
    - ii. *Size limited to 16 fluid ounces.* No container in which an alcoholic beverage is dispensed shall exceed 16 fluid ounces in size. No person shall hold in his possession any open alcoholic beverage container which exceeds 16 fluid ounces in size.
    - iii. *Drinking from a can, bottle or glass is prohibited.* It shall be unlawful for any person to drink or attempt to drink any alcoholic beverage from a can, bottle or glass vessel or to possess in an open can, bottle or glass vessel any alcoholic beverage.
    - iv. *All alcoholic beverages shall only be served by a licensed caterer or eating establishment.*

2. For a Downtown Dining District as defined by this chapter.

- i. For the purposes of this chapter only, a Downtown Dining District is defined as follows: A specifically authorized and pedestrian oriented area of the City as established by resolution of Mayor and Council that allows those establishments located in the Downtown Dining District with valid consumption on the premises licenses, growler licenses, or amenity permits to dispense and/or serve an alcoholic beverage for carry out purposes, provided all other laws, rules and ordinances are followed.
- ii. Within a Downtown Dining District, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a plastic cup; provided, however, that no person shall remove more than one such alcoholic beverage from the licensed premises at a time.
- iii. Within a Downtown Dining District, no unsealed container in which an alcoholic beverage is dispensed shall not exceed sixteen (16) fluid ounces in size. No person shall hold in their possession on the streets and sidewalks, in parks and squares, or in other public places within a Downtown Dining District any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.
- iv. It shall be unlawful within a Downtown Dining District for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private.
- v. No alcoholic beverage may be consumed outside of the Downtown Dining District, or upon any private property, without the express consent of the private property owners.

**Sec. 8-115. - Restrictions on entertainment and attire.**

The following types of entertainment, attire and conduct are not permitted upon any premises licensed to sell, serve or dispense alcoholic beverages or upon any premises licensed under the business ordinances of the city in which alcoholic beverages are consumed, allowed or dispensed on the premises:

- (1) The employment or use of any person, in any capacity, in the sale or service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva or genitals; or
- (2) Live entertainment where any person appears in the manner described in this section, or where any person performs acts of or acts which simulate:
  - a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; or
  - b. The touching, caressing or fondling of the breast, buttock, anus or genitals; or
  - c. the displaying of the pubic hair, anus, vulva or genitals; or
- (3) The showing of any film, still pictures, electronic reproduction or other visual reproductions depicting any of other acts described in this section; or
- (4) The holding, promotion or allowance of any conduct, promotion, special night or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the above-prohibited conduct.
- (5) Nothing contained in this section shall apply to the premises of any mainstream performance house, museum or theater that derives less than 20 percent of its gross annual income from the sale of alcoholic beverages.
- (6) The findings and statement of purpose from the Flowery Branch Adult Entertainment Ordinance are hereby incorporated by reference as if fully set forth herein as the purpose for this section and all amendments hereto.

*(Ord. No. 424, Ex. A(66), 8-19-2009)*

### **Sec. 8-116. – Gambling prohibited.**

There shall be no gambling, betting, games of chance of any kind, punch-boards, slot machines, or the operation of any scheme for hazarding money or any other thing of value in any place, or any room adjoining the same, leased or controlled by a licensee.

### **Sec. 8-117. - Inspections.**

Any establishment holding a license issued under this ordinance shall at all times, during the period allowable by law for operation of the business, be open to inspection by any officer of the Police Department, any license inspector of the city, or to any person designated by the Chief of Police or the City Manager. In addition, if the premises are being used after hours by employees or the owners or their agents, the premises may be inspected at this time by the designated persons in this section.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 287, § 33, 10-22-2002; Ord. 424, Ex. A(67), 8-19-2009)*

### **Sec. 8-118. - Emergency closure of licensed premises.**

The city clerk or the Flowery Branch Police Department may immediately close an establishment licensed under this chapter in case of an emergency, for the safety of the public or to investigate a crime, for a period of time not to exceed 24 hours.

*(Ord. 424, Ex. A(68), 8-19-2009)*

### **Sec. 8-119. – Audits; records.**

- (a) In the event the city clerk deems it necessary to conduct an audit of the records and books of the licensee, he shall so notify the licensee of the date, time and place of the audit. The city clerk or his designee shall perform any audit authorized in this chapter. The licensee shall cooperate with the audit or forfeit any license(s) issued hereunder.
- (b) All licensees must maintain the following records for a three(3) year period and make them available for audit at the licensed premises:
  - (1) Monthly income or operating statements;
  - (2) Invoices showing the quantity of alcoholic beverages purchased from or sold to a wholesaler;
  - (3) Daily sales receipts showing distilled spirits, beer, wine and food sales separately (this subsection does not apply to wholesalers or retail package licensees);
  - (4) Daily cash register receipts such as Z tapes or guest tickets (this subsection does not apply to wholesalers);

- (5) Monthly Georgia sales and use tax reports; and
- (6) Federal income tax return with all Form 1099s.

*(Ord. No. 287, §§ 5, 36, 10-22-2002; Ord. No. 424, Ex. A(80), (81), 8-19-2009)*

**Sec. 8-120. ---- 8-130. – Reserved.**

DIVISION 2. RETAIL SALE OF ALCOHOLIC BEVERAGES  
FOR CONSUMPTION ON THE PREMISES.

**Sec. 8-131. - Consumption license exclusive of wholesale business.**

It shall be unlawful for any person to hold an alcoholic license for consumption who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license for consumption to accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.

*(Ord. No. 170, § 12, 5-18-1999; Ord. No. 424, Ex. A(72), (83), 8-19-2009)*

**Sec. 8-132. - Consumption-only sales.**

Persons holding a license to sell alcoholic beverages for consumption on the premises shall not be permitted to sell any alcoholic beverage by the package or bottle for consumption off premises.

*(Ord. No. 424, Ex. A(71), 8-19-2009)*

**Sec. 8-133. - Sales off premises for catered functions.**

- (a) Licensed malt beverage, wine or distilled spirits consumption on the premises locations eligible for off premise catering licenses shall meet the following requirements:
  - (1) Any licensed alcoholic beverage locations that possess a valid license from the city or another jurisdiction which authorizes the licensee to sell malt beverages, wine or distilled spirits by the drink for consumption on the premises may be issued an off-premise catering license which authorizes such licensed alcoholic beverage caterer to sell malt beverages, wine or distilled spirits by the drink off the premises and in connection with an authorized catered function within the city limits of Flowery Branch;
  - (2) Any licensed alcoholic beverage locations that possess a valid license from another jurisdiction which authorizes the licensee to sell malt beverages, wine or distilled spirits by the drink for consumption on the premises shall make

application for an off-premise catering license in accordance with this chapter, and shall pay to the city an annual license fee for operation for one calendar year in an amount as established by resolution of the city council.

- (b) Event permits will be issued for all catered functions located within the city limits of Flowery Branch. In order to distribute or sell malt beverages, wine or distilled spirits for consumption off the premises at an authorized catered function, a licensed alcoholic beverage caterer shall be required to:
  - (1) Possess a valid current malt beverage, wine or distilled spirits consumption off the premises catering license from the city which authorizes the licensee to sell malt beverages, wine or distilled spirits by the drink;
  - (2) Provide satisfactory reports to the city clerk on forms provided by the city stating the quantity of any and all alcoholic beverages transported from the licensee's primary premises to the location of the authorized catered function and such other information as required by the city clerk; and maintain original local event permits and documents required by the city in the vehicle transporting the alcoholic beverages to the catered function at all times;
  - (3) Pay a nonrefundable fee in an amount established by resolution of the city council for the processing of an application for an event permit.
- (c) It shall be unlawful for an alcoholic beverage caterer to employ any person under 21 years of age who, in the course of employment, would dispense serve, sell or handle alcoholic beverages.
- (d) There is hereby levied excise taxes on the total quantity of alcoholic beverages brought into the corporate limits of the city from another jurisdiction by an alcoholic beverage caterer in accordance with article II of this chapter. Said excise taxes shall be paid within 30 days of the event.

*(Ord. No. 446, § I, 3-17-2011)*

#### **Sec. 8-134. - Hours and days of sale.**

- (a) It shall be unlawful to sell malt beverages, wine and distilled spirits for consumption on the premises on any day or at any time



when such sale or consumption is prohibited by law.

(b) The hours of sale of malt beverages, wine and distilled spirits for consumption on the premises are:

(1) On election days, whether primary or general election, the hours of legal sale shall be the same as any other such day of the week, except that no such alcoholic beverages shall be sold for consumption on the premises in City within two hundred fifty (250) feet of any polling place or within two hundred fifty (250) feet of the outer edge of any building within which such polling place is established.

(2) On Monday through Saturday between the hours of 7:00 a.m. and 2:00 a.m.

(2) On Sunday between the hours of 12:30 p.m. and 12:00 midnight so long as the establishment derives at least fifty percent (50%) of its total annual gross sales from the sale of prepared meals.

*(Ord. No. 54-F, 5-2-2007; Ord. No. 170-D, 5-2-2007; Ord. No. 287-A, 5-2-2007; Ord. No. 424, Ex. A(70), 8-19-2009; Ord. No. 459, § I, 10-20-2011)*

#### **Sec. 8-135. - Clearing service areas.**

All licensees for the sale of alcoholic beverages for consumption on the premises shall remove, or cause to be removed, from the area of the premises utilized by customers or patrons all alcoholic beverages within forty-five (45) minutes after the closing time for the sale of said alcoholic beverages.

*(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999; Ord. No. 424, Ex. A(73), 8-19-2009; Ord. No. 424, Ex. A973), 8-19-2009)*

#### **Sec. 8-136. - Poured alcohol to be transported by employees.**

Poured alcoholic beverages will be transported from point of dispensing to the customer by permitted employees only.

#### **Sec. 8-137. - Delivery.**

The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and provided further that this prohibition shall not apply to private clubs hereunder, nor to the sale for consumption hereunder to the registered guests of any hotel or motel in their designated rooms.

*(Ord. No. 54, § 8, 10-22-1987; Ord. No. 424, Ex. A(74), 8-19-2009)*

#### **Sec. 8-138. - Brown bagging prohibited; exemption.**

- (a) It is prohibited for any person to bring in his own alcoholic beverage in any establishment either licensed or unlicensed.
- (b) Notwithstanding subsection (a) above, eating establishments that possess corkage licenses may permit customers to bring, possess and consume bottles of wine or malt beverage growler that are owned by the customers pursuant to the conditions set forth in this division.
- (c) As used in this subsection, the term "art shop" means a retail business devoted exclusively to providing art education that is limited to instruction in painting, sculpture and similar crafts; or selling and displaying 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 the Zoning Ordinance.
- (d) The prohibition in subsection (a) shall not apply to an art shop as defined in subsection (c). Licensed art shops are subject to the specific provisions governing the operation of an art shop:
  - 1) An art shop established under this section may allow customers to bring in a bottle or bottles of wine and/or beer to be consumed on the premises between the hours of 3:00 p.m. and 10:00 p.m.
  - 2) Any wine and/or beer served on the premises shall only be served by an employee of the art shop holding a valid pouring permit.
  - 3) The customer must remove any unconsumed wine and/or beer from the premises before leaving the premises.
  - 4) The brown bagging of wine and/or beer in an art shop shall be subject to this section, the City of Flowery Branch's Alcoholic Beverage Ordinance and to state law; including but not limited to, the prohibition of consumption by anyone who is under 21 years of age or intoxicated.
  - 5) An art shop may serve food provided it meets all federal, state and local requirements.

**Sec. 8-139. – Corkage services.**

- (a) An eating establishment that possesses a license for the retail sale of wine or malt beverage growler for consumption on the premises and a corkage license may permit customers to bring, possess and consume bottles of wine or malt beverage growler that are owned by the customer and brought onto the premises under the following conditions:

- (1) Licensee has made application as provided in this chapter for a corkage license, has been granted a corkage license by the city clerk, and has paid the corkage license fee as established by resolution of the city council.
  - (2) No more than 750 milliliters of wine, per customer over the age of 21 per meal, shall be permitted to be uncorked.
  - (3) No more than thirty-two (32) ounces of malt beverage, per customer over the age of 21 per meal, shall be permitted to be opened.
  - (4) Only customers seated at tables or booths shall be permitted to consume wine or malt beverages that have been provided by the customer.
  - (5) Wine and malt beverages may only be consumed by individuals who order and are served a meal by the licensee.
  - (6) Every bottle of wine or malt beverage growler brought onto the premises by a customer must be opened by permitted employees only.
  - (7) A customer may remove an uncorked bottle of wine or malt beverage growler from the premises only if the requirements of section 8-140 are met.
- (b) An eating establishment may at its discretion charge corkage fees.

**Sec. 8-140. - Removal of a partially consumed bottle of wine or malt beverage growler.**

- (a) Any eating establishment which is licensed to sell wine or malt beverages for consumption on the premises may permit a patron to remove one unsealed bottle of wine or malt beverage growler per customer for consumption off premises under the following conditions:
- (1) The customer has purchased a meal from the eating establishment and consumed a portion of the bottle of wine which has been purchased on the premises or has been brought onto the premises by the customer pursuant to section 8 -139 or malt beverage growler that has been brought onto the premises pursuant to section 8-139.
  - (2) The partially consumed bottle of wine or malt beverage growler that is to be removed from the premises must be securely resealed by the licensee or its permitted employees before removal from the premises.
  - (3) The partially consumed bottle of wine or malt beverage

growler shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently tampered with or opened.

- (4) A dated receipt for the meal and the purchase of the bottle of wine or corkage fee shall be provided by the licensee and attached to the container.
- (b) If transported in a motor vehicle, the container with the resealed bottle of wine or malt beverage growler shall be placed in a locked glove compartment, a locked trunk or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

#### **Sec. 8-141. Amenity license.**

A non-eating establishment that offers alcoholic beverages as an act of hospitality, where it is clearly a secondary function of the business, shall be eligible to apply for an alcoholic beverage amenity license. Eating establishments shall not be eligible for an alcoholic beverage amenity permit.

- (a) An amenity license shall allow the license holder to offer alcoholic beverages as an act of hospitality and shall not be part of the core operations of such establishments.
- (b) Any alcoholic beverage served on the premises shall only be served by an employee of the business holding a valid pouring permit.
- (c) The amenity license will be renewed annually on the calendar year and the City may revoke or suspend such amenity license and/or impose such conditions on its operation at the City's discretion for violations of this chapter or in furtherance of the health, safety, and welfare of the City's inhabitants.
- (d) The amenity license application shall include an annual background check. A \$100.00 administrative fee shall be charged to cover this administrative process.

#### **Sec. 8-142. - Food sale requirement.**

- (a) Consumption on the premises licensees shall maintain more than forty percent (40%) of their gross sales from the sale of food; and for the purposes of this section, food shall be defined as any product intended for human consumption, except those containing alcohol, or those sold as over the counter medicines. The forty percent (40%) percent ratio shall be determined on a calendar quarter basis on the monthly reports submitted by each licensee. In the event food sales fall below forty percent (40%) of the gross sales for any quarter, then the licensee shall be placed on probation for the next succeeding quarter. At the end of the next succeeding quarter, if food sales have not attained more than forty percent (40%) of gross sales then the city clerk may suspend or revoke such license in accordance with this chapter.
- (b) Section 8-142(a) shall not apply to bars or taverns located in the Downtown Dining district.

**Sec. 8-143. - Employee regulations.**

- (a) The following regulations shall apply to all establishments holding a license for consumption of alcoholic beverages on the premises:
  - (1) No person shall be employed to dispense, sell, serve, take orders, mix alcoholic beverages, or in any managerial position, by an establishment holding a license hereunder until such person:
    - a. demonstrates he is a certified alcohol awareness server having completed Servsafe, "Training for Intervention Procedures for Servers of Alcohol" (TIPS) or any other comparable program as approved by the city clerk; and
    - b. such person has been fingerprinted or cleared by the Flowery Branch Police Department, indicating that the person is eligible for such permit.
  - (2) No person shall be granted a pouring permit unless it appears to the satisfaction of the Flowery Branch Police Department that such person has not been convicted or plead guilty or entered a plea of nolo contendere to any crime involving moral turpitude, illegal gambling, or illegal possession or sale of controlled substances or the illegal sale or possession of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of five years of the date of conviction and has been released from parole or probation. A person's first time conviction for illegal possession of alcohol as a misdemeanor or violation of a city ordinance shall not, by itself, make a person ineligible for an alcohol pouring permit.
  - (3) No person shall be granted a pouring permit who has been convicted, plead guilty or entered a plea of nolo contendere to any federal, state, or local law for any felony within five years of the date of conviction and has not been released from parole or probation prior to the filing for application for such permit.
  - (4) For purposes of this section, a conviction or plea of guilt or nolo contendere shall be ignored as to any offense for

which defendants were allowed to avail themselves of the Georgia First Offender Act (O.C.G.A. title 42, ch. 8, art. 3, O.C.G.A. § 42-8-60 et seq.). 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 sentence in court entered an adjudication of guilt as to the crime for which the defendant had previously been sentenced as a first offender.

- (b) No permit shall be issued until such time as a signed application has been filed with the Flowery Branch Police Department and upon paying a fee which shall be established by resolution of the city council and a search of the criminal record of the applicant completed. Said application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall not be produced for public inspection without a court order.
- (c) The Flowery Branch Police Department shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. In the event there is no record of a violation of this chapter, the Flowery Branch Police Department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the Flowery Branch Police Department shall notify the employer that this person is not eligible for employment, the cause of such denial and their right to appeal.
- (d) It shall be the duty of all persons holding any license to serve or sell alcoholic beverages to file with the city clerk the name of the establishment, the license number and a list of all employees, with their home addresses and home telephone numbers quarterly, on or before April 1<sup>st</sup>, on or before July 1<sup>st</sup>, on or before October 1<sup>st</sup> and with the December 1<sup>st</sup> annual renewal.
- (e) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the Flowery Branch Police Department.
- (f) This section shall not be construed to include employees whose duties are limited solely to those of busboy, cook or dishwasher.
- (g) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (h) In the event that any permit holder leaves the employ of a

licensed establishment, the licensee shall immediately surrender the permit to the Flowery Branch Police Department.

- (i) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the city clerk or Flowery Branch Police Department.
- (j) Separate permits shall be required by the city clerk for each employee working in more than one establishment serving alcoholic beverages.
- (k) No person shall be issued a permit if it is determined that the person knowingly and willfully falsified, concealed or covered up any material fact by any device, trick, or scheme while making application for an alcoholic beverage pouring permit under this section.
- (l) This applies only to establishments holding a consumption on the premises license as outlined in this chapter:
  - (1) Each licensed establishment is required to have all servers be certified as "alcohol awareness servers." Each server's certificate will be kept on site for review by any police officer, code enforcement officer or city clerk posted in plain view to the public along with the license to operate the establishment.
  - (2) Each establishment will provide the city clerk of the city a list of all servers that are employed and the certificate number of each "alcohol awareness server." This list is to be received no later than 60 days from receipt of license to operate and in conjunction with the renewal application.
- (m) An alcohol pouring permit shall be issued for a period of one calendar year from the date of the original application. Once received the alcohol awareness server certification is valid for three (3) years from the date listed on the certificate. The alcohol pouring permit must be in the possession of the employee while the employee is working at the licensed establishment. This permit must be in the possession of the employee while the pouring permit holder is working and available for inspection by the city clerk or his designee.

*(Ord. No. 424 Ex. A(62), 8-19-2009; Ord. No. 470, §§ I.A.-- I.D, 8-16-2012)*

#### **Sec. 8-144. - Underage loitering.**

No person who holds an alcoholic beverage license for consumption on the premises shall allow any person less than eighteen (18) years of age to be in, frequent, or loiter in any lounge located within the licensed premises unless such person is accompanied by a parent or legal guardian.

*(Ord. No. 54, § 7, 10-22-1987; Ord. No. 424, Ex. A(58), 8-19-2009)*

**Sec. 8-145. ---- 8-160. – Reserved.**

DIVISION 4. RETAIL PACKAGE SALES.

**Sec. 8-161. – Hours and days of sale for malt beverages and wine.**

- (a) It shall be unlawful to sell malt beverages and wine for consumption off the premises on any day or at any time when such sale or consumption is prohibited by law.
- (b) The hours of sale of malt beverages and wine for consumption off the premises are between 7:00 a.m. and 12:30 p.m., Monday through Saturday, and between 12:30 p.m. and 11:30 p.m. on Sunday

*(Ord. No. 54-F, 5-2-2007; Ord. No. 170-D, 5-2-2007; Ord. No. 287-A, 5-2-2007; Ord. No. 459, § I, 10-20-2011)*

**Sec. 8-162. - Hours and days of sale for distilled spirits.**

- (a) It shall be unlawful to sell distilled spirits for consumption off the premises on any day or at any time when such sale or consumption is prohibited by law.
- (b) The exterior entrances of package stores must be locked not later than 12:00 midnight, Monday through Saturday, and not later than 11:30 p.m. on Sunday. Package stores shall not engage in the sale of distilled spirits except on Monday through Saturday between the hours of 7:00 a.m. and 12:00 midnight and on Sunday between the hours of 12:30 p.m. and 11:30 p.m.”

*(Ord. No. 54-F, 5-2-2007; Ord. No. 170-D, 5-2-2007; Ord. No. 287-A, 5-2-2007; Ord. No. 459, § I, 10-20-2011)*

**Sec. 8-163. - On-premises consumption unlawful.**

It shall be unlawful for any person to consume any alcoholic beverage on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any retail package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises. This section shall not apply with respect to:

- (1) Tastings pursuant to a malt beverage or wine tasting license;
- (2) Malt beverage tastings pursuant to section 8-164(5);
- (3) Sales pursuant to a license for consumption.

**Sec. 8-164. – Growlers.**



Package malt beverage licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with draft beer at the licensed location subject to the following requirements:

- (1) Either at least ninety percent (90%) of the licensee's total gross sales are from the packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of four hundred (400) square feet of floor space dedicated to the display of malt beverages offered for sale.
- (2) A growler shall not exceed sixty-four (64) ounces.
- (3) Growlers may only be filled from kegs procured by the licensee from a duly licensed wholesaler.
- (4) Only professionally sanitized and sealed growlers may be filled and made available for retail sale.
- (5) Each growler must be securely sealed and removed from the premises in its original sealed condition.
- (6) Consumption on the premises is strictly prohibited. However, samples of tap beers may be made available without a malt beverage tasting license, but shall not exceed six (6) ounces nor shall any one individual be offered more than four (4) samples within a calendar day. Any samples served on the premises shall only be served by an employee holding a valid pouring permit.

**Sec. 8-165. - Restrictions on other mercantile establishments.**

A licensee of a retail establishment permitted to sell spirituous liquors under this chapter shall not operate such business in connection with any other mercantile establishment, except a retail store selling package malt beverages and wine and then only if such package malt beverages and wine store sells only malt beverages, wine and items of convenience normally associated with the retail sale of package malt beverages, and then only if such package malt beverages and wine is sold only for carry out purposes. No such retailer shall sell, offer for sale, display or keep stocked in his or her place of business where package spirituous liquors are offered for sale any other product or commodity except:

- (1) Wine (if licensed);
- (2) Beverages containing no alcohol and commonly used to dilute distilled spirits.
- (3) Tobacco products;
- (4) Malt beverages and beer (if licensed); and

- (5) Package ice, snacks, supplies, and accessories (including but not limited to containers and/or serving devices) as permitted by law.

*(Ord. No. 287, § 10, 10-22-2002; Ord. No. 424, Ex. A(76), 8-19-2009)*

**Sec. 8-166. - Applicability of article to those businesses operating both the retail sale of spirituous liquors and package malt beverages and wine.**

For licensees who wish to operate a business which conducts both the retail sale of spirituous liquors and package malt beverages and wine, in the case of conflict, the provisions of this article regulating the sale of spirituous liquors shall prevail, and compliance with these provisions, rather than those provisions applicable to the license permitting the sale of package malt beverages and wine, is required. The applicant shall be required to meet all licensee qualifications and requirements under both this article and the article governing the licensing and sales of package malt beverages and wine.

*(Ord. No. 287, § 23, 10-22-2002; Ord. No. 424, Ex. A(77), 8-19-2009)*

**Sec. 8-167. ---- 8-180. – Reserved.**

**DIVISION 5. WHOLESALERS**

**Sec. 8-168. - Hours and days of sale.**

Wholesalers shall not engage in the sale of alcoholic beverages except between 7:00 a.m. and 6:00 p.m. Monday through Saturday. There shall be no sales of alcoholic beverages on Sunday.

**Sec. 8-169. - Prohibited sales.**

No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

*(Ord. No. 287, § 5, 10-22-2002)*

**DIVISION 6. BREW PUBS**

**Sec. 8-170. Brew pubs.**

- (a) Notwithstanding any other provision of this chapter to the contrary, a limited exception to section 8-131 shall exist for owners and operators of brew pubs provided that:
  - (1) No individual shall be permitted to own or operate a brew pub without first obtaining a proper brew pub license from the city council. Each brew pub license holder shall comply with all other applicable state and local license requirements. A brew pub license authorizes the holder of such license to (i) manufacture on the licensed premises not

more than five thousand (5000) barrels of beer in a calendar year solely for retail consumption on the premises and solely in draft form; and (ii) operate a restaurant that shall be the sole retail outlet for such beer and may offer for sale any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, provided that such alcoholic beverages are purchased from a licensed wholesale dealer for consumption on the premises only and, provided further, in addition to draft beer manufactured on the premises, each brew pub licensee shall offer for sale commercially available canned or bottled malt beverages purchased from a licensed wholesale dealer.

- (2) Possession of a brew pub license shall not prevent the holder of such license from obtaining any other license available under this chapter for the same premises.
- (3) A brew pub license does not authorize the holder of such license to sell alcoholic beverages by the package for consumption off the premises.
- (4) A brew pub licensee shall pay all state and local license fees and excise taxes applicable to individuals licensed under this chapter as manufacturers, retailers and, where applicable, wholesale dealers.
- (5) Except as set forth in this section, a brew pub license holder shall be subject to all sections of this chapter.

*(Ord. 424a, § I, 4-1-2010)*

**Sec. 8-171. ---- 8-180. Reserved.**

**ARTICLE IV. EXCISE TAXES**

**DIVISION 1. GENERALLY**

**Sec. 8-181. - Unlawful retail sales.**

It shall be a violation of this chapter for any person to sell at retail within the city alcoholic beverages on which the taxes provided for in this article have not been paid.

*(Ord. No. 424, Ex. A(8), 8-19-2009)*

**Sec. 8-182. – Reports.**

In administration of the provisions of this article, the city may require the filing of reports by any person having in such person's possession or custody information relating to alcoholic beverage sales which are subject to the tax. Reports shall be filed with the city clerk when required by the city and shall set

forth the purchase price for each purchase, the date or dates of purchase and such other information as the city may require.

*(Ord. No. 424, Ex. A(15), 8-19-2009)*

**Sec. 8-183. – Misstatements or concealment of facts in reports.**

Any misstatement or concealment of fact in reports required by this article shall be grounds for suspension or revocation of the license issued and shall make the licensee liable to prosecution for perjury under the laws of the state.

**Sec. 8-184. – Failure to timely pay taxes; penalties and interest.**

In the event the tax due hereunder is not paid within the time required, the licensee shall pay a penalty of fifteen percent (15%) of the unpaid tax plus interest at a rate of one percent (1%) per month on the unpaid tax.

*(Ord. 424, Ex. A(16), 8-19-2009)*

**Sec. 8-185. - Deficiency determination; penalties and interest.**

- (a) If the city has cause to believe that the return or returns of the tax or the amount of the tax required to be paid to the city by any person is not proper, it may compute and determine the amount required to be paid upon the basis of any information that is within or may come into its possession. One or more deficiency determinations may be made of the amount due for any monthly period.
- (b) The city or its designated representatives shall give to the licensee written notice of its determination by certified mail. Notice shall be deemed delivered three days after the date of deposit to the United States Post Office by certified mail.
- (c) Deficiencies must be paid to the city no later than five (5) days after delivery of the deficiency notice. Any licensee who fails to pay such deficiency within the time required shall pay a penalty of fifteen percent (15%) of the deficiency amount plus interest at a rate of one percent (1%) per month non the unpaid deficiency.

*(Ord. No. 424, Ex. A(13), 8-19-2009)*

**Sec. 8-186. - Failure to make a return; penalties and interest.**

- (a) If any licensee fails to make a return for the tax levied under this article, the city clerk shall make an estimate of the amount of the gross receipts of the licensee or as the case may be; of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period in respect to which the licensee failed to make the return and shall be based upon any information which is or may come into the possession of the city clerk. Upon the basis of this estimate, the city clerk shall compute and determine the amount required to be paid the city, adding to

the sum thus determined a penalty equal to 15 percent thereof. One or more determinations maybe made for one or for more than one period.

- (b) In making a determination, the City Clerk may offset overpayments for a period or penalties and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month or any fraction of a month from the 20th day after the close of the monthly period for which the amount or any portion thereof should have been returned, until the date of payment.
- (d) If the failure of any person to file a return is due to fraud or an intent to evade this subdivision or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 15 percent penalty.

*(Ord. No. 424, Ex. A(14), 8-19-2009)*

### **Sec. 8-187. – Collection.**

At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the city may bring an action in the courts of this state, any other state or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorneys' fees and other legal fees incident thereto.

*(Ord. No. 170, § 14, § 15, 5-18-1999; Ord. No. 424, Ex. A(17), 8-19-2009)*

### **Sec. 8-188. – Successors and assigns liable.**

- (a) If any licensee liable for any amount under this article sells or terminates the business, the licensee's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the City Clerk, showing that the amount has been paid or a certificate stating that no amount is due.
- (b) If the purchaser of a business fails to withhold purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the City Clerk shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells the business or at the time that the determination against the operator becomes final, whichever event shall last occur.

### **Sec. 8-189. – Taxes paid more than once or erroneously collected.**

Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously collected or received by the City under this article, it may be offset. If the licensee believes it has overpaid or paid more than once, then it will have three years from date of payment to file claim in writing stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved, the excess amount paid to the city may be credited on any amounts due and payable from the licensee by whom it was paid or such person's successors or assigns.

*(Ord. No. 170, § 14, § 15, 5-18-1999; Ord. No. 424, Ex. A(17), 8-19-2009)*

### **Sec. 8-190. ---- 8-200. – Reserved.**

## DIVISION 2. WHOLESALERS AND BREW PUBS

### **Sec. 8-201. – Levy of malt beverage excise tax.**

There is hereby levied and imposed upon each wholesale dealer and brew pub selling malt beverages and wine within the City of Flowery Branch an excise tax in the following amounts:

- (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of Six Dollars (\$6.00) on each container sold containing not more than fifteen and one half (15 1/2) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and one-half (15 1/2) gallons.
- (2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents (\$.05) per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.

*(Ord. No. 424, Ex. A(3), 8-19-2009)*

### **Sec. 8-202. – Levy of wine and distilled spirits excise tax; exemptions.**

- (a) There is hereby levied and imposed upon each wholesale dealer selling wine and distilled spirits within the City of Flowery Branch, Georgia, an excise tax in the amount of twenty-two cents (\$.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (b) Pursuant to O.C.G.A. § 3-6-70 and O.C.G.A. § 3-6-71, no tax shall be levied under this section with respect to:
  - (1) Wine sold to and used by established and recognized churches and synagogues for use in sacramental services only;
  - (2) Any sale of wine which is exempt from taxation by the state or under the Constitution of the United States;
  - (3) Wine sold to persons outside this state for resale or consumption outside this state; or
  - (4) Wines which contain less than one-half of one percent alcohol by volume.

*(Ord. No. 54, § 4, 10-22-1987; Ord. No. 424, Ex. A(3), 8-19-2009)*

### **Sec. 8-203. – Collection.**

The taxes levied in this division are hereby levied upon the retailer licensed to do business in the city and it is the intent of this division to so levy this tax but require the payment of the tax at the time of delivery by the retailer to the wholesaler, who shall have the responsibility of remitting the tax to the city on behalf of the retailer.

### **Sec. 8-204. - Unlawful deliveries.**

It shall be unlawful and a violation of this chapter for any wholesale dealer or distributor to deliver any alcoholic beverages spirits to any retail dealer in the city without at the time of such delivery collecting the excise taxes provided for in this division.

*(Ord. No. 424, Ex. A(9), 8-19-2009)*

### **Sec. 8-205. - Reports and remittance.**

On or before the twentieth (20th) day of each calendar month, each wholesaler shall make a verified and comprehensive report to the city, which shall correctly show and reflect all sales and deliveries of all alcoholic beverages to or for retail dealers in the city for the calendar month immediately preceding the date of the report. The report shall show the name and address of each retail dealer, the quantities delivered to each retail dealer, the amount of excise tax collected under the terms of this division, and such other reasonable information as may be requested by the city. The report shall be accompanied by remittance payable to the city for all taxes collected or due, as shown on the report.

*(Ord. No. 54, § 4, 10-22-1987; Ord. No. 424, Ex. A(4), 8-19-2009)*

### **Sec. 8-206. - Noncompliance by wholesale dealer; distributor.**

If any wholesale dealer or distributor fails or refuses to make the reports required herein, the city shall notify such dealer or distributor in writing and if the reports are not made and the taxes, penalties and interest are not remitted within five (5) days from the date of delivery of such notice, such wholesale dealer or distributor shall be prohibited from making any further deliveries in the city.

*(Ord. No. 170, § 15, 5-18-1999; Ord. No. 287, § 35, 10-22-2002; Ord. no. 424, Ex. A(7), 8-19-2009)*

### **Sec. 8-207. ---- 8-220. – Reserved.**

## **DIVISION 3. PER DRINK**

### **Sec. 8-221. - Levy and collection of excise tax.**

- (a) There is hereby imposed and levied upon every purchaser of alcoholic beverages by the drink within this city a tax in an amount equal to three percent (3%) of the purchase price charged to the purchaser for such drink.



- (b) Every licensee or his agent is hereby authorized and directed to collect the tax imposed herein from purchasers of alcoholic beverages by the drink within the licensed premises. Such licensee or agent shall furnish such information as may be required by the city to facilitate the collection of the tax.
- (c) In all cases where the collection of food and drinks is by deferred payment or credit, the licensee is liable at the time of and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The city shall have authority to adopt rules and regulations prescribing methods and schedules for collection and payment of the tax.

*(Ord. No. 424, Ex. A(11), 8-19-2009)*

**Sec. 8-222. - Reports and remittance.**

- (a) The tax imposed by this division shall become due and payable from the purchaser at the time of purchase of any mixed drink in this city. All amounts of such taxes collected by the licensees shall be due and payable to the city monthly on or before the 20th day of every month next succeeding each respective monthly period for which the tax is imposed; provided, however, that upon a proper showing that the tax imposed will not be collected until after a regular billing period of the collecting agent then the collection of the tax may be deferred by the city for an additional period not exceeding 30 days.
- (b) On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the city in such form as the city may prescribe by every licensee liable for the payment of tax hereunder. All returns shall show the gross receipt of the sale of distilled spirits by the drink and the amount of tax collected on such drinks.
- (c) Copies of the "summary of sales" showing delivery by each supplier to consumption on the premises licensees shall be furnished to the city clerk with each monthly payment.
- (d) Licensees collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under the "Georgia Retailers' and Consumers' Sales and Use Tax Act," approved February 20, 1951, as now or hereafter amended (O.C.G.A. Section 48-8-1, et seq.).