

First Presentation 2-14-2017

Second Presentation 3-14-2017

Ordinance No: 17-03-14

AN ORDINANCE OF THE CITY OF MCCAYSVILLE, GEORGIA TO REGULATE THE SALE FOR CONSUMPTION ON THE PREMISES OF MALT BEVERAGES AND WINE WITHIN THE CITY OF MCCAYSVILLE, GEORGIA; TO PROHIBIT THE SALE BY THE PACKAGE OF MALT BEVERAGES AND WINE WITHIN THE CITY OF MCCAYSVILLE, GEORGIA; TO PROHIBIT THE SALE FOR CONSUMPTION ON THE PREMISES AND SALE BY THE PACKAGE OF DISTILLED SPIRITS AND FORTIFIED WINE WITHIN THE CITY OF MCCAYSVILLE, GEORGIA; TO PROVIDE DEFINITIONS; TO PROVIDE THE PURPOSE OF THE ORDINANCE; TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE; TO REQUIRE LICENSES FOR THE SALE OF MALT BEVERAGES AND WINE FOR CONSUMPTION ON THE PREMISES; TO PROVIDE REGULATORY FEES; TO ESTABLISH QUALIFICATIONS OF APPLICATIONS; TO PROVIDE LIMITATIONS ON THE NUMBER OF LICENSES HELD; TO PROHIBIT CITY EMPLOYEES FROM HOLDING LICENSE; TO PROVIDE FOR LOCATIONS FOR BUSINESS PREMISES OF LICENSE HOLDERS; TO PROVIDE INVESTIGATION OF THE APPLICATION; TO PROVIDE GUIDELINES REGARDING THE LICENSES; TO PROVIDE FOR THE GRANT OR DENIAL OF LICENSES, AND THE APPEAL THEREFROM; TO PROVIDE FOR SUSPENSION AND REVOCATION OF LICENSES UPON CERTAIN EVENTS; TO IMPOSE EXCISE TAXES UPON THE SALE OF MALT BEVERAGES AND WINE; TO PROVIDE FOR THE DETERMINATION OF THE TAX AND THE PAYMENT OF THE TAX TO THE CITY; TO PROVIDE PENALTIES FOR NON-PAYMENT OF THE TAX; TO PROVIDE REGULATIONS REGARDING BUILDINGS OF APPLICANTS; TO REGULATE EMPLOYEES AND HOURS OF OPERATION OF THE BUSINESSES; TO PROHIBIT SALES TO PERSONS WHO ARE UNDER AGE; TO PROHIBIT OPEN CONTAINERS WITHIN THE CITY; TO PROHIBIT BROWNBAGGING; TO PROVIDE FOR THE SALE OF WINE AND MALT BEVERAGES BY FARM WINERIES; TO PROVIDE FOR WHOLESALE DISTRIBUTION LICENSE AND REGULATION; TO PROHIBIT MANUFACTURING AND BREWPUBS WITHIN THE CITY OF MCCAYSVILLE, GEORGIA; TO PROVIDE FOR FURTHER REGULATIONS REGARDING THE SALE OF ALCOHOLIC BEVERAGES; AND FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of McCaysville, Georgia, finds that it will be to the economic benefit of the City of McCaysville, Georgia, and its citizens, to allow the sale of malt beverages and wine for consumption on the premises, but with said sales limited by the regulations provided by this ordinance; and

WHEREAS, the City Council of the City of McCaysville, Georgia, desires to regulate the sale of alcoholic beverages as provided by the regulations obtained within this Ordinance;

NOW, THEREFORE, BE IT ORDAINED, AND IT IS HEREBY ORDAINED by the governing authority of the City of McCaysville, Georgia, as follows:

ARTICLE I. – GENERAL.

SECTION 1-1.

This Ordinance shall be known as the McCaysville Malt Beverage and Wine Ordinance.

SECTION 1-2. – PURPOSE OF ORDINANCE.

This Ordinance has been enacted for the purposes, among others, as stated below:

(a) The Mayor and City Council, in exercise of its police powers, wishes to permit, but not promote, the sale of malt beverages and wine for consumption on the premises, in the incorporated city limits, this being necessary for the effective regulation and control of the sale of malt beverages and wine for consumption on the premises and for the protection of the health, safety, and welfare of the citizens of the City.

(b) It is the further intent of the Mayor and City Council, through the licensing and regulation of the sale of wine and malt beverages, to regulate and control the licensing and sale for consumption on the premises of malt beverages and wine; to establish reasonable regulations and ascertainable standards for licensees which will ensure the public peace; to protect schools and residential areas from the negative secondary effects attributable to establishments that sell alcoholic beverages; to establish punishments and penalties for licensees who do not follow the regulations in this Ordinance; to ensure that only qualified persons obtain licenses for the sale or distribution of malt beverages and wine; to impose a tax; and to raise sufficient revenues to cover the costs of licensing, regulating, and policing the sales of malt beverages and wine within the City limits.

SECTION 1-3. – DEFINITIONS.

The following words, terms and phrases, when used in this Ordinance, shall have the following indicated meanings, except where the context clearly indicate a different meaning:

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

(b) *Alcoholic beverage* means all alcohol, distilled spirits, beer, malt beverages, wines, or fortified wines as defined in this section.

(c) *Applicant* means any one or more persons applying for a City license authorized by this ordinance or renewal thereof.

(d) *Application* means those forms required and supplied by the City for the purpose of applying for any license or a renewal of license under by this Ordinance.

(e) *Bed and Breakfast* means any establishment where five (5) or more rooms used for sleeping accommodations are offered for pay to guests, which regularly prepares and serves breakfast, where there exists one or more dining rooms serving prepared meals, whether public or for the use of guests, with a seating capacity of at least ten, with a kitchen that has been approved by the county health and fire departments.

(f) *Beer* means any malt beverage as that term is defined herein.

(g) *Beverage license* means a license issued pursuant to this Ordinance to sell malt beverages and/or wine for consumption on the premise (by the drink), farm winery with a tasting room, farm winery without a tasting room, and wholesale dealer licenses.

(h) *Brewer* means any person engaged in manufacturing malt beverages.

(i) *Brewery* means any licensed premises used for the purpose of manufacturing malt beverages.

(j) *Brewpub* means any dining establishment in which malt beverages are manufactured or brewed for retail consumption on the premises solely in draft form.

(k) *Brownbagging* means the bringing, taking, or carrying of any alcoholic beverages into business establishments lawfully operating within the City for the purpose of drinking such alcoholic beverages at any such establishment., provided that bringing an alcoholic beverage into a house, apartment, bedroom, or other unit designed for private residential occupancy for consumption by the residents and invited guests thereof shall not fall within this definition.

(l) *Business* means any person, corporation, partnership, limited liability company, or other legal entity which exerts substantial efforts within the City, engages in, cause to be engaged in, and/or represents or holds out to the public to be engaged in any occupation or activity with the object of gain or benefit, either directly or indirectly.

(m) *City* means the City of McCaysville, Georgia.

(n) *Commissioner* means the state revenue commissioner.

(o) *County* means Fannin County, Georgia.

(p) *Department* means the department of revenue.

(q) *Dining establishment* means an establishment which is licensed to sell beer, malt beverages, or wines or a combination thereof, and which derives at least 50 percent (50%) of its business volume from the sale of prepared meals or food; provided, however, that barrels of malt

beverages sold to licensed wholesale dealers, as authorized pursuant to O.C.G.A. § 3-5-36(2)(C) shall not be used when determining the total annual gross food and beverage sales. Food sales shall include all consumable items sold on the premises except alcoholic beverages. The fifty percent (50%) ratio shall be determined on a calendar quarter basis pursuant to monthly reports that will be submitted under oath (and subject to all penalties for false swearing) by each licensee to the City Clerk.

(r) *Distilled spirits* means any alcoholic beverage obtained by distillation or containing more than 24 percent alcohol by volume, including, but not limited to, all fortified wines. Distilled spirits cannot be sold within the City.

(s) *Distiller* means any person engaged in distilling, rectifying, or blending any distilled spirits. The term “distiller” shall not include a person that blends wine with distilled spirits to produce a fortified wine.

(t) *Distillery* means any licensed premises used for the purpose of manufacturing distilled spirits.

(u)(1) *Farm winery* means a vintner that makes at least 40 percent of its annual production from agricultural produce grown in the state where the vintner’s winery is located and:

(2) Is located on premises, a substantial portion of which is used for agricultural purposes, including the cultivation of grapes, berries, or fruits to be utilized in the manufacture or production of wine by vintner; or

(3) Is owned and operated by persons who are engaged in the production of a substantial portion of the agricultural produce used in the vintner’s annual production. For purposes of this paragraph, the commissioner shall determine what is a substantial portion of such premises or agricultural produce.

(v) *Fermented apple beverage* means any alcoholic beverage containing not more than 6 percent alcohol by volume made from the fermentation of the juices of apples. For purposes of this ordinance, the term “fermented apple beverage” shall be deemed a malt beverage.

(w) *Fortified wine* means any alcoholic beverage containing more than 24 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term “fortified wine” includes, but is not limited to, brandy. For purposes of this ordinance, the term “fortified wine” shall be deemed a distilled spirit.

(x) *Georgia farm winery* means a farm winery that is licensed by the commission to manufacture wine in this state.

(y) *Gallon or wine gallon* means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches or the nearest equivalent metric measurement.

(z) *Governing authority* means the City Council for the City of McCaysville, Georgia, which shall have the power to act as granted by the state law, City Charter, and this ordinance.

(aa) *Hard cider* means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than six (6) percent alcohol by volume, including, but not limited to flavored or carbonated cider. For purposes of this ordinance, "hard cider" shall be deemed a malt beverage. The term does not include "sweet cider."

(bb) *Hotel, motel, or resort* means every building or structure or combination of buildings and structures, that is kept, used, maintained, advertised and held out to the public to be a place where sleeping accommodations are offered for pay to travelers and guests, whether transient, permanent, or residential, which contains ten or more rooms used for the sleeping accommodations of the guests, and having one or more dining/banquet/conference/meeting rooms having a seating capacity of 25 persons or more where meals are regularly served to the guests.

(cc) *Individual* means a natural person.

(dd) *Keg* means any brewer-sealed container or barrel containing, by liquid volume, more than two gallons of malt beverage.

(ee) *License* means the formal approval granted or issued by the City to a licensee for the sale of malt beverages and/or wine for consumption on the premises within the City.

(ff) *Licensee* means the individual, firm, partnership, limited liability company, joint venture, association, corporation, nonprofit corporation, business trust, or business entity to which the license is issued.

(gg) *Liquor* means any distilled spirits.

(hh) *Lounge* means a separate room connected with, a part of or adjacent to a dining establishment, as defined in this section, provided that the seating capacity of the lounge shall not exceed that of its connected dining establishment.

(ii) *Malt beverage* means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume. The term "malt beverage" shall include "hard cider" and "fermented apple beverages" and defined in this Section. The term "malt beverage" shall not include sake, known as Japanese rice wine.

(jj) *Manufacturer* means any maker, producer, or bottler of an alcoholic beverage. The term "manufacturer" also means:

- (1) In the case of distilled spirits, any distiller;
- (2) In the case of malt beverages, any brewer; and
- (3) In the case of wine, any vintner.

(kk) *On-premises consumption dealer* means any person who sells, at retail only to consumers and not for resale, wine or malt beverages, or any combination thereof, for consumption on the premises. The sale of distilled spirits for consumption on the premises is not allowed in the City.

(ll) *Open container* means any container, containing alcoholic beverages which is immediately capable of being consumed from or the seal of which has been broken.

(mm) *Outlet* means the definite structure, whether a room, shop, store, building, restaurant, or club in which activities permitted by this ordinance are conducted.

(nn) *Package* means a bottle, can, keg, barrel, or other original consumer container.

(oo) *Package dealer* means any person engaged in selling, at retail only to consumers and not for resale, any wine or malt beverages in unbroken packages. The sale of distilled spirits, wine, and malt beverages by the package is not allowed in the City.

(pp) *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.

(qq) *Pouring license* means the same as “sale by the drink” or “consumption on the premises” as defined in this Section.

(rr)(1) *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 city license and shall include the entire building, structure, and lot, including parking area where the outlet is located, except where the outlet is located in a hotel or shopping center.

(2) The term “premises” is further defined as one physically identifiable place of business consisting of one room, or two or more contiguous rooms operating under the same name where malt beverages and/or wine are sold. Any premises which cannot be determined as one identifiable place of business shall require additional licenses regardless of such establishments having the same name, ownership, or management; provided nothing herein shall require additional licenses for service bars or portable bars used exclusively for the purpose of 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.

(ss) *Prepared food* means any food item or meal that is assembled, created, or cooked by a chef or cooks in a full service kitchen on the premises and served to the customer who

customarily eats it with eating utensils. Prepackaged food items, hot or cold, are not recognized as prepared meals because they are not made or assembled on premises.

(tt) *Proper identification* means any document issued by a governmental agency continuing a description of an individual or an individual's photograph, or both, and giving such individual's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or identification card authorized under O.C.G.A. §§ 40-5-100 through 40-50-104. The term "proper identification" shall not include a birth certificate and any traffic citation and complaint form.

(uu) *Retail on premises dealer* means any person that sells either malt beverages or wine or both for consumption on the premises at retail only to consumers and not for resale.

(vv) *Sale by the drink* means sale at dining establishments or other premises where the malt beverages and/or wine is poured for consumption on the premises.

(ww) *Sale by the package* means sale of alcoholic beverages at retail locations where the customer purchases unopened containers for consumption off the premises.

(xx) *Tasting room* means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine may be given on a complimentary basis, which may not exceed two ounces per sample and no more than five ounces may be provided to any prospective customer in any two-hour period, or for a fee.

(yy) *Taxpayer* means any person made liable by law to file a return/report or to pay tax.

(zz) *Vintner* means any person engaged in the manufacturing of wine.

(aaa) *Wholesaler or wholesale dealer* means any person that sells alcoholic beverages to other wholesale dealers, package dealers, retail dealers, or retail consumption dealers.

(bbb) *Wine* means any alcoholic beverage containing not more than 24 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added or made from honey.

(1) The term "wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products provided they do not contain more than 24 percent alcohol by volume.

(2) The term "wine" shall not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage.

(3) The term “wine” for purposes of this ordinance shall not include the term “fortified wine.”

(4) A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of the term “wine” contained in this section.

SECTION 1-4. – CONSTRUCTION OF DEFINITIONS.

Words and terms not explicitly defined in this Ordinance shall have the meaning given by common and ordinary use as defined in the latest edition of Webster’s New Collegiate Dictionary.

SECTION 1-5. – INCORPORATION OF STATE LAWS.

This Section incorporates all the minimum laws and regulations relating to the sale for consumption on the premises of malt beverages and wine in the state as set forth in O.C.G.A. Title 3. Said code and all regulations and requirements enumerated therein are made a part thereof to the same extent, as if they were quoted herein.

SECTION 1-6.—OFFICER TO ACT INCLUDES DESIGNEE.

Any time an officer is designated or authorized to act within this chapter, such designation or authorization shall include the officer's designee as those persons are designated or authorized to act.

SECTION 1-7. – SEVERABILITY.

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid. It is the intent that any provisions declared unconstitutional shall be severed from the Ordinance, and the remainder of the Ordinance remains in effect.

SECTION 1-8. -- REPEALER.

All Ordinances, Resolutions or other acts, or parts thereof, in conflict with this Ordinance are hereby repealed provided, however, that any portion of said Resolutions or Ordinances not in conflict herewith shall remain in full force and effect. The invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance, which can be given effect without such invalid part or parts.

SECTION 1-9. -- EFFECTIVE DATE.

This Ordinance shall be effective on the date of its approval by the City Council.

SECTION 1-10. – COPIES OF THIS ORDINANCE AVAILABLE FOR A FEE.

Copy of this ordinance shall be available from the City Clerk for a fee of ten cents (\$.10) per page.

SECTION 1-11. – COMPLIANCE WITH ORDINANCE.

(a) No person shall sell or offer for sale any malt beverages or wine at wholesale or for consumption on the premises, within the City without first having complied with the provisions of this Ordinance.

(b) It is unlawful for any person to knowingly and intentionally violate any criminal prohibition contained in this title.

(c) It shall be unlawful for any person to sell or possess for the purpose of sale any alcoholic beverage if the person does not have a license granted by the City to sell or possess for sale the alcoholic beverages or to sell or make deliveries beyond the boundaries of the premises covered by the license.

(d) No person shall sell or offer for sale any malt beverages or wine at wholesale or for consumption on the premises within the City without first having complied with the provisions of this Ordinance.

SECTION 1-12. – VIOLATIONS; PENALTY.

(a) Any person found guilty of or entering a plea of guilty or nolo contendere to violating any of the provisions of this Ordinance shall be punished up to the maximum punishment allowed by law, including a fine or imprisonment, or both, as assessed by a court of appropriate jurisdiction, including, but not limited to, the Municipal Court of the City of McCaysville.

(b) Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Ordinance is committed, continued, or permitted by such person, and shall be punished accordingly.

(c) Violations of this ordinance by the license holder or by agents of the license holder, or both, shall also be grounds for suspension, revocation, or denial of renewal of the license of the license holder, as provided herein, in addition to any fine or imprisonment.

ARTICLE II. – LICENSES.

SECTION 2-1. – LICENSE REQUIRED.

(a)(1) Malt beverages and wine may be sold for consumption on the premises (pouring) in the City only after the issuance of a license by the City Council and only in the manner

permitted by the license. The sale of distilled spirits in the City of McCaysville is prohibited. The sale of malt beverages and or wine by the package in the City of McCaysville is prohibited.

(2) Provided that wholesalers and distributors maintaining no fixed place of business, warehouse, or other facility in the City and possess a valid state license, wholesalers may make sales and deliveries of malt beverages and wine to licensed consumption on the premises dealers/licensees pursuant to the requirements of this ordinance.

(b)(1) All licenses granted by the City for the sale of alcoholic beverages are a mere grant of privilege to carry on or conduct a business covered by such license during the term of the license, subject to the terms and conditions imposed by the City Charter, this Ordinance, other applicable Ordinances of the City, the Constitution, law, and regulations of the state and the United States of America, and subject to being revoked by the City.

(2) The issuance of a license shall not create any property right in the license holder; the sale of malt beverages and wine for consumption on the premises in the incorporated area of the City of McCaysville, Georgia is a privilege and not a right. However, such privileges shall not be exercised except in accordance with this Ordinance and state law.

(3) All licenses granted pursuant to this division shall have printed on the front these words:

"THIS LICENSE IS A MERE PRIVILEGE SUBJECT TO BE REVOKED AND ANNULLED AND IS SUBJECT TO THE TERMS OF THE MCCAYSVILLE MALT BEVERAGE AND WINE ORDINANCE, AS THE SAME MAYBE AMENDED FROM TIME TO TIME AND IS CONDITIONAL ON THE HOLDER MEETING ALL STANDARDS FOR SUCH LICENSE AND OPERATING REGULATIONS APPLICABLE THERETO SET OUT IN CITY ORDINANCES AND GEORGIA LAW. FAILURE TO MEET SUCH STANDARDS OR TO COMPLY WITH SUCH OPERATING REGULATIONS SHALL SUBJECT THE HOLDER TO CIVIL PENALTIES WHICH MAY INCLUDE THE LICENSE BEING REVOKED FOLLOWING NOTICE AND HEARING.

(c)(1) Malt beverages and wine may be sold in the City only by a licensee who complies with the rules and regulations of this Ordinance, and with the licensing, regulatory, and revenue requirements of the state.

(2) Any holder of a license issued in accord with this Ordinance is required to apply for and obtain a coordinating alcoholic beverage license from the state before any sales commence. Additionally, City licensees are required to abide by all applicable state regulations and laws.

(d) Except as specifically authorized in this Ordinance no person licensed for the sale of a particular class of alcoholic beverages in a particular manner may sell another class of alcoholic beverages or in a different manner without first obtaining the required license.

SECTION 2-2 –TYPE OF LICENSES TO BE ISSUED.

(a) Only the following alcoholic beverage licenses shall be issued and authorized under this ordinance:

- (1) *Malt beverages*
 - i. Sale by the drink for consumption on the premises.
- (2) *Wine.*
 - i. Sale by the drink for consumption on the premises.
- (3) Farm winery,
 - i. Farm winery with a tasting room
 - ii. Farm winery without a tasting room
- (4) *Combination.*
 - i. Malt beverages and wine sale by the drink for consumption on the premises.
- (5) Wholesale dealer licenses.

(b) The sale of distilled spirits by the package or sale by the drink for consumption on the premises is not permitted, authorized, or allowed in the City.

(c) The sale of malt beverages and wine by the package is not permitted, authorized, or allowed in the City.

(d) The manufacture of alcoholic beverages and distilled spirits is not allowed in the City except for a farm winery that must meet the requirements of Section VIII.

- (1) A brewery or brewpub is specifically not authorized in the City.
- (2) A distillery is specifically not authorized in the City.

SECTION 2-3.—LICENSES GENERALLY.

(a) Each licensee of the City shall display the license prominently at all times at the outlet for which the license is issued. A separate license must be issued for each method of sale and each type of alcohol beverage authorized and a separate application must be made for each outlet.

(b) All licenses issued shall be granted for the full calendar year or for the number of months remaining in the calendar year. When a new license is issued on or after July 1, the license fee shall be reduced by one-half (1/2).

(c) All licenses shall expire at midnight on December 31 of the year in which said license was issued.

(d) The licensee shall be active in the operation of the outlet and personally present on the premises sufficiently to ensure compliance with the provisions of this article. If the owner of the outlet is a corporation, the corporation and its principal officers shall also be responsible for the operation of the outlet.

(e) All license holders shall be required to prepare and deliver reports as determined by the City or its designee to aid and assist it in the determination and collection of excise taxes and for the enforcement of this Ordinance.

(f) Each licensee shall maintain a schedule of the prices charged for all alcoholic beverages to be served and consumed on the licensed premises. The licensee shall not vary the schedule of prices from day to day or from hour to hour within a single day, and the schedule shall be effective for not less than one calendar week.

(g) Happy hours or similar promotions shall not be permitted by any licensee, employee, or agent of a licensee, in connection with the sale or service of malt beverages and/or wine for consumption on the premises.

(h) It shall be unlawful for any delivery to be made to and/or sales be made outside of the outlet. It shall be unlawful to sell or dispense alcoholic beverages from "drive-thru," "drive-in," or service windows.

(i) A license holder shall report within seven (7) day any arrest of the license holder or other person listed on the application, for any felony; any violation of the laws of this state, the federal government, or administrative regulation regulating the sale, manufacture, or distribution of alcoholic beverages, gambling, taxes, sex offense, narcotics, or any misdemeanor including moral turpitude; or the offense of driving a motor vehicle under the influence of any alcoholic beverage or drugs.

(j) No licensee shall:

(1) Offer or deliver any free malt beverage and/or wine to any person or group of persons. Provided, however, each licensee for the purchase of wine for consumption on the premises shall be allowed to provide a prospective customer, free of charge, a sample of wine which may not exceed two ounces per sample and no more than five ounces may be provided to any prospective customer in any two-hour period. Moreover, each licensee for the purchase of malt beverages for consumption on the premises shall be allowed to provide a prospective customer, free of charge, a sample of a malt beverage which may not exceed two ounces per

sample and no more than five ounces may be provided to any prospective customer in any two-hour period.

(2) Deliver more than one malt beverage and/or wine to one person at a time;

(3) Offer or deliver a malt beverage or wine without also serving food, except that while a customer is waiting for a table, the customer in a lounge may order up to a maximum of three (3) malt beverages or glasses of wine without purchase of a food item. This subsection shall not relieve the license holder of compliance with the overall food sale requirements mandated by this Ordinance;

(4) Sale, offer to sell, or deliver to any person or group of persons any malt beverage or wine at a price less than the price regularly charged for such beverage during the same calendar week;

(5) Sale, offer to sell, or deliver to any person or group of persons an unlimited number of malt beverages or wine during any set period of time for a fixed price;

(6) Sale, offer to sell, or deliver malt beverages and/or wine to any person or group of persons on any one day at prices less than those charged the general public on that day;

(7) Add to the contents of a bottle or refill an empty bottle or in any other manner misrepresent the quantity, quality, or brand name of any alcoholic beverage;

(8) Encourage or permit on the licensed premises any game or contest which involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize;

(9) Allow the licensee's employees to consume alcoholic beverages on the premises during the employee's shift or one hour prior to said employee's shift.

(10) Sell any malt beverages or wine that do not fully meet all federal requirements as to quality or purity, as represented by the label, or do not meet such standards as may be adopted by the Commissioner.

(11) Failure to comply with any of the above regulations by the licensee shall be deemed a violation of this Ordinance, and cause for suspension or revocation of the license.

(k) An application for a new license for an existing licensed location shall be subject to all the requirements for the granting of an original application for a new license.

(l) Sale by the drink for consumption on the premises licenses shall only be issued pursuant to Section 2-7 & 2-8 of this Ordinance.

SECTION 2-4. – LIMITATIONS REGARDING LICENSES HELD.

(a) No person shall have an interest in more than five (5) licenses, regardless of the degree of such interest. A combination license from the City, allowing the sale of more than one type of alcoholic beverage shall be considered as one license.

(b)(1) For the purpose of this Section, a person shall be deemed to have a beneficial interest in a license when he:

- (i) Holds a license to sell by consumption on the premises (pouring);
- (ii) Has any ownership interest, whether legal, equitable or other, in or control over a consumption on the premises (pouring) license;
- (iii) Is the land owner for a leased property if the lease provides that the payment of rent is based on a percentage of the gross or net sales of alcoholic beverages or sales of the business as a whole (which includes alcoholic beverages).

(2) Under the de minimis concept, a person who owns less than five percent (5%) of the shares of a corporation which has more than 35 shareholders or whose stock is publicly traded shall not, on the fact of stock ownership alone, be deemed to have a beneficial interest in a license held by a corporation. Likewise a five percent (5%) interest in a limited liability company shall not be deemed to be a beneficial interest in a license held by the limited liability company.

(3) With regard to this Section, a person will not be deemed to have an interest in more than one alcoholic beverage business when separate malt beverage and wine licenses are held by the same licensee at the same business premises conducted as a single operation.

(c) Nothing contained in this Section is intended to prohibit the child of the holder of a license from also owning such a license if such child is emancipated and holds no business or financial interest or vested interest in the parent's operation.

(d) No person shall have, own, or enjoy any ownership interest in, share in the profits from, or otherwise participate in the business of any license unless a full description of such interest shall have been furnished to the City at the time of making application for the license. It shall be the continuing duty of a licensee to report to the City Clerk, in writing, within ten (10) days any change in any interest in such licensee's business. Failure to report such change in interest within ten (10) days after such change is made shall constitute due cause for cancellation, revocation, or suspension of the license.

(e) The sale of distilled spirits by the package or for consumption on premises (pouring) is not allowed within the City of McCaysville, Georgia.

(f) The sale of malt beverages and/or wine by the package is not allowed within the City of McCaysville, Georgia.

SECTION 2-5. – SALE, DISTRIBUTION, AND OTHER DEALINGS IN ALCOHOLIC BEVERAGES WITHIN THE CITY BY CITY OFFICIALS AND CITY EMPLOYEES PROHIBITED; EXCEPTIONS

(a) No member of the City Council or Mayor shall hold any interest, directly or indirectly, in an establishment licensed by the City to sell, distribute, or otherwise deal in alcoholic beverages. Any member holding or having a beneficial interest in any license issued by the City at the time of that person's election or appointment to office shall divest himself thereof within sixty (60) days. For purposes of this Section, a member shall be deemed to have or hold a beneficial interest if the license is issued in the name of the person, person's spouse, child, parent or sibling, in a partnership or corporation or limited liability company in which such person owns more than ten percent interest, if the person has any ownership interest, whether legal, equitable or other, in or control over a consumption on the premises (pouring) license, or if the person, person's spouse, child, parent, or sibling is the land owner for a leased property if the lease provides that the payment of rent is based on a percentage of the gross or net sales of alcoholic beverages or sales of the business as a whole (which includes alcoholic beverages).

(b) No officer or employee of the City, whose official duties involve issuance and regulation of license or the enforcement of alcoholic beverage laws, including but not limited to the City Clerk and Chief of Police, shall hold any interest, direct or indirect, in any license issued by the City or in any establishment licensed by the City to engage in the sale or distribution of alcoholic beverages. The Mayor, upon advice and consent of the City Council, may exempt officers and employees of the City from the provisions of this Section, upon written finding that such officer or employee's involvement, direct or indirect, in any business licensed by the City to engage in the sale or distribution of alcoholic beverages would pose no conflict of interest or interference with the performance by the officer or employee of his official duties for the City.

(c) No officer or employee of the City while an officer or employee of the City shall be permitted to engage in employment with any person, firm, or corporation licensed by the City to sell or distribute alcoholic beverages. The City Council may, in writing, exempt those officers or employees from the prohibition of this Section, upon finding that such employment would pose no conflict of interest or interference with the performance by the officer or employee of his official duties for the City; provided, however, no police officer of the City of McCaysville shall be permitted employment by any establishment that deals in alcoholic beverages without first obtaining the written consent of the McCaysville Chief of Police and City Council.

SECTION 2-6. – LICENSE FEES.

(a) Before a license or permit shall be granted, the applicant therefore shall comply with all provisions of this Ordinance and each applicant shall pay the license, permit, administrative, and investigatory fees in accordance with this Section.

(b) There is hereby imposed a license, permit, and administrative/application fee, payable at the time of issuance of the license, time of application, and each annual renewal license, except as provided herein, as follows:

| | | |
|-------|--|----------------------|
| (1) | <i>Malt beverages for sale by the drink for consumption on the premises (pouring)</i> | Annual Fee |
| (i) | Fee for the sale of malt beverages for consumption on the premises | \$1,000.00 |
| (2) | <i>Wine for sale by the drink for consumption on the Premises (pouring) except farm winery</i> | Annual Fee |
| (i) | Fee for the sale of wine for consumption on the premises | \$1,000.00 |
| (3) | Farm Winery | Annual Fee |
| (i) | Fee for Farm Winery License without Tasting Room | \$2,000.00 |
| (ii) | Fee for Farm Winery License with Tasting Room | \$3,000.00 |
| (4) | <i>Combination for sale by the drink for consumption on the premises</i> | Annual Fee |
| (i) | Fee for the sale of malt beverages and wine for consumption on the premises | \$2,000.00 |
| (5) | <i>Wholesale dealer license</i> | |
| (i) | Wholesalers, principal place of business in the City of McCaysville | \$2,000.00 |
| (ii) | Wholesalers, principal place of business outside City of McCaysville | \$100.00 |
| (6) | Other | |
| (i) | Administrative/Application fee for each license | \$300.00 |
| (ii) | Alcoholic beverage employee permit (includes fingerprinting) | \$30.00 per employee |
| (iii) | Penalty for late payment of annual fees | 10% licensing fee |

| | | |
|------|--|--|
| (iv) | Investigatory fee (for renewals only) | As set by the Chief of Police not to exceed \$100.00 |
| (v) | Change in managing agent | \$100.00 |

(c) Each application for a license shall be accompanied by the full amount of the license fee, together with the administrative/application fee. All fees shall be paid by certified check or money order to the City of McCaysville. Any check returned as insufficient funds will result in the suspension of license.

(d) The license fees imposed by this Section are regulatory fees intended to offset the City's cost in administering and enforcing this Ordinance. In addition thereto, licensees are subject to payment of an occupational tax and excise tax.

(e) When a new license is issued on or after July 1, the license fee shall be reduced by one-half (1/2).

(f) There shall be no exception from the license fees or taxes provided by this Ordinance in favor of any person or organization unless specifically provided for by law.

(g) Any applicant for a renewal of an existing license under this Ordinance who has in existence at the time of making the application an existing license under this Ordinance shall pay no administrative/application fee but shall still pay the investigatory fee.

(h) If the application is denied, the annual licensing fee submitted, but not the administrative or investigatory fee will be refunded. If the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the administrative and investigatory fee shall be retained. Once a license has issued, however, no portion of the application fees shall be refunded if the license is revoked, suspended, or surrendered.

(i) Any license application made pursuant to this Ordinance may be withdrawn by the applicant at any time. If the application is withdrawn before the license is issued, the funds submitted, less the administrative and investigatory fee will be refunded.

SECTION 2-7. – LICENSED OUTLET LOCATION RESTRICTIONS.

(a) Except as provided otherwise herein this Ordinance, consumption on the premises (pouring) sales of malt beverages and/or wine may be conducted only in conjunction with a dining establishment, as defined herein, which has as its principal business conducted being the serving of meals, and with the serving of alcoholic beverages to be consumed on the premises only as incidental thereto. Consumption on the premises licensees shall maintain at least fifty (50%) percent of its business volume from the sale of prepared meals or food which shall not include the sale of alcoholic beverages. Food sales shall include all consumable items sold on the premises except alcoholic beverages. The fifty (50%) percent ratio shall be determined on a calendar quarter basis pursuant to monthly reports that will be submitted under oath (and subject

to all penalties for false swearing) by each licensee to the City Clerk. In the event food sales fall below fifty (50%) percent of the business volume of the license holder in any quarter, then the license holder shall be placed on probation for the next succeeding quarter. The City Clerk or other designated agent of the City shall notify the license holder in writing of the probation. At the end of the next succeeding quarter, if food sales have not attained fifty (50%) percent of business volume, then the City Council, Mayor, or other designated agent of the City, shall suspend such license for a period of six (6) months in accordance with Section 5-1 of this Ordinance. After the period of suspension, should the license holder fail to meet the fifty (50%) percent food sales ratio for any quarter during the year following suspension, then the license shall be revoked following the procedures of Section 5-1. Nothing herein provided shall prevent the City Council from suspending or revoking such licenses for any other violations of this Ordinance. Authorized agents of the City may examine the records of businesses licensed hereunder at any reasonable time to ascertain that the requirements of this and other provisions of this Ordinance are met. Licensees for consumption on the premises (pouring) licenses shall provide a monthly report under oath (and subject to all penalties for false swearing) by the 15th day of the following month, to the City Clerk for the City of McCaysville, Georgia, that demonstrates that the food sale requirements of this Ordinance have been met. Such licensees, upon request by the City of McCaysville or its designated agent, shall provide to the City Clerk, any and all backup documentation to demonstrate that the food sale requirements of this Ordinance have been met. Failure to provide any of the reports or documentation required under this Ordinance by the licensee to the City may result in the City Council suspending the pouring license until the reporting requirements are met, and may result in revocation of the pouring license by following the revocation procedures provided within this Ordinance. An audit may be required at any time to ensure compliance with these provisions.

(b) If the outlet provides a bar or counter service for the sale of malt beverages and/or wine for consumption, the seating for the bar shall not exceed ten (10%) percent of the total seating capacity of the outlet.

(c)(1) Dining establishments may operate a lounge upon the premises, so long as the dining establishment meets the food requirements under this Ordinance, the lounge is inside the premises of the dining establishment or contiguous thereto, and the operation of the lounge is only incidental to the operation of the dining establishment.

(2) The sale of malt beverages and/or wine in a lounge is permitted under the same retail consumption dealer license as the dining establishment, provided the lounge qualifies under the definitions of this Ordinance.

(3) While a customer is waiting for a table, the customer in a lounge may order up to a maximum of three (3) malt beverages or glasses of wine without purchase of a food item. This subsection shall not relieve the license holder of compliance with the overall food sale requirements mandated by this Ordinance.

(d) Malt beverages and/or wine sales can be made by a licensed consumption on premises in a patio/open area type environment if the establishment's patio/open area has been approved in this Section.

(1) The requirements for approval are of malt beverage and/or wine sales for consumption on the premises in a patio/open area:

(i) The patio/open area must be enclosed by some structure (which may be a rope guard) provided for public ingress/egress only through the main licensed premises. The only exception to this would be a fire exit as required by building and fire codes. Such fire exit would not be open for general public use unless an emergency exists and would be of the type which sounds an alarm so that the establishment would be alerted of unauthorized use if no emergency exists. The height of such structure may be a minimum of three and one-half (3.5) feet above the patio's floor. The structure does not have to be a solid nor does it have to restrict visibility into or out of the patio/open area. The method or means of enclosure shall be flexible depending on the location of the premises, so long as there is substantial compliance with the requirement that ingress/egress be only through the main licensed premises. The Building Inspector or other City agent will make a case-by-case determination of compliance with the primary requirement being controlled access to the patio/open area.

(ii) The Patio/open area shall not be required to be covered by a roof. However, patio/open areas that are covered shall be covered by a roof. As used in this section, the term roof shall mean a structural covering of the patio/open floor area which shall be of similar design and material as the primary structure to which it is attached, whether physically attached or by use.

(iii) The patio/open area shall be used merely as an extension of the interior seating area. Service in the patio/open area shall be only by waiter or waitress or by customer self-service at an interior selling location. i.e., no outside bar or service window shall be allowed.

(iv) The patio/open area cannot be located within seventy-five feet of any public street or thoroughfare with the exception of licensees located within the downtown business area. Such measurement shall describe the shortest straight-line distance on the ground between the street curb and patio. For purposes of this Section, The downtown business area shall be defined as the area along and touch Toccoa Avenue at the point of intersection of Toccoa Avenue/GA Hwy 60 and the Georgia/Tennessee state line in McCaysville, Georgia and in an easternly direction to the intersection of Toccoa Avenue with Casteel Street, the area along and touching Blue Ridge Drive beginning at the point of intersection with Blue Ridge Drive and Toccoa Avenue and in a southern direction on Blue Ridge Drive to its intersection with East/West Tennessee Avenue, the area along and touching Bridge Street at the point of intersection of Bridge Street and the Georgia/Tennessee State line in McCaysville, Georgia in a southern direction to the intersection of Bridge Street and West Tennessee Avenue, and the area along and touching East/West Tennessee Avenue in McCaysville, Georgia from the intersection of West Tennessee Avenue and Bridge Street to the intersection of East/West Tennessee Avenue with Blue Ridge Drive.

(v) The patio/open area cannot be located within seventy-five (75) feet of any residence, with the exception of licensees located within the downtown business area. Such measurements shall describe the shortest straight-line distance on the ground from the patio to any portion of the residential structure. For purposes of this Section, The downtown business area shall be defined as the area along and touch Toccoa Avenue at the point of intersection of Toccoa Avenue/GA Hwy 60 and the Georgia/Tennessee state line in McCaysville, Georgia and in an easternly direction to the intersection of Toccoa Avenue with Casteel Street, the area along and touching Blue Ridge Drive beginning at the point of intersection with Blue Ridge Drive and Toccoa Avenue and in a southern direction on Blue Ridge Drive to its intersection with East/West Tennessee Avenue, the area along and touching Bridge Street at the point of intersection of Bridge Street and the Georgia/Tennessee State line in McCaysville, Georgia in a southern direction to the intersection of Bridge Street and West Tennessee Avenue, and the area along and touching East/West Tennessee Avenue in McCaysville, Georgia from the intersection of West Tennessee Avenue and Bridge Street to the intersection of East/West Tennessee Avenue with Blue Ridge Drive.

(vi) Patio/open area plans must be reviewed and approved on an individual basis by the Building Inspector. Patio/open areas must be permitted and approved by building inspection and fire department inspection as required by regulations and codes.

(2) It is prohibited for an establishment:

(i) To allow any noise to be created in a patio/open area which may be heard from a distance of one hundred (100) yards from the patio/open area. Any measurement made pursuant to this Section shall describe the shortest straight line distance from the patio to the point in question.

(ii) To allow the operation of any sound amplification devises in the patio/open area.

(iii) To operate outdoor loudspeakers within the City limits after the hours of 10:00pm and before 12:00pm, unless specifically approved by the Mayor and City Council for special occasions that are deemed by the Mayor to City Council to be in the interest of the citizens of the City.

(e) Licenses for consumption on the premises sale of malt beverages and/or wine will be issued only for premises located in the downtown business area and premises with the main entrance on and/or street address of Blue Ridge Drive from the intersection of Toccoa Avenue and Blue Ridge Drive (also known as GA Hwy 5 and Harpertown Road) in a southern direction to the intersection of Blue Ridge Drive and the McCaysville City Limits. For purposes of this Section, The downtown business area shall be defined as the area along and touch Toccoa Avenue at the point of intersection of Toccoa Avenue/GA Hwy 60 and the Georgia/Tennessee state line in McCaysville, Georgia and in an easternly direction to the intersection of Toccoa Avenue with Casteel Street, the area along and touching Blue Ridge Drive beginning at the point of intersection with Blue Ridge Drive and Toccoa Avenue and in a southern direction on Blue Ridge Drive to its intersection with East/West Tennessee Avenue, the area along and touching

Bridge Street at the point of intersection of Bridge Street and the Georgia/Tennessee State line in McCaysville, Georgia in a southern direction to the intersection of Bridge Street and West Tennessee Avenue, and the area along and touching East/West Tennessee Avenue in McCaysville, Georgia from the intersection of West Tennessee Avenue and Bridge Street to the intersection of East/West Tennessee Avenue with Blue Ridge Drive. This paragraph shall not apply to licensed Farm Wineries.

(f) All premises at which the consumption on the premises sale of malt beverages and/or wine is authorized shall meet all requirements of the City's ordinances as well as minimum building, fire, and life safety codes.

(g) Notwithstanding the provisions of Section 2-7(a), the following provisions shall apply to hotels, motels, resorts, and bed and breakfasts, and said businesses shall be governed as follows for pouring licenses:

(1) A licensed hotel, motel, or resort meeting the other requirements of this Ordinance, including 2-7(e), may serve malt beverages and/or wine for consumption on the premises, after obtaining a license for such, along with food in other locations on the hotel/motel/resort premises at a full service dining establishment located in the hotel/motel/resort which shall meet all of the requirements of this Ordinance. This provision specifically does not allow a "stand-alone bar." A hotel/motel/resort will be required to meet the 50% requirement for non-alcohol sales, which may include revenue from the sale of rooms.

(2) A bed and breakfast meeting the other requirements of this Ordinance may serve malt beverages and/or wine for consumption on the premises, after obtaining a license for such, along with food at a full service dining establishment located in the bed and breakfast. This provision specifically does not allow a "stand-alone bar." A bed and breakfast will be required to meet the fifty (50%) percent requirement for nonalcoholic sales which may include revenue from the sale of rooms.

Sec. 2-8. – LICENSE; DISTANCE RESTRICTIONS.

(a) No person may knowingly and intentionally sell or offer to sell any alcoholic beverages within 250 feet of any polling place or of the outer edge of any building within which such polling place is established on any state, federal, or municipal primary or election days.

(b) No person may knowingly and intentionally sell or offer to sell any alcoholic beverages within 300 feet of an alcoholic treatment center owned and operated by this state or any county or municipal government therein.

(c)(1) No person may knowingly and intentionally sell or offer to sell any malt beverages or wine within 300 feet of any school building, school grounds, educational building, or college campus.

(2) For the purpose of this ordinance, the schools or colleges referred to herein, shall include only such state, county, or city school buildings and such buildings in which

are taught subjects commonly taught in the common schools and colleges of this state, which are public schools as defined in O.C.G.A. § 20-2-690(b).

(3) The term "school grounds" shall mean and include all real estate owned, leased or controlled by any organization meeting the definition of "school" in this section. Such term shall include, but not be limited to, classroom buildings in which school children are regularly taught.

(4) This paragraph shall not apply at any location for which a new license is applied for if the sale of wine and beer was lawful at such location at any time during the 12 months immediately preceding such application.

(d) No person may knowingly and intentionally sell or offer to sell any alcoholic beverages for consumption on the premises within 300 feet of any housing authority property. For the purpose of this ordinance, the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by O.C.G.A. § 8-3-1 et seq, the "Housing Authorities Law."

(e) No person may knowingly and intentionally sell or offer to sell any wine or malt beverages within seventy-five (75) feet of any private residence.

(f) Unless otherwise provided by law, all measurements to determine distance required under this Section, 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 business regulated under this title;

(2) To the main entrance of the school building, housing authority, polling place, private residence, or alcoholic treatment center. Provided, however, if the school building, housing authority, polling place, or alcoholic treatment center has more than one entrance regularly used by the public, the distance shall be measured to the closest public entrance of the school building, housing authority, polling place, or alcoholic treatment center; and

(3) Along the most direct route of travel on the ground which describes the shortest distance between the two front doors.

(g) Every license application shall include a scale drawing of the location of the proposed building or premises with respect to all streets within 600 feet in every direction and the distance in feet by as described in Section 2-8 to any protected grounds described in Section 2-8 and patio to any residence as described in Section 2-7 and a certificate of a registered land surveyor or professional engineer that the location complies with the distance requirements in this Ordinance.

SECTION 2-9. -- NEW BUILDINGS.

(a) Where a building in which a licensee proposes to operate under the provisions of this Ordinance is, at the time of application for such license, not in existence, or not yet completed, a license may be issued for such location, provided the plans and specifications for the proposed building are filed with the City Council or its designated agent and shows compliance with the other provisions of this Ordinance and other applicable Ordinances of the City. No sales shall be allowed in such establishment until it has been completed in accordance with plans and specifications and is in conformity with all other provisions of this Ordinance and other applicable ordinances of the City. If the building is not completed during the year in which the licensee fee was paid, such fee shall apply to the year in which the building is completed and the business commences.

(b) All holders of licenses under this Ordinance must open for business within six (6) months after issuance of the license.

ARTICLE III. – APPLICATION AND ISSUANCE.

SECTION 3-1—APPLICATION AND QUALIFICATIONS OF APPLICANT

(a) Any person who desires to obtain a license for the sale of wine or malt beverages by the drink must meet the minimum qualifications set forth in this Section.

(b)(1) The applicant shall be the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license.

(2) If the premises are leased, the application shall also disclose the names of every person owning a beneficial interest in the premises and shall state the manner in which the rental is to be determined, and to whom and at what intervals the rent is to be paid. The applicant shall also attach a copy of the lease or proposed lease with the verified statement of the applicant that such lease contains the entire agreement between the parties.

(3) If the lease provides that the payment of rent is based on a percentage of the gross or net sales of alcoholic beverages or sales of the business as a whole (which includes alcoholic beverages), then the owner of the leased premises is hereby deemed to have a financial interest in the outlet, and information required for other applicants must be provided for the property owner.

(c) Corporations shall apply for a license in the name of the corporation or the limited liability company and a managing agent for the corporation or limited liability company, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity. The license shall be issued to the corporation or limited liability company and the managing agent, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity. Corporate or limited liability company applicants shall attach to the application a certificate showing compliance with the annual registration requirements from the secretary of state, corporate

division, and showing the name and address of a registered agent for service within the state. Where the applicant is a corporation or a limited liability company, an agent (“managing agent”) involved in the active management of the business to be licensed, as designated by corporate or limited liability company resolution, shall meet the requirements of individual applicants under this Section at the time application is made and at all times during which the license is in effect. Owners, partners, members, and shareholders must meet all requirements under this ordinance to be issued a license, unless the entity has a managing agent who meets all requirements, and in which event, the residency requirement will not apply to owners, partners, members, and shareholders.

(d) Partnerships shall apply for a license in the name of one of the partners having no less than a 10% interest in the partnership and a managing agent for the partnership, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity, if the managing agent is not the partner signing the application. The license shall be issued in the name of the applicant and managing agent, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity. If the applicant is a partner in a partnership, the requirements of this subsection shall apply to the managing agent for the partners at the time of application, and at all times during which the license is in effect. Owners, partners, members, and shareholders must meet all requirements under this Ordinance to be issued a license, unless the entity has a managing agent who meets all requirements, and in which event, the residency requirement will not apply to owners, partners, members, and shareholders.

(e)(1) Corporations, partnerships, and other types of legal entities shall have the license jointly issued in the entity’s name and an individual who meets the requirements of this Section and who does in fact have managerial authority over the business conducted on the licensed premises, including the sale of malt beverages and/or wine, and who is employed full time by the entity. Said individual shall be known as the “managing agent.”

(2) In the event the managing agent changes, the licensee shall notify the City Clerk within five (5) days of the change. A fee of one hundred dollars (\$100.00) will be charged for the processing of an application for the change of the managing agent, and such applicant must be approved by the City Council or its designated agent.

(f) No license shall be issued to an applicant who is under 21 years of age.

(g) No license shall be issued to an applicant who is not a citizen or resident legal alien of the United States. Moreover the applicant must have been a resident of the County of Fannin for one (1) year preceding the filing of the application (the residency requirement may be met by a managing agent for applicant). Honorably discharged members of the U.S. Military services may have their service count for residency requirements, but must be a Fannin County resident at the time of application.

(h) No license shall be issued by the City to any person that has an interest in more than five (5) licenses, regardless of the degree of such interest as more fully explained in Section 2-4.

(i) No license shall be issued by the City under this Ordinance to any person holding a City taxicab license or tax driver's permit.

(j) No license shall be issued at a premises where an adult entertainment establishment is operating, or is to be operated.

(k)(1) A license for the sale of wine or malt beverages may only be issued to an applicant of good moral character with mental and physical capacity to conduct such a business.

(2) All applicants for licenses, whether original or renewal, must attach to their applicants evidence of their good character.

(l) No license shall be issued to any person, partnership, limited liability company, or corporation if any individual having an interest either as owner, partner, member, leaseholder, or stockholder, directly or indirectly, beneficial or absolute, shall have been convicted of or shall have taken a plea of guilty or nolo contendere or entered a plea under the First Offender Act to:

(1) Any felony in any county, state, federal, or local court within ten (10) years immediately prior to the filing of the original application or renewal;

(2) Any violation of any law or convicted of any violation of the laws of this state, the federal government, or administrative regulation regulating the sale, manufacture, or distribution of alcoholic beverages, gambling, taxes, sex offense, narcotics, or any misdemeanor including moral turpitude within ten (10) years immediately prior to the filing of the original application or renewal; or

(3) The offense of driving a motor vehicle under the influence of any alcoholic beverage or drugs within five (5) years immediately prior to the filing of the application.

(4) The restrictions of this subsection as to members or stockholders shall apply only to members or stockholders of privately or publicly owned limited liability companies or corporations who hold in excess of ten percent of outstanding stock.

(5) The Mayor and City Council may, at its discretion, waive conviction of a misdemeanor if they determine that the conviction has no bearing on whether or not the applicant can or cannot operate the outlet in accordance with municipal, state, and federal law.

(m) The applicant shall not have been denied or had revoked for cause within five (5) years of the date of his application any license issued to him by the City or any other city, county, or state to sell alcoholic beverages of any kind.

(n) No license shall be issued to any person who fails to comply with all rules and regulations regarding the sale of alcoholic beverages contained in this Ordinance.

(o) No license under this Ordinance shall be issued to any person or entity that owes taxes, assessments, fees, water charges, sewer charges, fines, or other fees to the City. This prohibition shall not apply for property taxes issued in the year that the application is made.

(p) All applicants must meet all qualifications for a license under state law.

(q) Applicants for renewal licenses must meet all qualifications of applicants for original licenses. Loss of qualifications during the term of a license shall be grounds for revocation or of denial of renewal.

(r) No license under this Ordinance shall be issued to any applicant if any person holding a beneficial interest in the business is currently in violation of any ordinance or regulation of the City, and the applicant has not cured the violation and come into compliance with the ordinances and regulations of the City.

(s) No license under this Ordinance shall be issued to any person or entity that does not meet and comply with the requirement of Sections 2-3, 2-4, 2-7, 2-8, 3-1, 3-2, and 6-2.

SECTION 3-2—APPLICATION SUBMISSION; BASIC INFORMATION.

(a) Any person desiring a license under this Ordinance shall make written application to the City Council or its designated agent on forms furnished by the City Clerk. The applicant shall answer all questions on the application, under oath, and shall supply all information and furnish all certificates, affidavits, bonds, and other supporting data or documents as required by this Ordinance or the City Council.

(b)(1) All applications shall be fully completed by the applicant and sworn to and signed by the applicant in the presence of a notary public or other officer authorized to administer oaths.

(2) If the application is filed on behalf of a partnership, then all partners shall sign the application in the presence of a notary public or other officer authorized to administer oaths.

(3) If the application is filed on behalf of a corporation or limited liability company, then all principal officers of the corporation and all stockholders holding more than ten percent of any class of corporate stock must sign the application in the presence of a notary public or other officer authorized to administer oaths.

(c) Any material omission from, or untrue or misleading information in, an original or renewal application for a license under this Ordinance shall be cause for the denial or refusal of a license, or for the revocation of a license previously granted.

(d) Each application shall state the name and address of each applicant (including the managing agent); the place where the proposed business is to be located; and the type of license applied for, whether malt beverages or wine, or any combination thereof, or other license allowed by this Ordinance.

(e) The application shall also contain a beginning balance sheet showing the proposed original capitalization of the business and its source.

(f) If an applicant is a corporation, the application shall state the names of all officers and stockholders of the corporation and the percentage ownership of each. If the applicant is a partnership, the application shall state the names of all partners therein, whether general or limited. If the applicant is a limited liability company, the application shall state the names of all members therein.

(g) All applications shall include the names of all persons that have or will have any direct or indirect beneficial interest in the business for which the license is sought.

(h) All applications for licenses shall contain a full and complete statement of all material facts which tend to show whether the applicant, or any member of their immediate families, own a financial interest in any other alcoholic beverage outlets, or any interest in a wholesale alcoholic beverage entity, or distillery or brewery, and what interest they and each of them will have in the license being requested from this City.

(i) Each applicant shall certify that such applicant has read this Ordinance; and if the license is granted, each licensee shall maintain a copy of this Ordinance on the premises and shall require each of the licensee's employees to be familiar with this Ordinance.

(j) Each application shall also contain such additional information as the City Council or designated agent prescribes and shall be verified as true by the applicant before filing.

(k) Each application for a consumption on the premises (pouring) license shall demonstrate that the applicant at the required premises has an adequate and sanitary kitchen and dining room, air conditioning, adequate space for seating for customers; and the anticipated days of the week that applicant shall be serving meals to the general public.

(l) All applications shall be accompanied by the following:

(1) A copy of the applicant's state issued license.

(2) A certificate of residency is required for all persons required to sign the application, unless the application is on behalf of a partnership or corporation, in which case a certificate of residency is required of at least one partner/member/owner owning no less than a ten percent interest in the business or at least one shareholder owning no less than a ten percent interest in the outstanding and issued stock of the corporation.

(3) If the outlet is to be located on a leased premises, then a copy of the lease must be attached.

(4) If the applicant is a partnership, a copy of the partnership agreement, including amendments, shall accompany the application.

(5) If the applicant is a corporation, a copy of the articles of incorporation and bylaws, including amendments, and a certificate of existence from the secretary of state shall accompany the application.

(6) If the applicant is an LLC, a copy of the articles of organization, including amendments, and a certificate of existence from the secretary of state shall accompany the application.

(7) The application shall be accompanied by a certified check or money order for the nonrefundable application fee of \$300.00 to cover the cost of investigating the applicant and processing the application. Criminal background checks by fingerprinting shall also be performed on all signers of the application and the managing agent with the fingerprinting including as a part of the application fee. The premises for the location of the license shall also be inspected by the agent for the City for building inspections which fee is included with the application fee.

(8) The application shall be accompanied by a certified check or money order for the full licensing fee as stated in Section 2-6. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee, without interest, shall be refunded but the application fee shall be retained by the City.

(9) Every license application shall include a scale drawing of the location of the proposed building or premises with respect to all streets within 600 feet in every direction and the distance in feet by as described in Section 2-8 to any protected grounds described in Section 2-8 and patio to any residence as described in Section 2-7 and a certificate of a registered land surveyor or professional engineer that the location complies with the distance requirements in this Ordinance.

(10) All applicants for licenses, whether original or renewal, must attach to their applications evidence of their good character.

(11) Copies of all form ATT-17 and Personnel Statements filed with the state shall be submitted with the application.

(m) The Mayor and City Council may require any additional information and records they deem necessary. Failure to furnish the data shall automatically serve to dismiss the application. Any misstatement or concealment of fact in the application shall be grounds for denying a license or revoking an issued license, and shall make the applicant liable to prosecution for perjury under the laws of the state.

SECTION 3-3. -- FINGERPRINTING.

(a) As a prerequisite to the issuance of any license, the applicant shall furnish a complete set of fingerprints for all persons required to sign the application to be forwarded to the Georgia Bureau of Investigation and to the Federal Bureau of Investigation, as specified under state law.

(b) The applicant, by submitting the application, and each person required to sign the application, by signing the application, for an original license or renewal license, authorizes the City or its designated representatives to secure from any state, county, municipal or federal court any police department or law enforcement agency his, her, or its criminal history and civil history and further authorizes the City, its officers, and employees to use the information in determining whether or not a license under this Ordinance will be issued to the applicant.

(c) The applicant, by submitting the application, authorizes the City, its officers, and employees to use the information in a public hearing, if necessary, to determine whether or not the applicant's license should be denied, voided, cancelled, or revoked. Each applicant waives any right he, she or it may have under state or federal law, statute, or court ruling to preclude the City from securing the criminal or civil history from any source and waives any right he, she, or it may have to preclude the City from using the information publicly in determining whether the license will be issued to the applicant.

(d) Any material omission from, or untrue or misleading information in, an original or renewal for a license under this Ordinance shall be cause for the denial or refusal of a license, or for the revocation of a license previously granted.

SECTION 3-4. – POSTING OF NOTICE.

(a) At the time the applicant makes application for a license he shall, at his expense, post on the premises where the activities permitted by the license are to be conducted, a notice of the pending application that meets the following minimum specifications.

(b) The notice shall be painted or printed in black letters three inches or more in height, against a white background, on a wooden or metal sign and having a surface of not less than 12 square feet, and shall be placed with the base of the sign not more than three feet from the ground on the most conspicuous part of the premises, facing the most frequently traveled road, street, or highway abutting same, and not more than ten feet therefrom.

(c) The notice shall state clearly the nature and purpose of the application, and the name of the person, persons, and business making the application.

SECTION 3-5. – INVESTIGATION OF APPLICATION.

(a)(i) Every application filed pursuant to this Ordinance shall be thoroughly investigated by the Chief of Police, who shall make a formal written report and recommendation to the City Council.

(ii) When an application, the accompanying documents, and the required application fees and license fees are filed, a copy of the application package shall be provided to the City Chief of Police for investigation.

(iii) Based on his investigation, the Police Chief or his designee shall make a written report to the Mayor and City Council regarding the qualifications of the applicant. The

report and a copy of the application package shall be furnished to the Mayor and City Council for preliminary review.

(b) The City Council shall review the Chief's report and make such further investigation as it deems appropriate.

(c) All applications shall be investigated and acted upon within 90 days of the date of submission of a completed application.

(i) Unless consent of the applicant, to extent the investigative period has been waived in writing; or

(ii) In the event the City requests additional documents during the application review, the 90 day review period shall be stayed until production of the additional documents is completed.

(d) Inability of the City Council to obtain the good faith cooperation of the applicant in the investigation process, within the time period specified, shall constitute grounds for denial of the license.

SECTION 3-6. – REVIEW OF APPLICATION BY CITY COUNCIL.

(a) It shall be the duty of the City Council or its designated agent of the City to issue a license under this Ordinance.

(b) In reviewing an application under this Ordinance, the City Council or its designated agent of the City of McCaysville may utilize the Chief of Police and other City officials with respect to matters within their area of expertise. All applicants shall furnish such additional data, information, and records as may be requested of them by the City Clerk, Chief of Police, or other City official such as would be useful in determining whether to approve or reject such application.

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

(d) After the Chief of Police has delivered his report to the Mayor and City Council, the application shall be scheduled for review and decision at the next meeting of the City Council that is at least five (5) weeks in the future. The applicant shall be notified in writing of the date and time of the public hearing.

(e) Prior to the hearing before the City Council, the applicant must publish the notice of intent as provided in Section 3-7.

(f) At that meeting, the applicant and any person opposed to the application has the right to present to the City Council any information which the City Council determines is relevant to the licensing decision.

(g) In making its determination on whether to approve or deny the application, the City Council shall look to the public interest and welfare and shall have the sole discretion to grant or deny the application. In determining whether or not any application shall be granted and a license issued, the City Council or its designated agent of the City shall consider all mandated standards of this Ordinance and the following information in the public interest and welfare:

(1) If the applicant and/or any holder of an interest in the license has ever violated any federal, state, county, or municipal law, ordinance, or administrative regulation regarding alcoholic beverages, their possession, sale, manufacture, distribution, handling, or dealing therein;

(2) The manner in which the applicant and/or any holder of an interest in the license has conducted any business within the City as to the necessity for excessive police intervention;

(3) The reasonably anticipated effect on the immediate surrounding neighborhoods for which the license is sought as to traffic congestion, noise, and/or light pollution;

(4) Whether the applicant and/or any holder of an interest in the license has ever had any alcoholic beverage or business license suspended or revoked by any state or any political subdivision thereof, or whether any alcoholic beverage business with which the applicant and/or any holder of an interest in the license has been associated has been cited for a violation of the laws or regulations of any state or any local ordinance pertaining to alcoholic beverages, and the outcome of such proceedings;

(5) If the applicant and/or any holder of an interest in the license, as determined by the City Council or its designated agent of the City, by reason of such person's business experience, financial standing, trade associations, personal associations, record of arrest, or reputation in any community in which he has resided, is not likely to maintain the operation for which he is seeking a license in conformity with federal, state, or local laws, rules, and regulations;

(6) If the applicant and/or any holder of an interest in the license has ever been convicted under any federal, state, or local law of any felony involving moral turpitude;

(7) If the applicant and/or any holder of an interest in the license has been convicted under any federal, state, or local law of any felony not involving moral turpitude within ten (10) years immediately preceding the filing of an application for a license;

(8) If the applicant and/or any holder of an interest in the license has been convicted under any federal, state, or local law of a misdemeanor, particularly, but not limited to,

those involving alcoholic beverages, gambling, narcotics, sex offenses, moral turpitude, or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state, or local laws, rules, and regulations;

(9) Whether the proposed outlet would be in a location within an area where, in the judgment of the City Council or its designated agent of the City, the number of malt beverage and/or wine license already granted makes it contrary to the public interest or welfare;

(10) Whether the proposed outlet would be in a location at which a previous license has been revoked or suspended, and where, in the judgment of the City Council or its designated agent of the City the problems which have arisen from the operation of a license at such location indicate that it is not in the interest of public health, safety, welfare, or morals that the sale of malt beverages and/or wine be permitted at such location;

(11) Whether the proposed outlet would be in a location within an area where, in the judgment of the City Council or its designated agent of the City, the location would be contrary to the public interest or welfare;

(12) Whether the granting of such license would constitute a violation of state law or regulations;

(13) Whether the applicant is in compliance with, or cannot comply with, any of the terms of this ordinance.

(14) Whether the applicant is in compliance with Sections 2-3, 2-4, 2-7, 2-8, 3-1, and 3-2.

(h) A decision by the City Council shall be made within 30 days from the date of the City Council meeting, and written notice of that decision shall be mailed to the applicant by the City Clerk or Mayor. In the event the application is denied, the written notification shall set forth in reasonable detail the reason for the denial and shall notify the applicant of his right to appeal; the appeal to be in accordance with the provisions of Section 5-6 of this Ordinance.

SECTION 3-7. – PUBLICATION OF NOTICE OF INTENT.

Upon notice of the scheduling of a hearing before the City Council for consideration of an application for a malt beverage and/or wine license, the applicant at his sole expense shall cause to be published in the official county organ of Fannin County, Georgia, at least once each week for four consecutive weeks prior to the hearing, a notice in the form required by the City, indicating the applicant's intent to secure a license for the sale of malt beverages and/or wine. The notice shall include the exact location of the place of business for which a license is sought; the type of license sought, the names and addresses of each owner of the business and each person having an interest in the business, if the applicant is a corporation, the names and titles of all corporate officers, and if the applicant is a partnership, the names and titles of all partners,

and if the applicant is a limited liability company, the names and titles of all members and managers.

SECTION 3-8. – REAPPLICATION AFTER DENIAL.

In all instances in which an application is denied under the provisions of this Ordinance, the applicant may not reapply for the same type of license for at least one year from the final date of the denial.

SECTION 3-9. – ISSUANCE OF LICENSE.

(a) Upon approval by the City Council of the application for a license, the City Clerk shall issue a license in accordance with the approved application.

(b) When the applicant is applying for himself and a corporation or limited liability company, the license, if issued, shall be issued in the name of the corporation or the limited liability company and a managing agent for the corporation or limited liability company, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity.

(c) If the applicant is a partnership, the license will be issued in the name of the applicant and managing agent, who does in fact have managerial authority over the business conducted on the licensed premises and is employed full time by the entity

(d) If the applicant is an individual, then the license shall be issued in the name of the individual.

SECTION 3-10. – REGISTERED AGENT.

Upon the issuance of a license to a corporation, the licensee must have and continuously maintain a registered agent upon whom any process, notice, or demand required or permitted by law or under this Ordinance to be served upon the licensee may be served. This registered agent must be an individual. The licensee shall file the name of the agent, along with the written consent of the agent, with the Mayor and City Council in the form as they may prescribe.

ARTICLE IV. – LICENSE RENEWAL, TRANSFER, AND CHANGES IN STATUS.

SECTION 4-1. – LICENSE RENEWAL

(a) All alcoholic beverage licenses are annual licenses that run from January 1 to December 31 of each year. All licenses granted hereunder shall expire at midnight on December 31 of the year in which said license was issued.

(b) Holders of existing licenses who desire to renew their license shall apply to the City Clerk for renewal for the next calendar year between September 1 and October 15 by filing a renewal application in proper form and tendering the required licensing fee. Annual license

fees are due upon renewal filing and shall be past due if not paid by that date. Renewal applications will be accepted also from October 16 through December 31, but shall bear a ten percent penalty. After October 15, there shall be imposed a penalty of ten percent of the amount of the license fee that shall be paid before a new license is issued.

(c) Any licensee making proper application, with all supporting documents, for a license to operate during the following year and having filed the application prior to the renewal date specified in this Section shall be permitted to continue to operate pending final approval or disapproval of the licensee's application for the following year by the City Council. The effective date and the expiration date of the license shall be clearly marked on the license.

(d) Any person holding any license issued pursuant to this Ordinance who fails to file a proper application for a similar license for the following year, with the proper licensing fee accompanying the application, on or before the renewal date specified in this Section shall not be permitted to continue to operate past the printed expiration date on the license.

(e) The City Clerk shall promptly notify the State of Georgia Department of Revenue of all licenses which were not renewed on or before January 1, and all privilege to carry on and conduct a business governed by this Ordinance shall be immediately suspended due to license expiration without the need for a hearing.

(f) Any person holding any license issued pursuant to this Ordinance who fails to file a proper application for a similar license for the following year by December 31 of the preceding year and then subsequently files an application shall be treated as an original application and not one for renewal and the applicant shall be required to complete a full application as if it was his original application and not one for renewal, pay the licensing fee, and pay an application fee.

(g) Each application for renewal will show the date of the original application and state there have been no changes in any of the information and data contained in or furnished with the original application and that the applicants for renewal are familiar with applicable state laws and regulations and with the rules and ordinances of the City.

(h) The renewal application must be signed and sworn to by all applicants in the presence of a notary public or other officer authorized to administer oaths.

(i) In the event it is discovered by the City that changes have occurred, that are in any way different from those facts shown in the original application and the documents furnished with the original application, the renewal shall be void. The applicant may be required to file a new license application as if it was his first application and not one for renewal and pay an application fee if changes have occurred in the information and data furnished with the original application.

(j) The applicant will furnish all information required by the renewal application and failure to furnish the information will be grounds for denying the application. A false statement made on the renewal application will void the application, constitute due cause for cancellation,

revocation, or suspension of a license, and shall make the applicant liable to prosecution for perjury under the laws of the state.

(k) Each application for renewal of a license shall be approved or denied in accordance with the same procedures applicable to applications for a new license prescribed herein for original issuance; provided, however, that any applicant submitting an application for renewal of a license for malt beverages and/or wine for consumption on premises does not have to advertise in the local paper or post a notice on the premises.

SECTION 4-2. — TRANSFER OF LICENSE.

(a) Licenses cannot be transferred. This prohibition includes transfers from the original holder of the license to a new entity or individual as well as transfers from the location referenced in the application to a new location.

(b) Except as provided herein, any change in the ownership of any entity owning a licensed outlet shall cancel and revoke any license issued hereunder automatically, without the necessity of any hearing.

(c) Any licensee desiring to discontinue business at one location and commence business at some other new location must make a complete new application for such new license, pay the administrative/application fee, and licensing fees.

(d) Upon the sale of an existing business, the City license issued for that business location shall remain in effect pending approval or denial of a new application by the City Council, provided that the buyer or transferee has immediately upon the date of sale or prior to the date of sale made proper written application and has paid the original license fees and application/administration fee.

(e)(1) A new license application must be applied for whenever a partnership holding a license admits a new partner to the partnership that was not a partner at the time of the original license application.

(2) Nothing in this section shall prohibit a partner in a partnership holding a license to withdraw from the partnership and to assign his interest to one or more of the partners who were partners at the time of the issuance of the license. Such withdrawal shall not serve to bring any new ownership into the partnership, unless such new owner shall apply for a license and comply with all provisions of this Ordinance and then only upon the approval of the City Council or its designated agent of the City.

(f) A new license must be applied for whenever a corporation owning a license admits stockholders holding ten percent or more of any class of stock, who were not stockholders at the time of the application for the existing license. Such additional stockholders must apply for a license and meet all requirements of a licensee, including approval by the City Council or its designated agent of the City before he shall be permitted to acquire such interest.

(g) A new license must be applied for whenever a partnership, limited liability company, or corporation holding a license takes on additional partners or members, as the case may be. Such additional partner or member must apply for a license and meet all requirements of a licensee, including approval by the City Council or its designated agent of the City before he shall be permitted to acquire such interest.

(h) Whenever a partnership, limited liability company, or corporation holding a license loses the license as a result of the provisions of this Section, upon filing an application for a new license the partnership or corporation may continue to operate under the terms of the prior license until such time as the new application is approved or denied by the City Council.

(i) All licenses issued pursuant to this Section shall be valid only so long as the licensee is actively engaged in such business, with the exception of holidays, vacations, and periods of redecoration, and in the event the licensee shall cease to be actively engaged in such business such license shall be invalid and the licensee of such business shall immediately notify the City Council and return his license thereto.

SECTION 4-3. – CHANGE IN STATUS.

When a change occurs in the relationship of any person, or in the status of any property or license, or any change in payment of rents, ownership of the lease, or building or land on which the outlet is located, any change in corporate ownership or management, any loss or damage to goods which results in a claim against an insurance policy, any change in the division of profits, any change in any division of net or gross sales for any purpose whatsoever, and any change in facts stated or claimed in any application or report herein required, a sworn statement of the change and all material facts relating thereto shall be filed with the City Clerk. Failure to do so within five (5) days after the change shall, unless the time limit is extended for good cause, be reason for cancellation of a license granted pursuant to the provisions of this Ordinance.

ARTICLE V. – SUSPENSIONS, REVOCATION, OR FORFEITURE OF LICENSE AND APPEALS THEREFROM.

SECTION 5-1.—SUSPENSIONS, REVOCATION, OR FORFEITURE OF LICENSE.

(a) Except as provided elsewhere in this Ordinance and in Sections 5-3 and 5-4, no license which has been issued or which may be issued pursuant to this Ordinance shall be suspended or revoked except for due cause and after a hearing and upon prior three (3) day advance written notice to the holder of the license stating the time, place, and purpose of the hearing and a statement of the charges upon which the hearing shall be held.

(b) The term “due cause” for the purpose of this section shall include, but not be limited to:

(1) Every license issued by the City for the sale of malt beverages and/or wine shall expire and be of no further force or effect in case of bankruptcy, receivership, levy of legal

process, or failure to promptly account for and pay the excise tax levied on the sale of said beverages.

(2) Any change in the ownership of any entity owning a licensed outlet shall cancel and revoke any license issued hereunder.

(3) All licensees must, within six (6) months after the approval of the license, open for business the outlet referred to in the application for license, and begin the sale of the product authorized by the license. Failure to open the outlet and begin the sales referred to above within the six-month period shall serve as a ground for forfeiture and revocation of the license.

(4) Failure of any licensee who for a period of three (3) consecutive months to operate the business and sale of the product authorized in the license shall be grounds for revocation of the license.

(5) A license may be suspended or revoked if the licensee provides fraudulent or untruthful information in the application for a license under this Ordinance or bearing upon the licensee's qualification therefor or omits information required in the application for a license. Any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this Ordinance shall be deemed a violation of the requirements attempted to be circumvented.

(6) A license may be suspended or revoked if the licensee fails to pay all fees, taxes, or other charges imposed under this Ordinance.

(7) Whenever the state shall revoke or suspend any permit or license required as a condition for possession, sale, or distribution of alcoholic beverages, the City license shall thereupon be automatically revoked, without any action by the City. Any licensed outlet that is found to be in violation of the prohibited conduct provided for in this Ordinance shall be subject to immediate license revocation in addition to all other penalties allowed.

(8) The Mayor and City Council may suspend or revoke the license of any outlet that does not meet the licensing qualifications set forth in this Ordinance at any time the knowledge becomes known to him.

(9) A license may be suspended or revoked if the licensee fails to meet or maintain any standards prescribed by this Ordinance as a condition or qualification for holding a license. Included within this, but not limited thereto, is the failure of the holder of a license for sale and consumption on the premises (pouring) to meet the food sale requirements and the other requirements of his Ordinance, and which shall be a continuing condition for the validity of said license.

(10) An act or omission of a licensee, or employee of the licensee, or licensing outlet willingly or knowingly performed, which constitutes a violation of federal or state law, or of any provision in this Ordinance, will subject the licensee to suspension or revocation of his license in accordance with the provisions of this Ordinance when the Mayor and City Council

determine to their own satisfaction that the act or omission did occur regardless of whether any criminal prosecution or conviction ensues; provided, however, in the case of an employee, the Mayor and City Council will determine that the acts of the employee were known to, or under reasonable circumstances should have been known to the licensee, or were condoned by the licensee, or where the licensee has not established practices or procedures to prevent the violation from occurring.

(11) A license may be suspended or revoked if the licensee or any person holding an interest in the license is conviction of, enters of a plea of guilty or nolo contendere, or entered a plea under the First Offender Act for (i) any felony; (ii) any law, administrative regulation, or ordinance involving alcoholic beverages, gambling, or narcotics; or (iii) any tax laws involving the premises, the license, licensee, or occurring on the premises.

(12) A license may be suspended or revoked if the licensee, any of its employees, or any person holding an interest in the license is conviction of, enters of a plea of guilty or nolo contendere, or entered a plea under the First Offender Act for any sex offense.

(13) A license may be suspended or revoked for any violation of this Ordinance.

(14) The occurrence on three or more occasions within any thirty (30) day period of fights, disorderly conduct, drunkenness, breach of the peace, physical violence against persons or property, or other activities prohibited by the Ordinance upon the licensed premises of a licensee, whether such conduct is committed by agents of the licensee or by customers or others, shall be due cause for the suspension or revocation of the license.

(15) Any license shall automatically expire on December 31 of each year, without the necessity of a hearing, unless renewed by the Mayor and City Council.

(16) A license may be suspended or revoked based upon any other factors known to or discovered by the City whereby it is objectively shown that the licensee, any of the licensee's employees, or any person holding an interest in a licensed business has or has permitted conduct on the licensed premises that constitutes a violation of federal or state law, local ordinance, or administrative regulations involving alcoholic beverages, gambling, narcotics, or any sex offense. With respect to this Section, it shall be rebuttably presumed that the prohibited act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist, or aid in such occurrence, or in the exercise of full diligence that such licensee could not have discovered or prevented such activity.

(c) Notice of suspension or revocation proceedings shall be served on the person or persons named as licensee in the application at least three (3) day prior to the hearing and shall state the time, place, and purpose of the hearing and a statement of the charges upon which the hearing shall be held. Notice shall be in writing. The notice may be served personally or by first class mail. If by mail, the notice shall be addressed to the licensee(s) at its address as it appears in the records of the City. The burden shall be on the licensee(s) to provide notice, in writing, of

any change of address for service of notices and process. In the case of service by mail of any notice required by this ordinance, the service is completed at the time of deposit in the United States Postal Service.

(d) The hearing shall be conducted by the City Council.

(e) Hearings shall only be as formal as necessary to preserve order and shall be compatible with the principles of justice. The City Attorney or other designated agent shall present the City's case and bear the burden of proving by a preponderance of the evidence that due cause exists to suspend or revoke the license. At the hearing the licensee shall have the right to represent itself or be represented by counsel, may cross examine all witnesses offered by the City, and may call witnesses and present evidence on its own behalf. Formal rules of evidence shall not apply to hearings under this Section, although the City Council shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation.

(f) The City Council shall make its final determination within ten (10) days of the completion of the hearing.

(g) Within ten (10) days of City Council's decision, to deny, suspend, or revoke a license, the Mayor or City Clerk shall provide written notice to the applicant or licensee of the City Council's decision to deny, suspend, or revoke the license and the decision as to any penalty, if any. The written notification shall set forth in reasonable detail the decision and reasons for the action and shall notify the applicant or licensee of the right to appeal under the provisions of this Ordinance.

(h) In the assessment of any penalties, the City Council or hearing officer can consider evidence presented by the licensee of any training program for employees instituted by the licensee, or to be instituted, to prevent further violations.

(i) Such penalty may include one or more of the following: suspension of the license for no more than 12 months, revocation of the license, imposition of a probationary period not to exceed 12 months, and/or a civil penalty not to exceed the amount allowed by the City Charter or general state law. Notwithstanding the foregoing, in the event that a license holder including but not limited to any employee of the license holder while acting in the employment of said license holder, furnishes or causes to be furnished, sells, or permits any person in such employer's employ to furnish any alcoholic beverages to any person under 21 years of age, then for a first offense, the minimum penalty shall be a civil fine of \$500.00 and a 15 day suspension of the right of the license holder to sell alcoholic beverages. In the event that a license holder has been found guilty of a second offense of an underage sale within one year of the first offense, then the minimum civil fine shall be \$1,000.00 and the right to sell alcoholic beverages by said license holder shall be suspended for 60 days. In the event of a third offense, within one year of the first offense, then the license holder shall have a minimum fine of \$1,000.00, the alcoholic beverage license shall be revoked, and the license holder shall be unable to reapply for the alcoholic beverage license for one year from the date of the revocation of the original license. When any fine is imposed, the licensee or the offender shall have five consecutive days, exclusive of

weekends or other days where City Hall is closed, to pay the fine or the license will be suspended until the fine is paid.

(j) A total of four separate violations within 24 months, whether or not within the probationary period shall constitute grounds for permanent revocation.

(k) The City Clerk shall promptly notify the State of Georgia Department of Revenue of all licenses suspended and all disciplinary action within forty-five (45) days of said action.

SECTION 5-2. -- NO REFUNDS FOLLOWING SUSPENSION OR REVOCATION

If a license issued under this Ordinance is suspended or revoked, the licensee shall not be entitled to a refund of any portion of the application, investigatory, or license fees previously remitted.

SECTION 5-3. – SHORT-TERM EMERGENCY SUSPENSION FOR VIOLATIONS INVOLVING LICENSED BUSINESS.

(a) The Mayor has authority to suspend a license for a short-term period not to exceed ten (10) days. The Mayor’s decision shall be in writing, with the terms of the suspension and the reasons therefor stated, and shall be mailed or delivered to the licensee as provided in section 5-1(c).

(b) A short-term suspension by the Mayor must be for an emergency cause. Emergency cause for the short-term suspension of a license shall consist of a third or subsequent violation by the same licensee or the licensee’s agents on the same premises within a two-year period of any state or federal laws, administrative regulations of the state or City ordinances regulating such business holding a license, including those prohibiting gambling, regulating the sale, manufacture, distribution, handling, dealing in, and possession of alcoholic beverages, including the sale or transfer of alcoholic beverages to minor in an unlawful manner, and the manufacture, sale, or distribution of any controlled substance which puts the City and the health and safety of its citizens at such risk that an immediate suspension is necessary until a hearing as provided for in section 5-1 can be held.

SECTION 5-4. – EMERGENCY SUSPENSION OF ALL ALCOHOLIC BEVERAGE LICENSES.

The City Council is authorized to suspend the sale of alcoholic beverages under all licenses issued pursuant to this Ordinance during any state of emergency declared by the governor or any local emergency as defined by O.C.G.A. § 36-69-2, or for any other serious emergency situation when the City Council deems such immediate suspension necessary for the protection of the health and welfare of the citizens of the City. Such suspension may be made effective immediately without the necessity of a hearing and shall remain in force until the City Council determines the emergency is over or until the next meeting of the City Council, at which time the suspension shall cease unless the same is extended by affirmative action of the City Council.

SECTION 5-5. – ACCEPTANCE OF APPLICATION AFTER REJECTION OR REVOCATION.

When any license is rejected or revoked by the City Council or its designated agent, no new application shall be accepted from the same applicant for a license within 12 months from the time of such rejection or revocation. Submission of a new application by another applicant, which application shows the applicant was previously rejected or revoked as a holder of an interest in the desired license, shall result in rejection of the new application.

SECTION 5-6. – APPEALS OF DENIAL, REVOCATION, OR SUSPENSION.

(a) The findings of the City Council shall be final unless appealed to the Superior Court of Fannin County within 30 days of the date notice of the findings are mailed or delivered to the applicant or licensee.

(b) For the purpose of this Section, notice shall be deemed delivered when personally served or when deposited in the United States Postal Service.

ARTICLE VI. REQUIREMENTS AND PROHIBITIONS OF LICENSEES.

SECTION 6-1-- REQUIRED SIGNS; POSTED INFORMATION.

(a) In addition to other postings required in this Ordinance or by law, all licensees shall post in a conspicuous and prominent location or locations on the licensed premises, in a manner whereby it may be easily viewed by patrons the following:

(1) Any licensee subject to this Ordinance shall post on the premises, in a conspicuous place, a sign which clearly reads: "THE CITY OF MCCAYSVILLE AND THE STATE OF GEORGIA REQUIRE YOU TO BE 21 YEARS OF AGE IN ORDER TO PURCHASE AND CONSUME ALCOHOLIC BEVERAGES, AND TO PROVIDE PROPER PROOF OF AGE PRIOR TO PURCHASE. PLEASE HAVE YOUR IDENTIFICATION READY TO PRESENT TO THE SERVER, MANAGER, OR CASHIER. PERSONS PROVIDING FALSE IDENTIFICATION WILL BE PROSECUTED."

(2) Further, any licensee subject to this Ordinance shall post on the premises, in a conspicuous place, a sign which clearly reads: "WARNING, DRINKING ALCOHOLIC BEVERAGES DURING PREGNANCY CAN CAUSE BIRTH DEFECTS."

(3) The police department is authorized to design and have printed approved signs, which shall be made available to licensees at a price to be established by the Chief of Police.

(b) All licensees shall display in prominent places within the interior of the licensed premises not less than one copy of the printed price list of the malt beverages and wine offered for sale or, in lieu thereof, on menus. Any price change must remain valid for seven consecutive

calendar days. The licensee shall furnish to any customer who so desires an itemized list of such prices. All charges shall not exceed the established price list.

SECTION 6-2.—CONDITION OF PREMISES.

(a) All premises licensed under this Ordinance shall be kept clean, in proper sanitary condition, and in full compliance with all building codes, ordinances, provisions, and regulations governing the conditions of premises used for the storage and sale of food for human consumption, and regulations of the City, County and state.

(b) The City and County health department shall have the authority to inspect regularly the licensed premises to determine whether the licensed premises is in compliance with all City, County, and state health rules and regulations and shall report any violation to the City Clerk.

(c) The City and County fire department shall have the authority to inspect regularly the licensed premises to determine whether the licensed premises is in compliance with all City, County, and state fire regulations and shall report any violations to the City Clerk.

(d) The City and County building inspector shall have the authority to inspect regularly the licensed premises during the hours when the outlet is open for business to determine whether the licensed premises is in compliance with all City, County and state codes and regulations and shall report any violations to the City Clerk.

(e) The Mayor, or his/her designee, and City Councilmembers shall have the authority to inspect regularly the licensed premises during the hours when the outlet is open for business to determine whether the licensed premises is in compliance with all City technical codes and sections of this Ordinance and shall have access during the inspection to all books, records, and supplies relating to the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages, and also such records and documents regarding food sales by such licensee licensed for consumption on the premises (pouring). Violations shall be reported to the City Clerk.

(f) The city police department shall have the authority to inspect periodically the licensed premises during the hours when the outlet is open for business to determine if the licensed premises is in compliance with all sections of this Ordinance and shall report any violation to the City Clerk.

(g) The commissioner and his agents may enter upon the licensed premises at any time for the purpose of inspecting the premises and enforcing this Ordinance and the law of the state and shall have access during the inspection to all books, records, and supplies relating to the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages.

(h) This Section is not intended to limit the authority of any City officer to conduct inspection authorized by other provisions of law

(i) Each licensee shall keep and preserve records of all alcoholic beverages manufactured, purchased, or sold by him. The records shall be kept for a period of three (3) years from the date of manufacture, purchase, or sale and shall at all times be open to inspection by the Mayor and City Council or any designated City employee or any outside agency for the City upon approval of the outside agent by the City Council.

(j) In addition to subsection (i) above, all licensees for the sale of malt beverages and/or wine for consumption on the premises, hotels/motels/resorts, bed and breakfasts, and farm wineries, shall keep and preserve records of all food and nonalcoholic beverages purchased and sold by the licensee. Such records shall be kept for three (3) years from the date of purchase and sale and shall be at all times open for audit and inspection by the Mayor and City Council or any designated City employee or any outside agent of the City upon approval of the outside agent by the City Council.

(k) In the event an audit is called for by the City Council, they shall notify the licensee of the date, time, and place of the audit.

(l) The front entrance of all licensed retail consumption premises shall be clearly visible from a public street; provided, however, that this restriction shall not apply where the premises are located in a hotel, motel, restaurant, shopping center or multiple-story business building.

(m) All buildings, premises, and exterior of each building where malt beverages and/or wine are sold shall provide adequate lighting to be safe for customers to transact business therein and so that all sides of the building and all entrances thereto are clearly visible at all times when the premises are opened for business.

(n) All premises shall be landscaped in accordance with the ordinances of the City as may relate to landscaping and parking spaces.

SECTION 6-3. -- ADVERTISING.

(a) Except as otherwise authorized in this Section, no outdoor advertising or signs promoting the sale of alcoholic beverages, or the prices of such beverages, shall be permitted on the exterior of any licensed premises, on the windows that may be viewed from the outside, or on portable signs of any nature or any location outside the premises.

(b) No licensee shall be permitted to utilize a lighted portable sign outside the building.

(c) Lighted signs advertising beer and wine may only be placed on the furthest back wall of licensed premises and cannot be placed outside the premises.

SECTION 6-4.-- PURCHASES TO BE MADE ONLY FROM LICENSED WHOLESALERS.

Licenses shall not buy nor accept deliveries of malt beverages or wine from any person other than a wholesaler, dealer, or distributor licensed by the State Department of Revenue.

SECTION 6-5. -- STORAGE OF ALCOHOLIC BEVERAGES.

All licensees shall store all malt beverages and wine on the premises for which the license was issued and at no other place. All stock shall be available at all times for inspection by any duly authorized representative of the City. Any alcoholic beverages found in any licensee's stock which was not sold or distributed by a wholesaler licensed in accordance with the laws of the state to make sales and deliveries in the City shall be subject to immediate confiscation.

SECTION 6-6. – SPECIAL PROVISIONS FOR WHOLESALERS.

(a) No person or entity shall sell any alcoholic beverages at wholesale unless the person or entity holds a valid and current wholesale license from the state of Georgia and from the city or county where the principle place of business of the wholesaler is located.

(b) Any wholesale dealer in alcoholic beverages licensed by the state or the agent of the wholesale dealer shall be granted a license to distribute malt beverages and/or wine in the City upon application for the license to the City Council and the presentation of satisfactory evidence that he understands the alcoholic beverage rules and regulations of this City and the conditions under which licenses are issued.

(c)(1) No person or entity that has any financial interest, either direct or indirect, in any license for the sale of any malt beverages and/or wine in the City shall be allowed to have any interest or ownership in any wholesale alcoholic beverage license issued by the State of Georgia.

(2) Farm wineries acting as wholesalers under the provisions of O.C.G.A. § 3-6-21.1 are exempt from this provision and may, upon proper application, approval, and permitting, hold licenses as farm wineries with or without a tasting room and wholesale operations at a single location.

(d) No licensee shall purchase any malt beverage or wine from any person other than a wholesaler licensed under this Ordinance. No wholesaler shall sell any malt beverage or wine to any person other than another duly licensed wholesaler or licensee under this Ordinance; provided however, that this section shall not prohibit the purchase by one licensee of another licensee's entire stock in a bona fide purchase of an ongoing business.

(e) No malt beverage or wine shall be delivered to any outlet in the City except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

(f) Every licensee shall maintain sufficient audit records to attribute all malt beverages and wine in its inventory to a purchase from a licensed wholesaler.

(g) Each wholesaler, at the time of any sale of wine or malt beverages, shall prepare and keep a copy of a sales invoice containing: (i) The name of the wholesale dealer; (ii) The name, address, and license number of the licensed importer, wholesaler, or licensee making the purchase; (iii) The quantity, type, and container sizes of beverages sold; (iv) The date of the sale; and (v) Any other information the Mayor or Commissioner may require.

(h) Licensed wholesalers shall only engage in the sale of malt beverages and/or wine from sunup to sundown only on days the outlets for sale of malt beverages and wine by the drink are authorized to sell said beverages.

(i) Licensed wholesalers or their employees shall follow all traffic rules for the City and shall not in any way conduct their business so as to interfere with the flow of traffic in the City.

(j) All provisions of this Ordinance including those regarding licenses, qualifications, audits, records, and penalties, shall also apply to wholesalers.

(k) Wholesaler's license with the principal place of business in the City will be issued only for premises meeting all requirements of the City ordinances and with the main entrance on Blue Ridge Drive (also known as Harpertown Road) from the intersection of East Tennessee Avenue and Blue Ridge Drive (also known as Harpertown Road) to the intersection of Hillcrest Drive and Blue Ridge Drive (also known as Harpertown Road). This Section shall not apply to properly licensed farm wineries who also hold wholesaler licenses.

(l) Each establishment licensed as wholesaler with the principal place of business in the City shall meet all requirements of the City's ordinances, as well as minimum building, fire, and life safety codes.

(m) It is prohibited for any person to consume alcoholic beverages outside a wholesale establishment. No licensee authorized for wholesale shall permit the consumption of alcoholic beverages on the premises.

SECTION 6-7. – DAYS AND HOURS OF SALE.

(a) License holders may sell from 9:00 a.m. until 11:45 p.m. Monday through Saturday.

(b) Should a holder of a license to sell by the drink for consumption on the premises remain open for more than forty-five (45) minutes beyond the prohibited hours of sale, said act shall be construed as prima facie evidence that alcoholic beverages are being consumed on the premises in violation of this Ordinance.

(c) There shall be no sales for consumption on the premises (pouring) of malt beverages or wine permitted on Sundays or Christmas day regardless of the day of the week upon which Christmas falls. Sales are permitted on election day; provided, however, it shall be unlawful for any person to sell alcoholic beverages within 250 feet of any polling place or of the outer edge of any building within which such polling place is established on any state, federal, or municipal election day.

SECTION 6-8. – PROHIBITED SALES.

(a)(1) No person under 21 years of age shall purchase, drink, or possess alcoholic beverages. No licensee shall knowingly, directly or through another person, sell, furnish, cause to be furnished, or permit any person in such person's employ to sell or furnish alcoholic beverages to any person under 21 years of age. No person shall 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.

(2) It shall be the duty of every person seeking to purchase or possess alcoholic beverages from a licensee within the City to furnish, upon request, proper identification showing that the person is 21 years of age or older.

(3) No person under 21 years of age shall misrepresent such person's age in any manner whatsoever for the purpose of obtaining any alcoholic beverage.

(4)(i) All licensees shall require and properly check identification to insure an underage person is not served or have in his possession alcoholic beverages while in a licensed establishment. Identification in this Section shall mean proper identification as it is defined in this Ordinance.

(ii) It shall be a violation of this Ordinance for any licensee, or any agent, officer, or employee of a licensee, to fail to check the proper identification of any patron when selling or otherwise providing any alcoholic beverage, which failure results in an underage person being sold or served, or to have in such underage person's possession while on the licensee's premises, any alcoholic beverages.

(5) If such conduct is not otherwise prohibited pursuant to municipal or state law, nothing contained in this Section shall be construed to prohibit any person under 21 years of age from:

(i) Dispensing, serving, selling, or handling malt beverages and wine as a part of employment in any licensed establishment, if at least 18 years of age;

(ii) Taking orders for and having possession of malt beverages and/or wine as a part of employment in a licensed establishment, if at least 18 years of age; or

(iii) Being employed in a farm winery as long as the employee also complies with Section 6-8 (i) and (ii)

(6) Any licensee, or any person acting on behalf of such licensee, who upon requesting proper identification from a person attempting to purchase alcoholic beverages from such licensee is tendered a driver's license which indicates that such driver's license is falsified, is not the driver's license of the person presenting it, or that such person is under the age of 21 years, the person to whom said license is tendered shall be authorized to either write down the name, address, and license number or to seize and retain such driver's license and in either event shall immediately thereafter summon a law enforcement officer who shall be authorized to seize the license either at the scene or at such time as the license can be located. The procedures and rules connected with the retention of such license by the officer shall be the same as those provided for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to O.C.G.A. § 17-6-11.

(b) No licensee shall permit on the licensed premises the sale, barter, exchange, giving, providing, offering, or furnishing of alcoholic beverages to any person who is in a state of noticeable intoxication.

(c) It shall be unlawful for any delivery to be made to and/or sales be made outside of the outlet. It shall be unlawful to sell or dispense alcoholic beverages from "drive-thru," "drive-in," or service windows.

(d) It shall be unlawful to knowingly sell alcoholic beverages to a person who is intoxicated or to allow intoxicated persons to congregate on the premises, either inside, on any patio, in an outside areas, or in parking lots, and it shall be the responsibility of the owner of the business, the license holder, its agents, and employees to strictly enforce this provision, and the failure to do so shall be cause for revocation of the license.

(e) There shall be no gambling, betting, games of chance, slot machines, or the operation of any scheme or hazarding money or any other thing of value in any place of business licensed under this Ordinance, or in any room adjoining same, owned, leased, or controlled by a licensee, except that this restriction shall not apply to official sales locations of Georgia lottery games and tickets.

(f) No licensee under this Ordinance shall keep any malt beverages and/or wine at any place except the licensed place of business.

SECTION 6-9. ---ADULT ENTERTAINMENT BUSINESSES

(a) No license under this Ordinance shall be issued as to any premises where an adult entertainment establishment operates or is to be operated. Further, adult entertainment establishments shall not be entitled to have any type of alcoholic beverage license. Brownbagging is expressly prohibited within any adult entertainment establishment. If an employee of an adult entertainment establishment knowingly allows, or with reckless indifference permits any brownbagging within the adult entertainment establishment, than such action or omission shall be cause for the revocation of any occupational tax license issued to the adult entertainment establishment, as well as a revocation of the occupancy permit of any adult entertainment established for the premises.

(b) No licensee shall permit on the licensed premises any person performing acts of, or acts which constitute or simulate sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals or the displaying of any portion of the female breast below the top of the areola of the breast, or the displaying of any portion of any person's pubic hair, cleft of the buttocks, anus, vulva, or genitals. No licensee shall permit on the licensed premises any person using artificial devices or inanimate objects to perform, simulate, or depict any of the prohibited activities described above. No licensee shall permit on the licensed premises the showing, displaying, or exhibiting of any film, still picture, electronic reproduction, or any other visual reproduction or image of any act or conduct described in this paragraph. No licensee shall permit on the premises any person using artificial devices or inanimate objects to depict any of the prohibited activities described in this Section. No licensee shall permit any person to remain in or about the licensed premises who exposes to public view any portion of the areola of the breast, pubic hair, cleft of the buttocks, anus, vulva, or genitals. There shall be no nude or semi-nude or erotic dancing, or the performance of obscene acts or acts which simulate: (1) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts which are prohibited by law; or (2) the touching, caressing or fondling of the breast, buttock, anus, or genitals; or (3) the displaying of the pubic hair, anus, vulva, or genitals; in any outlet that is licensed. The holding, promotion, or allowance of any contest, promotion, special night, or any other sexual activity is prohibited in any licensed outlet. The violation of this paragraph by the operator of any licensed premises or any premises for which a permit has been issued shall constitute grounds for the suspension and revocation of any and all beverage licenses issued under this Ordinance issued to such operator.

SECTION 6-10. -- DRINKING IN PUBLIC, OPEN CONTAINERS, AND PARTIALLY CONSUMED BOTTLES OF WINE PURCHASED WITH A MEAL.

(a) It shall be unlawful to possess or consume any alcoholic beverage while on any streets, sidewalks, alleyways, parking areas, city parks, or other open areas owned, operated, or controlled by the City, except as permitted under Section 2-7 (Patio sales/outdoor sales).

(b) No person shall possess an open container of any alcoholic beverages within the passenger compartment of a motor vehicle. Unopened containers of alcoholic beverages may be transported in any part of a vehicle.

(c) No person shall possess an open container of any alcoholic beverage while walking, standing, or otherwise occupying any public street, road, or highway, sidewalk adjacent thereto, city park, public parking lot, or other property owned or leased by the City.

(d) It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage outside in the parking lot or entrance areas or outside of the premises of the licensed dining establishment, except consumption on the premises of malt beverages or wine in previously approved patio/open areas. It is prohibited for customers to leave the premises of a consumption on the premises licensee with alcoholic beverages, except as provided in Section 6-10 (e), and it is the licensee's responsibility to insure that no such beverages are sold or carried out. The owner of the business and the license holder, their agents, and employees shall

strictly enforce this provision, and the failure to do so will be a violation of this Ordinance and cause for revocation of the license.

(e)(1) Any dining establishment which is licensed to sell wine for consumption on the premises may permit a person to remove one (1) unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the dining establishment's premises.

(2) A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employee before removal off the premises.

(3) The partially consumed bottle of wine 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 opened or tampered with, and an itemized dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container.

(4) If transporting in a motor vehicle, the container with the resealed bottle of wine 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. Licensee or its employee shall inform the customer or patron of this requirement of securing the resealed wine in this manner, when the customer or patron is exiting the restaurant with the resealed bottle of wine.

SECTION 6-11. – BROWNBAGGING.

(a) Brownbagging is prohibited within the City of McCaysville. Brownbagging shall include the following prohibited acts:

(1) Any person who brownbags;

(2) Any person participating in consumption of any alcoholic beverages being brownbagged; and

(3) Any employee of the business establishment in whose presence brownbagging knowingly or with reckless indifference occurs;

(4) Notwithstanding any other provisions of this Ordinance, nothing contained in this Ordinance shall be interpreted as banning or prohibiting the serving of wine as part of a religious sacrament or ceremony (including weddings and wedding receptions) at the premises of any organized church or house of worship.

SECTION 6.12. -- EMPLOYEES.

(a) No licensee under this Ordinance shall permit any person under the age of 18 within his employment to sell or dispense malt beverages or wine. This provision shall not

prohibit dining establishments from employing persons under the age of 18, so long as such employees under age 18 do not sell any such beverages.

(b) No licensee under this Ordinance shall permit any person to sell, dispense, serve, or take orders for alcoholic beverages while that persons is serving a sentence, including probation or parole, based upon a conviction in any state or federal court or the United States or in any foreign country for any felony or any misdemeanor ordinance violation relating to the manufacture, sale, use, or distribution of alcoholic beverages or narcotics or controlled substances, sexual offenses, or crimes of moral turpitude. No licensee shall employ within its business for the purpose of selling or dispensing beverages licensed under this Ordinance any person convicted within three (3) years immediately prior to the application for employment of any felony relating to the manufacture, sale, use, or distribution of alcoholic beverages or narcotics or controlled substances, sexual offenses, or a crime of moral turpitude or within two (2) years immediately prior to the application for employment of any misdemeanor or ordinance violation relating to the manufacture, sale, use, or distribution of alcoholic beverages or narcotics or controlled substances, sexual offenses, or a crime of moral turpitude.

(c) It shall be the duty of the licensee to ascertain that all employees are eligible for employment under this Ordinance. The City reserves the right to obtain fingerprints from and conduct a criminal history check of any licensee's employees at any time and as part of receiving an employee permit for any license as provided herein. Upon employment, the licensee shall cause the employee to appear at City Police Department and shall pay the requisite employee permit fee in the amount of \$30.00.

(d) It shall be the duty of the licensee to train all employees whose duties shall include the sale, dispensing, serving, or taking of orders for alcoholic beverages in the requirements of this Ordinance and applicable state laws and regulations. Each licensee shall establish written policies, a copy of which shall be posted within the licensed premises, governing the sale and dispensing of alcoholic beverages in accordance with state law and this Ordinance. Licensees are encouraged to adopt disciplinary sanctions for employees who fail to meet the standards of law as violations by employees may constitute grounds for revocation, suspension, or denial of a license under this Ordinance. The degree of training, supervision, and discipline of employees by the licensee may be considered by the City in determining action on any license.

(e) Employee permits:

(1) No person shall be employed to dispense, sell, serve, or take orders, or in any other managerial position, by an establishment holding a license for malt beverages or wine, or both, for consumption on the premises unless such person has been approved by the Chief of Police. The individual named on the license for such establishment shall be exempt from this requirement.

(2) Upon approval by the Chief of Police, such person shall be issued an employee permit which shall contain the name, expiration date, and identifying information of such employee. Such employee permit shall remain the property of the City and shall be in the

possession of the employee at any time he or she is working at any licensed establishment, and shall be produced upon the request of any law enforcement officer or other agent of the City.

(3) No permit shall be issued until such time as a signed application has been filed with the McCaysville Police Department and upon the payment of the nonrefundable fee of \$30.00. The applicant shall furnish, at the time of presenting the application, two (2) forms of proper identification, as defined in this Ordinance. Such application shall contain the following information: Applicant's name, date of birth, height, weight, race, sex, address, telephone number, and disclosure of arrest record. Applicant must give permission to the police department to obtain and inspect any criminal history of such applicant which is in the possession of any law enforcement agency, and permit fingerprinting in order to allow the police department to obtain the criminal history. The \$30.00 fee shall include the fingerprinting performed by the police department.

(4) No person shall be granted an employee permit who has been convicted, plead guilty, entered a plea of nolo contendere, or entered a plea under the First Offender Act to any crime involving the sale or possession of alcoholic beverages within three (3) years of the date of the application.

(5) No person shall be granted an employee permit who has been convicted, plead guilty, entered a plea of nolo contendere, or entered a plea under the First Offender Act to any any felony within five (5) years of the date of the application.

(6) No person shall be granted any employee permit if he or she has been the holder of an alcoholic beverage license or employee permit which has been revoked within five (5) years of the date of the application.

(7) An employee permit shall be valid for three (3) years from the date of issue. At the expiration of three (3) years, the employee permit may be renewed upon the submission of a renewal application, the payment of the appropriate renewal fee and upon determination that such individual remains qualified under this Ordinance. The fee for renewal of an employee permit shall be \$30.00.

(8) An employee permit may be suspended or revoked by the Chief of Police or other agent of the City if it is determined that the individual has violated any provision of this Ordinance or committed any offense which would make him or her ineligible to hold such a permit.

(9) Notification of any denial, suspension, or revocation of any employee permit shall be in writing and served either in person or by first class mail and shall contain the reasons for such action and the notice of the right to appeal the decision.

(i) Decisions of the Chief of Police or other agent of the City that adversely affect or aggrieve any applicant, certificate holder, or permit holder under this Ordinance may be appealed to the City Council. All appeals shall be submitted in writing to the City Clerk, within ten (10) days after notification of the adverse decision. For purposes of this

subsection, notification shall be complete when personally served or deposited in the US Postal Mail.

(ii) A hearing shall be conducted on each appeal within thirty (30) days of the date of the filing of the written appeal, unless a continuance of such hearing is agreed to by the appellant and the Chief of Police, or unless the hearing is rescheduled by the City Council. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses.

(iii) The appellant shall be notified in writing of the date and time of the hearing at least seven (7) calendar days prior to the date of the hearing.

(10) Falsifying or failure to disclose any information required by this Section shall be grounds for denial or revocation of the employee permit.

(11) The employee permit is non-transferable and is valid only for the individual named on the permit. Such permit is valid for the individual named while employed in any establishment licensed in the City.

(12) No licensee shall allow any employee or manager required to hold an employee permit to work on the premises unless the employee or manager has in their possession a current valid employee permit. Provided, however, that an individual may be employed for a period of time not to exceed fourteen (14) days pending the submission of the application to and the approval of the permit by the police department.

(13) It shall be the duty of the license holder to file with the police department on a monthly basis a report which lists all employees employed in a capacity which would require an employee permit. Such report shall include the name and date of birth of all such individuals, as well as the same information on all such individuals who have terminated employment during the reporting period. Failure to submit said report to the police department by the fifteenth day of each month shall be a violation of this Ordinance.

SECTION 6-13. -- LAST CALL.

(a) All licensees for the sale of malt beverages and/or wine 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 alcoholic beverages;

(b) All licensees for the sale of malt beverages and/or wine for consumption on the premises shall remove, or cause to be removed from the premises, all customers or patrons within forty-five minutes after the closing time. After the time period for removal of the customers or patrons has lapsed, only employees of the licensee engaged in their employment duties shall remain on the premises. Failure to comply with this Section shall be due cause for the suspension or revocation of the license following the procedures provided herein.

ARTICLE VII. - TEMPORARY PERMITS.

SECTION 7-1. – TEMPORARY PERMITS.

(a) When an application for an alcoholic beverage license is pending final fingerprint clearance, the City Council may direct issuance of a temporary permit to the applicant authorizing the applicant to operate under the terms and conditions of the temporary permit and this Ordinance; provided, however; that the applicant must be in full compliance with all other provisions of the application process specified herein.

(b) The temporary permit shall be valid for no longer than 90 days from its issuance; provided, however, that if the fingerprint clearance has not been received by the City during the initial 90-day temporary permit period, the City Council may, if circumstances warrant, and in its sole discretion, extend the temporary permit.

(c) The temporary permit shall be prominently displayed at the applicant's place of business.

(d) In all cases, a temporary permit issued under this Section is conditional upon fingerprint clearance, and the City Council shall direct revocation of the permit upon failure of fingerprint verification or criminal history not in conformity with the provisions of this Ordinance.

ARTICLE VIII. -- FARM WINERIES

SECTION 8-1. -- FARM WINERIES

(a) There is hereby created a license for the business of operating a Georgia farm winery, to be in conformance with the farm winery laws of the State of Georgia under O.C.G.A. § 3-6-21.1 et seq., as amended and this Ordinance. The applicant for a farm winery license shall indicate within the application as to whether the applicant is seeking a license for the premises of that farm winery that manufactures wine in Georgia, or whether the application is for one of the five additional locations in the State of Georgia that the farm winery can operate a tasting room for consumption on the premises of the tasting room and retail sale closed packages of wine for consumption off the premises.

(b) Under this Section, the licensee shall be authorized to carry on the business of operating a farm winery tasting room on the premises of the farm winery, if the premises is located within the City of McCaysville, Georgia, or operating a tasting room off of the premises of the farm winery and located within the incorporated limits of the City of McCaysville and subject to the provisions of O.C.G.A. § 3-6-21.1 et seq., as amended.

(c) The farm winery tasting room created by this article is limited to farm wineries licensed by the State of Georgia and allows the licensee to offer wine samples and to make retail sales of its wine and the wine of any other Georgia farm winery in the tasting room, and as allowed by state law. No license is created by this Ordinance authorizing any other person to deal in any other alcoholic beverages in a farm winery tasting room.

(d) The requirements of this Ordinance with respect to the sale of food with alcoholic beverages and percentage of sales requirements shall not apply to farm winery tasting room, but all other provisions and requirements shall apply. Further, notwithstanding any other provisions of this Ordinance to the contrary, in the event that the Georgia Revenue Commissioner has authorized the farm winery licensee to make sale of malt beverages and wines not produced by a farm winery for consumption in its tasting rooms, then the farm winery shall be allowed to sell such alcoholic beverages provided that the tasting room is upon the premises of the farm winery or on property located contiguous to the premises of the farm winery and owned by the farm winery or by an affiliate of the winery.

(e) A licensed farm winery must specifically apply for a farm winery license for the City of McCaysville, Georgia, to operate a tasting room within the City, and pay the license fee for a farm winery or a tasting room, or both. The farm winery licensee must operate its tasting room in accordance with the requirements of state law and the provisions of this Ordinance.

(f) A farm winery shall comply with all provisions of this Ordinance.

(g) A farm winery shall affix to each bottle or container of wine and malt beverages, or to the edge of the shelf whereon the bottles or containers are located directly beneath the bottles or containers, a tag showing the prices of individual bottles or containers.

SECTION 8.2 – EXCEPTIONS REGARDING FARM WINERY LICENSES.

(a) Farm wineries shall be subject to all qualifications and regulations of this Ordinance except as otherwise specifically provided in this Section.

(b) Any farm winery applying for licensure hereunder must submit proof of state licensure and compliance with state production requirements as set forth in O.C.G.A. § 3-10-21.1 et seq.

(c) A farm winery license issued pursuant to this Ordinance shall authorize the winery to sell or distribute its wine, and the wine of any other state farm winery licensed by the state, within the jurisdictional limits of the City at retail in a tasting room or other facility on the premises of the winery, or on property located contiguous to the winery and owned by the winery or by an affiliate of the winery, for consumption on the premises and in closed packages for consumption off the premises.

(d) Nothing in this Section shall be construed so as to authorize a farm winery to sell wine on any premises other than as set forth herein.

(e) Farm wineries shall be subject to the excise taxes levied on wine sales and annual license fees as provided in this Ordinance.

ARTICLE IX. --EXCISE TAX.

Section 9-1. -- EXCISE TAX.

(a) In addition to the license fees required in this Ordinance and in addition to the excise taxes levied by the state, all licensees under this Ordinance shall pay to the City the taxes imposed in this Ordinance.

(b) The City hereby levies a tax on the sale of beer malt beverages as follows:

(i) Where malt beverages, commonly known as tap, draught beer, or draft beer, are sold in or from a barrel or bulk container, the City hereby levies an excise tax of \$6.00 per container sold in the City containing not more than 15 1/2 gallons and a like rate for fractional parts of 15 1/2 gallons where the draught beer is sold in or from barrel or bulk containers. The wholesaler shall remit these taxes to the city on a monthly basis.

(ii) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, the City does hereby levy a tax on the sale of beer and malt beverages of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(iii) Malt beverages which contain less than one-half of 1 percent alcohol by volume shall not be subject to any tax levied under this Ordinance.

(c) The City hereby levies a tax on the sale of wine as follows:

(i) There is hereby levied an excise tax of \$0.22 per liter on the first sale or use of wine by the package and a proportionate tax at the same rate on all fractional parts of a liter. The wholesaler shall remit the tax of \$0.22 per liter to the City on a monthly basis.

(ii) The taxes imposed by this article shall not be levied 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 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 1 percent alcohol by volume.

(d) The excise taxes provided for in this Section shall be imposed upon and shall be paid by the licensed wholesale dealer. The taxes shall be paid on or before the tenth day of the

month following the calendar month in which the beverages are sold or disposed of by the wholesale dealer.

(e) Each licensee responsible for the payment of the excise tax shall file a report with the City Clerk itemizing for the preceding calendar month the exact quantities of beverages, by type, location, size and type of container, sold during the preceding month within the City. Each wholesaler of malt beverages responsible for payment of the excise tax shall file with the City, Ga. Rev. Dept. form ATT-122, showing the exact quantities of malt beverages, by size and type of the container, sold within the City during the preceding month.

(f) The wholesaler shall remit to the City on the tenth day of the month following the calendar month in which the sales were made the tax imposed by the City.

(g) Any person who fails to pay the tax imposed in this Section to the City, or fails to pay any amount of such tax required to be collected and paid to the City, within the time required, shall pay a civil penalty of 15 percent of the tax, or amount of the tax due, in addition to the tax or the amount of the tax, plus interest on the unpaid tax or any portions as set forth in subsection (h) of this Section.

(h) Should the City determine that a deficiency exists in the amount of tax due by a licensee for one or more monthly periods, the amount of the deficiency shall bear interest at the rate of 1.50 percent per month, or fraction thereof from the due date of taxes, exclusive of penalties.

(i) If any part of the deficiency for which a deficiency determination has been made is due to gross negligence or disregard of rules and regulations, a penalty of 15 percent of the amount of such deficiency shall be added thereto in addition to the 15 percent prescribed in subsection (g) of this Section.

(j) If the Mayor and City Council have cause to believe that the return, or the amount of the tax required to be paid to the City by any licensee is not proper, he may compute and determine the amount required to be paid upon the basis of any information that is available to him.

(k) If any licensee fails to make a return, the Mayor, City Clerk, or designee shall make an estimate of the amount of the gross receipts of the licensee or, as the case may be, of the amount of total sales in the City which are subject to the tax. The estimate shall be made for the period or periods 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 Mayor, City Clerk, or designee. Upon the basis of this estimate, the Mayor, City Clerk, or designee shall compute and determine the amount required to be paid to the City. One or more determinations may be made for one or for more than one period.

(l) The Mayor, City Clerk, or designated representative shall give to the licensee written notice of this deficiency determination, and notice may be served by police officer or by mail; if by mail the service shall be addressed to the registered agent of the licensee. Service by

mail is complete when delivered by certified mail a receipt signed by the addressee or by receipt of mailing. Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 10th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

(m) 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 to collect the amount delinquent, together with penalties and interest, court fees, filing fees, attorney's fees, and other legal fees incident thereto.

(n) Whenever the amount of any tax, penalty, or interest has been paid more than once, or has been erroneously or illegally collected or received by the City under this Section, it may be offset against any future liability for the tax.

(o) If the licensee determines that he has overpaid or paid more than once, which fact has not been determined by the Mayor and City Council, he will have three years from the date of payment to file claim with the City Clerk in writing, stating the specific ground upon which his claim is founded. The claim shall be audited. If the claim is approved by the Mayor and City Council, the excess amount paid to the City may be credited on any amounts then due and payable from the licensee, or may be refunded to the licensee if the licensee is no longer operating a licensed premises in the City.

(p) The Mayor and City Council shall administer and enforce the provisions of this Section for the collection of the tax imposed by this Section. In the administration of the provision of this Section, the Mayor and City Council may require the filing of the reports by any person or class of persons having in their possession or custody information relating to purchases that are subject to the tax. The report shall be filed with the City Clerk and shall set forth the purchase price for each purchase, the date of purchase, and such other information as the Mayor and City Council may require.

(q) Every licensee shall keep the records, receipts, invoices, and other pertinent papers in such form as the Mayor and City Council may require. The Mayor and City Council or any person authorized in writing by the Mayor and City Council may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.

(r)(i) If any licensee liable for any amount under this Ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amounts until the former owner produces a receipt from the Mayor, City Clerk, or other designee showing that he has paid the taxes, or a certificate stating that no amount is due at this time.

(ii) If the purchaser of the business fails to withhold the necessary amount from the purchase price as required in this Section, the purchaser becomes personally liable for the payment of the amount required to be withheld by it to the extent of the purchase price valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the Mayor, City Clerk, or other designee shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the City 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 be at the time the licensee sells out his business or at the time the determination against the licensee becomes final, whichever event occurs later.

(s) The licensee shall keep a copy of this Ordinance at the outlet at all times. All employees of the licensee will be informed of the contents of this Section.

ADOPTED AND APPROVED on the 14th day of March 2017, at a regular meeting of the Mayor and Council of the City of McCaysville.

Thomas Seabolt
THOMAS SEABOLT, MAYOR

Paul Patton
CITY COUNCIL MEMBER

Richard Wagner
CITY COUNCIL MEMBER

Laura Collier N. Godfrey
CITY COUNCIL MEMBER

See BEATER
CITY COUNCIL MEMBER

CITY COUNCIL MEMBER

ATTEST:

Nancy Godfrey
CITY OF MCCAYSVILLE, CITY CLERK

