

**AN ORDINANCE TO PERMIT CONSUMPTION ON SPECIFIC
PREMISES OF WINE AND MALT BEVERAGES AND TO
AUTHORIZE
FARM WINERIES AND TASTING ROOMS
WITHIN THE UNINCORPORATED AREAS OF FANNIN COUNTY, A
POLITICAL SUBDIVISION OF THE STATE OF GEORGIA AND
TO PROVIDE FOR SEVERABILITY;
TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER
PURPOSES**

The Board of Commissioners of Fannin County, a political subdivision of the State of Georgia does amend "The Code of Ordinances of Fannin County Georgia" by adding a new Chapter to said Code to be entitled "**ON SITE CONSUMPTION OF WINE AND MALT BEVERAGES AND FARM WINERIES**" The new Chapter to be entitled "ON SITE CONSUMPTION AND FARM WINERIES" shall read as follows:

1.010. License issuance for Consumption on the Premises of Malt Beverages and Wine

Consumption on the premises licenses for the sale of malt beverages and wine outside municipalities in the county will be issued by the board of commissioners of the county pursuant to the rules and regulations set forth in the following paragraphs of this chapter. The holding of any of said licenses is declared to be a privilege and not a right.

1.020. Definitions.

As used in this chapter, the term:

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

Bar means a business open to the public which sells alcoholic beverages for consumption on the premises which does not meet the definition of a restaurant and which does not derive a minimum of 60 percent of its gross income from prepared food sales.

Brown bagging means possession of an open glass bottle, can, or other container containing an alcoholic beverage or consumption of an alcoholic beverage on premises:

- (a) For which a county business license has been issued; and
- (b) [Which] occurs at a location different from where said alcoholic beverage was purchased.

Church means any permanent building which houses the main sanctuary in which persons regularly assemble for religious worship and which is publicly designated as a church, but shall not include a residence also used for religious purposes. The term "church" shall not include the temporary housing of a religious group in an otherwise commercial center.

College means only those state, county, church or other colleges that teach the subjects commonly taught in the common colleges of this state and shall include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Director means the business license director for Fannin County. Currently said individual shall be the accounts payable clerk with the

Board of Commissioners or such other position or board as the Board of Commissioners may from time to time designate.

Election day means that period of time beginning with the opening of the polls and ending with the closing of the polls. As used in this section, the term "election" is defined as any statewide primary election and the statewide general election and any runoff held for such primary or general election. The term also includes "local elections."

Good moral character means the propensity of the person to serve the public in the licensed area in a fair, honest and open manner.

(1) A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used in and of itself as proof of a person's lack of good moral character. It may be used as evidence in the determination and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that:

- a. At the current time he has the ability to, and is likely to, serve the public in a fair, honest and open manner; and
- b. He is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks a business license or business permit.

(2) The following criminal records shall not be used, examined or requested by the county in a determination of good moral character when used as a requirement to obtain a business license or business permit:

- a. Records of an arrest not followed by a conviction.
- b. Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

- c. Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest and open manner.
- d. Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.

Indoor recreation establishment means an indoor facility that contains regulation-size courts or alleys where physical sporting activity takes place and equipment related to the activity is available for rent or sale.

Lounge means a separate room connected with a part of and adjacent to a restaurant or with a hotel with all booths, stools and tables being unobstructed and open to view.

Malt beverage means any alcoholic beverage obtained by any 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 six percent alcohol by volume and including ale, porter, brown, stout, lager, beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Nonprofit private club means a corporation organized and existing under the laws of the state or a fraternal or veterans' organization associated with and a part of a recognized national fraternal or veterans' organization which is organized and operated exclusively for pleasure, recreation and other nonprofit purposes and which immediately prior to the application for a license hereunder:

- a. Has at least 100 members regularly paying dues; and
- b. Has tax exempt status under the provisions of section 501(a) of the U.S. Internal Revenue Code; and
- c. Owns or leases a building or space for the reasonable use of its members; and
- d. Has no members or officers, agent or employees of the club receiving compensation directly or indirectly in the form of commissions or other compensation based on the amount of profits from the sale of malt beverages and wines beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club; and
- e. Has no part of the net earnings inuring to the benefit of any shareholder or member; and
- f. Has been in continuous operation for at least one year prior to the application for a license hereunder.

Premises means the space or area owned, leased or controlled by the licensee and used by him for the purpose of operating under the license. It shall be limited to one location for each license and there shall be a separate license for each premises outlet, except in the case of a licensee where:

- a. A golf course is located adjacent to and contiguous with a restaurant, premises shall include the playing area of the golf course.
- b. Where a SportsCar, SCCA (Sports Car Club of America), ACO (Automobile Club De L'Quest) CART (Championship Auto Racing Teams), or NASCAR(National Association for Stock Car Auto Racing) sanctioned motor sport

road race track facility is located adjacent to and contiguous with a restaurant. Likewise, a train with a restaurant shall include all cars connected to the same engine with a minimum seating capacity of 60.

c. A convention center or public venue designed to accommodate or seat a minimum of 750 people in a permanent structure being enclosed on at least three sides and having a permanent roof, and shall include all concession stands as one venue.

d. In these exceptions the premises shall include the permanent concession points, grandstands and other event viewing areas; provided however, that alcoholic beverages may only be served at permanent concession points on the premises operated by the main licensed location and approved in advance by the county business license director or such other official as may be designated by the board of commissioners.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and permanent seating capacity of at least 60 people, with at least two meals per day being served for not less than five days a week, for at least seven months each calendar year, and the serving of such meals being the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto.

Retail package means sales of malt beverages or wine packaged to go and not for consumption on the premises sales.

Veterans' organization means a veterans group duly certified by their national organization and with a membership of not less than 25 persons.

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this chapter.

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.

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

School means any state, county, church or other private school that teach the subjects commonly taught in the common schools of this state and shall include the adjacent open land or fenced areas used for school purposes but this shall not include any portion of a private school, where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

1.030. License required.

No person shall engage in the business of selling malt beverages and wines of any kind for on site consumption in the unincorporated area of the county without first obtaining a license therefore under this chapter.

No person shall engage in the business of selling an alcoholic beverage of any type, to include all alcohol, distilled spirits, beer, malt beverages, wine, or fortified wine except as specifically authorized by this ordinance.

1.040. License classifications.

Only the following classes of licenses shall be authorized:

- A. Malt beverage: Consumption on the premises;
- B. Wine: Consumption on the premises;
- C. Combination, malt beverage and wine: consumption on the premises;
- D. Manufacturing: Farm Winery, as set forth in Section 2.000 and following.

1.050. License fees.

- A. The applicant for consumption on the premises malt beverage and/or wine license shall pay to the business license director at the time of application the sum of \$5,000.00 for the sale of malt beverages and \$5,000.00 for the sale of wine, as the initial cost of said licenses.
- B. Said licenses will only be sold in combination with each other, resulting in an initial application fee of \$10,000.00.
- C. At the time of implantation, the number of licenses for consumption on the premises of malt beverages and /or wine (and excluding farm wineries) available for purchase shall be limited to twenty five (25) in the entire unincorporated area of the County.
- D. Subsequent to the initial license fee of \$10,000.00, there shall be an annual license renewal fee for operation for one year at one location or one business where the product will be sold shall be due annually in the amount of \$1,000.00.
- E. The annual fee is per calendar year and shall not be prorated.
- F. The license can be sold to a qualifying individual or entity, under the terms and conditions hereinafter set forth.
- G. The applicant for a manufacturing license pursuant to the farm winery provisions of this ordinance shall pay to the business license director at the time of application the sum of \$1,000.00 as an initial fee.
- H. An annual license renewal fee for operation of a farm winery for one year at one location or one business where the product will be sold shall be due annually in the amount of \$150.00.
- I. Each application for a license under this chapter shall be accompanied by a certified check for the full amount of the initial license fee. Should the applicant be denied a license or should the applicant(s) withdraw the application prior to its being submitted to

the commission, the license fee shall be refunded; however \$150.00 for investigation and application processing shall be retained.

J. Annual license fees for permanent concession points for the sale of alcoholic beverages as set forth under the definition of "premises" in Section 1.020(G)(1), (2) and (3) shall be as follows:

1. An annual inspection fee of \$100.00 for one to four concession locations;

2. An annual inspection fee of \$200.00 for five to ten concession locations; and

3. An annual inspection fee of \$300.00 for more than ten concession locations shall be charged to offset the cost of concession site inspections.

4. Licensing inspection fees for concession points shall not be pro-rated and shall be due and payable at the same time the alcoholic beverage license is renewed each year.

5. Alcohol concession permits will be issued for each concession point as a supplementary license to the main licensed location.

6. Any new concession locations added during the licensing year shall be charged an initial inspection fee of \$50.00, and then the new concession location shall be added to the annual renewal fee the following year.

1.060. License application.

A. All applications for licenses to sell malt beverages and wine shall be made in person by the applicant to the business license director in writing on forms furnished by the business license director. The

application shall contain, but is not restricted to, the following information:

1. Name;
2. Age;
3. Address;
4. Length of residency of the applicant;
5. Name of business;
6. Location of business;
7. Description of the premises or place of business where the license is to be effective;
8. Statement as to whether the applicant or any person with any interest in the applicant has made application previously for any malt beverage or wine license and the disposition of such application;
9. Whether the applicant or any person with any interest in the application has ever been convicted of a crime other than traffic violations;
10. Whether a previous license issued to the applicant or any person with any interest in the application has been revoked by any state or subdivision thereof or by the federal government, and the reason for said revocation;
11. Whether any other person is interested directly or indirectly in the profits or losses of the proposed business;
12. Each applicant for a malt beverage or wine license shall attach to his application evidence of ownership of the business premises or a copy of the current lease for the premises upon which the license is to be effective.
13. If the business is not an on going entity, the anticipated commencement dates for construction / operation.

14. Only after meeting all requirements for licensing by the applicant shall the application be submitted to the commission for approval. Current license holders applying for additional locations shall be exempt from this provision.

B. Every application for a license shall be accompanied by a scale drawing showing the nearest church, funeral chapel, school or college or shall have attached thereto an affidavit of a registered surveyor that the proposed location of the licensed premises complies with the distance requirements of this chapter and any state or federal law.

C. All applications shall bear an identification number (1 thru 25) and shall be dated as to the date received by the Director. A duplicate copy of the application with the number, date and the signature of the Director indicating receipt of the same and the fees shall be given to the applicant at the time of application.

D. At such time as twenty five applications have been received and a certified check for the license fees (totaling \$10,000.00/ per application) for malt beverages / wine have been received no additional applications shall be accepted until such time as a final disposition of the initial twenty five has occurred. In the event that one or more of the initial twenty five are not granted, notice of the availability of additional applications shall be made and applications accepted in accordance to the provisions of the Notice and this Ordinance.

1.070. License approval procedures.

A. After filing an application with the director, the applicant for a license shall publish a notice of the application in the legal organ of the county one time (on such date as the legal notices are published) prior to the regular county commissioner meeting at which the application is

to be presented and considered. The notice shall contain the name of the person applying for the license and the name of the person for whom the application is submitted, if different, and the location of the proposed premises. An affidavit of the publisher or his authorized agent certifying that the advertisement has been published shall be submitted to the Director subsequent to the publication and prior to the same being placed on the agenda of the Board of Commissioners.

B. After filing an application with the director, the applicant for a license shall place a sign in or at the establishment (if the same is a current business) where alcoholic beverages are to be sold. This sign shall remain on the premises from the date of the initial filing of the application with the director until the application has been approved or denied. The sign shall be a minimum of 12"x 15" and shall be visible from the street or thoroughfare on which the establishment where alcoholic beverages are to be sold is located. The sign shall contain the words "NOTICE: WINE/MALT BEVERAGE LICENSE APPLIED FOR." The words shall appear in bold type and be clearly visible from the street or thoroughfare on which the establishment where alcoholic beverages are to be sold is located, and be located at the main entrance to the establishment. Letters on this sign shall be not less than four inches in height. The day, month, and year the license was applied for shall also appear on said sign.

C. In the event that the restaurant or premises are not yet operational, the notice required in 1.070 (B) shall be placed on the property for the proposed establishment.

D. The application shall be reviewed and considered first by the Sheriff of Fannin County in order to determine the compliance with this ordinance as to any felony conviction which would preclude the obtaining a license. Thereafter the same shall be submitted by the

Director to the county commission for consideration at a regularly scheduled county commission meeting. The same shall then be tabled and not eligible for a vote by the county commission on the application until the next regularly scheduled county commission meeting

E. Where a building in which any person intends to operate under the provisions of this chapter is, at the time of the application for the license, not in existence or not yet completed, a conditional license may be issued for the location provided the plans for the proposed building show clearly a compliance with the other provisions of this chapter. No sales for onsite consumption shall be allowed in the establishment until it has been completed in accordance with the plans and is in conformity with all of the other provisions of this Ordinance.

1.080. License renewal and transfer.

A. A licensee who desires to renew his license for a subsequent calendar year must file a renewal application with the director on or before November 15 of the preceding year. Payment of license fees for renewal shall be made at the time of application and, upon approval of the renewal application by the director, the license will be issued. Applications for renewal shall be treated as applications for new licenses but need not be advertised and/or resurveyed unless requested by the director. Any renewals submitted after the due date of November 15, shall be considered delinquent and assessed a penalty in the amount of ten (10) per cent of the fees due. Interest on delinquent fees shall be assessed at one (1) percent for each month or fraction thereof of delinquency.

B. No license may be transferred from one person to another or from one managing agent to another without the approval of the director pursuant to written application.

C. Upon change of a license holder or owner (unless the owner is a corporation and stock is traded publicly or listed on a major stock exchange) the license shall be transferred and will remain in effect for no longer than 45 days or until the transfer is granted or refused under this chapter, whichever shall occur first. Payment of a transfer fee of \$150.00, if made within five days of the transfer, or \$300.00 if more than five days after the transfer, will be due at the time of application. The license shall cease to be in effect after 45 days or the business is closed. A time extension for the transfer may be granted by the director due to extenuating circumstances.

D. Upon the death of any license holder, his personal representative or heirs may continue to operate under the original license for the balance of the year without payment of any fee, provided those persons are otherwise qualified as license holders. Otherwise, the license may be transferred to a qualified transferee within 30 days after the condition of the estate of the deceased licensee will permit. In such case, the transferee shall pay a transfer fee of \$150.00.

E. Any licensee desiring to discontinue business at one location and commence business at another location must make a new application for the new location, providing the information as set forth above. However, the licensee will maintain his priority as to the twenty five available licenses.

F. No refund of renewal fees shall be made once the renewal application is submitted, approved and license is issued.

G. Licenses **may only** be sold with an ongoing business and the new licensee will have to meet all the requirements of licensure. However, the new licensee will maintain the same priority as to the twenty five available licenses.

H. No license shall be sold separate and apart from an on going business and no license shall be sold for more than the stipulated fee of \$10,000.00.

I. Any license that is sold separate and apart from an ongoing concern or that is sold for more than the original fee shall be null and void and all priority as to the initial twenty five (25) licenses shall be lost.

J. An individual, entity or organization may make application for a license and pay for the same prior to the establishment of a business. However, said individual, entity or organization can not offer the same to sale to any third party separate and apart from an ongoing business.

1.090. Qualifications of license holders.

A. All applicants for a license shall be at least 21 years of age.

B. All sole proprietor owners who are permanent residents of the State of Georgia shall make application for a license in their own name. Where the owner is a corporation, partnership, association, or nonresident of the State of Georgia, the application shall be made in the name of an officer, partner or associate who owns a substantial interest in the business or in the name of the principal managing officer, or managing agent who is a permanent resident of the State of Georgia. In such cases the application shall show that the license is for the use of the owner who shall be named in the application.

C. For the purpose of this chapter, unless otherwise indicated, applicant means the corporation, partnership, sole proprietorship, or other organization and the managing agent.

1. Every managing agent applicant for a county malt beverage and wine license shall be at least 21 years of age, a U.S. citizen or an alien lawfully admitted for permanent residency, and a resident of the state, and shall make application on forms furnished by the business license office and in connection therewith shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, and other supporting data as required thereby.
2. Where the application is made on behalf of a corporation, the license shall be issued jointly to the corporation and an officer or agent who meets the requirements as set forth in section 1.090. The officer or agent named as the applicant shall be an individual who does in fact have regular managerial authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, who is employed fulltime by the corporation. Said individual shall be known as the "managing agent."
3. Where the application is made on behalf of a partnership, the license shall be issued jointly to the partnership and either the managing general partner thereof, or an individual who meets the requirements set forth in section 1.090 does in fact have managerial authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, who is employed full time by the partnership. Said individual shall be known as the "managing agent."
4. Where the application is made on behalf of a sole proprietorship, the license shall be issued jointly to the sole proprietorship and an individual who meets the requirements set forth in section 1.090 who does in fact have management

authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, who is employed full time by the proprietor. Said individual shall be known as the "managing agent." The "managing agent" may be the sole proprietor, if he/she otherwise qualifies under this section.

5. Where the application is made on behalf of any other type organization, the license shall be issued jointly to the organization and an individual who meets the requirements set forth in section 1.090 who does in fact have management authority over the business conducted on the licensed premises, including the sale of alcoholic beverages, who is employed full time by the organization. Said individual shall be known as the "managing agent." In the case of a nonprofit private club, the managing agent may be an officer of the organization in lieu of a full-time employee if the individual is otherwise qualified under section 1.090.

6. A license application may be denied to any applicant for any alcoholic beverage license where it appears that the applicant would not have adequate participation in the proposed business to direct and manage its affairs, or where it appears that the application is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license for any reason whatsoever.

7. The written application for the license shall be a permanent record which the licensee must maintain current as required by this chapter. Failure to maintain a current application shall be grounds for revocation of the license.

8. In the event the "managing agent" changes, or ceases to meet requirements as set forth in subsections 1, 2, 3, 4, and 5

above, the licensee shall notify the business license director within five days of the change. A fee of \$150.00 will be charged for the processing of an application for the change of the "managing agent," or if after five days a fee of \$300.00, and such applicant must be approved by the director.

9. The business license director shall refuse to approve any "managing agent" who has been convicted, within the five years preceding his application, of any felony of any kind or any misdemeanor relating to an alcoholic beverage violation or any state law, or county or municipal ordinance violation relating to alcoholic beverages.

D. Registered agent.

1. All applications for licenses under this chapter shall nominate and name in the application one or more residents of Fannin County, Georgia, as the registered agent and representative of the applicant to receive all communications, notices, services or process or other papers or documents, on behalf of the applicant in connection with any matter arising out of or connected with the issuance, holding, suspension, revocation or other action with respect to any county license. If the managing agent is a permanent resident of Fannin County, Georgia, then he/she may serve as the registered agent. The applicant shall furnish a notarized affidavit from such registered agent, and the mailing to any registered agent at that address of any notice required to be given under this chapter or any other law shall be sufficient notice to the applicant/licensee.

2. A registered agent must be a U. S. Citizen or a legal alien of at least 21 years of age.

3. Such registered agent shall be a permanent resident of Fannin County, Georgia, and must be approved by the business license director. The business license director shall refuse to approve any registered agent who is not a bona fide resident of Fannin County, Georgia, or who has been convicted of any felony of any kind, or any misdemeanor within the past five years relating to an alcoholic beverage violation or any state law, or county or municipal ordinance violation relating to alcoholic beverages.

4. If any registered agent shall cease to be a resident of the county or in any manner ceases to meet the requirements of subsection (3) of this section, the licensee shall notify the business license director in writing of such event and shall nominate a new registered agent within five days after such event occurs. Such new registered agent shall meet the requirements in subsections (1), (2), and (3) of this section and must be approved by the business license director. The county shall charge a fee of \$50.00 for a change of the licensee's registered agent; provided, however, that if the licensee fails to notify the county and nominate a new registered agent within said five-day period, then the county shall charge a fee of \$100.00 for a change of the licensee's registered agent and/or revoke the licensee's license.

5. No license may be transferred from one registered agent to another without the approval of the director pursuant to written application.

6. Upon change of a registered agent the license shall be transferred and will remain in effect for no longer than 45 days or until the transfer is granted or refused under this chapter,

whichever shall occur first. The license shall cease to be in effect after 45 days or the business is closed. A time extension for the transfer may be granted by the director due to extenuating circumstances.

E. Where an application for a license is submitted for a nonprofit private club or veterans' organization, the application shall be made in the name of the highest elected officer and/or the manager of the club or organization.

F. When contrary to the public interest and welfare, no license shall be issued by the county commission to an applicant under the following circumstances:

1. The applicant's business experience, financial standing, trade associations, personal associations, arrest record or reputation in any community in which he has resided indicates he is not likely to operate the business for which he is seeking a license in conformance with federal, state or local laws, rules, regulations, or resolutions;
2. The applicant has been convicted of or pled guilty to any federal, state or local law classified as a felony;
3. The applicant is an official or employee of the county;
4. The applicant is a person, firm, partnership, association, or corporation where any manager, partner, officer, or director thereof has been convicted of or pled guilty to any felony.
5. An application which is for an applicant with any of the above convictions shall be automatically denied by the director.

1.100. Building and location requirements.

A. No license shall be issued for a location not suitable in the judgment and discretion of the county commission because of traffic

congestion, or general character of the neighborhood, or because of the effect which such an establishment would have on the adjacent and surrounding properties and neighborhood.

B. No license shall issue for a location within an area where, in the judgment and discretion of the county commission, the number of malt beverage or wine licenses already granted makes it contrary to the public interest or welfare.

C. No license shall issue for a location at which the operation of such a licensed business would violate regulations of the county.

D. No license shall issue for a location where a previous license has been revoked or suspended, and where, in the judgment of the county commission, the problems which have arisen from the operation of a licensed business at such a location indicate that it is not in the interests of public health, safety, welfare, or morals that the sale of malt beverages or wines be permitted at such a location.

E. No license shall issue for a location where it would violate state or local law, regulations or resolutions.

F. No license shall issue for a location where the main entrance of the main structure of the business is located within 500 feet of the main entrance of the main structure of any school or church as measured in a straight line between the two structures. The word "school" shall include kindergartens, primary and secondary schools, day cares licensed for more than 20 students, colleges and other educational institutions whether public or private; provided, however, this provision shall not apply where it would prohibit the renewal of an alcoholic beverage license for the sale of malt beverages and wine at a location where a license holder had been granted a license under the terms of any prior county resolution relating to the sale of malt beverages and wines. In the event a school or church subsequently

locates within 500 feet of licensed premises, this provision shall not be applicable under such circumstances and such an event would not cause a license holder to be in violation of this provision or prohibit the renewal of a license. In such cases, the license may be renewed by the same license holder for the same place of business as long as all of the other provisions of this chapter are complied with. No license shall issue for any location in which the licensed premises contain a drive-in window for the sale of malt beverages and wine.

G. The licensed premises shall be subject to inspection by authorized personnel of the county.

H. Consumption on the premises licenses **shall be issued only to** restaurants with a minimum seating capacity of 60 individuals, at all times, and nonprofit private clubs and veterans' organizations and public venues as defined herein, or convention venues designed to accommodate more than 750 individuals in one area as defined herein. Retail package licenses shall not be issued to restaurants and nonprofit private clubs and veterans' organizations, convention venues or any other premises.

I. Licensed premises must be open for business at least seven months of each calendar year. Licensed premises may close for seasonal or remodeling reasons only. Closures due to being out of business, or change in ownership will require an application for a new license. Once the business is "closed," the license ceases to be valid and is revoked and loses its priority.

1.110. Required reports and notices.

A. The licensee must report to the director within five days any change in any interests in the licensee's business, including but not limited to:

1. Any change in the division of the profits of the licensed business;
2. Any change in the division of net or gross sales for any purpose whatsoever;
3. Any change in the payment of rents or leases;
4. Any change in the ownership of any lease or building or land used in such business;
5. Any change in the ownership of stock of any corporation that has an interest in the licensed business except for the sale of stock over the counter or through a recognized stock exchange;
6. Any change in the local managing agent or registered agent of a corporate business licensed under this chapter.

B. Since licenses shall be revoked if gross sales of food products and merchandise (excluding sales of alcoholic beverages) fall below the sum of \$3,000.00 monthly and if gross sales of food products and merchandise (excluding sales of alcoholic beverages) fall below 60 percent of the combined business volume of food products and merchandise and alcoholic beverages exceeds more than 39.9 percent sold monthly for three consecutive months, commencing 5th month after license granted a report verifying those sales is required of each license holder on or before the 20th day of each month for the proceeding month. Each licensee shall furnish to the business license director an affidavit showing the gross sales of food products and merchandise (excluding sales of malt beverages and wines), the gross sales of malt beverages and wines, and the gross sales of other merchandise for the preceding month. The business license director will furnish the form for this affidavit. The licensee must attach to the affidavit a copy of the Georgia Sales and Use Tax Report for the same period. These reports shall remain confidential.

C. Copies of summaries of sales and state form ATT-122 shall be furnished to the business license director not later than the tenth day of each month by wholesale dealers selling malt beverages and wines to licensees. The report shall apply to deliveries made during the previous month. Copies of these reports shall be submitted with the excise tax described in section 1.200.

1.120. Hours of operation.

A. The hours of sale for consumption on the premises of malt beverages and wine shall be 11:00 a.m. to 11:45 p.m. Mondays through Saturday. No alcoholic beverage sales are permitted on Sunday, Christmas or such other days as are otherwise prohibited by the laws of the State of Georgia.

B. In the event that a licensed business is open for less than the hours stated in the preceding paragraph, then sales of malt beverages and wines shall be restricted to those regular event / operational hours; however, in no event shall sales be made during hours other than described in the preceding paragraph.

C. All licensed businesses for the consumption of malt beverages and wines on the premises shall remove the beverages from the area of the premises used by customers within 15 minutes after closing time for the sale of the beverages.

1.130. Advertising.

Advertising of the sale of malt beverages and wine shall be in accordance with the laws of the State of Georgia and the regulations adopted by the Georgia Department of Revenue.

1.140. Minors.

A. Any license holder, or agent or employee of a license holder, who fails to require proper identification and who sells alcoholic beverages to a person under the legal age to purchase alcoholic beverages, as provided by state law, may, at the sole discretion of the board of commissioners, be subject to the revocation or suspension of his/her license on the first offense; for a second offense, the board of commissioners may suspend the license for no less than 30 days. The board of commissioners, in its sole discretion, may suspend the license for a longer period of time, or revoke the license depending upon the severity of the offense evidenced by the facts in each case, including but not limited to, consideration of prior violations of law by the license holder. In the event the board of commissioners determines a license holder and/or his/her agents and/or employees have failed to require proper identification and have sold alcoholic beverages to an underage person or persons on at least three separate occasions, then the license shall be revoked and application for a new license shall not be authorized until the expiration of 12 months following the date of revocation.

1. All persons seeking to purchase alcoholic beverages within the unincorporated area of the county (regardless of their apparent age) shall be required to provide "proper identification" showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. "Proper identification" as defined for purposes of this subsection means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth, and includes, without being limited to, a passport,

military identification and, driver's license and/or certified birth certificate.

2. Any license holder, agent or employee of any license holder, who sells alcoholic beverages to a person under the age of 21 years, without requiring proper identification as that term is defined in subsection 1. above, shall, upon first conviction thereof, be sentenced to a mandatory sentence of a minimum of one weekend (48 hours) in confinement and a fine of not less than \$500.00 and not more than allowed by § 1.50.020. Subsequent violations and convictions shall be punished as provided by section 1.230 of this Code.

B. License holders may not allow a person under 18 years of age to deliver malt beverages or wine to any patron.

C. No person shall knowingly and intentionally act as agent to purchase or acquire any alcoholic beverage for or on behalf of a person who is under the minimum age to purchase alcoholic beverages, as provided by state law, or otherwise procure for or furnish to a person who is under the minimum age to purchase alcoholic beverages, as defined by state law, any alcoholic beverage, except for medical purposes upon the written prescription of a duly licensed physician under the laws of the state.

D. It is unlawful for any person who is under the minimum age to purchase alcoholic beverages, as provided by state law, to falsely misrepresent his or her age in any manner whatsoever in violation of this chapter or applicable laws.

E. It is unlawful for any person who is under the minimum age to purchase alcoholic beverages, as provided by state law, to purchase, drink, or possess any alcoholic or malt beverage or wine as defined herein in the county outside of any municipalities.

F. It shall not be considered a violation of this chapter for a person who is under the minimum age to purchase alcoholic beverages, as provided by state law, to purchase, drink, or possess any alcoholic or malt beverage or wine if such person is at the time bona fide acting for and on behalf of law enforcement agencies conducting investigations of license holders and/or their employees.

1.150. Gross sales requirement.

A. Consumption on the premises licenses shall be revoked if gross sales of food products and merchandise (excluding sales of alcoholic beverages) fall below the sum of \$3,000.00 monthly and if gross sales of food products and merchandise (excluding sales of alcoholic beverages) fall below 60 percent of the combined business volume of food products, merchandise and alcoholic beverages sold monthly for three consecutive months, commencing with the fifth month of operations.

B. On or before the 20th day of each month, each retail and consumption licensee shall furnish to the business license director an affidavit showing the gross sales of food products and merchandise (excluding sales of malt beverages and wine), the gross sales of malt beverages and wines, and the gross sale of other merchandise for the preceding month. This affidavit shall be on a form furnished by the business license department. The licensee shall attach a copy of the Georgia Sales and Use Report for the same period to his affidavit.

C. These reports shall remain confidential.

1.160. Sale on Sunday, Christmas Day, and election day.

- A. Except as specifically authorized by law, no person knowingly and intentionally shall sell or offer to sell alcoholic beverages on Sundays or Christmas Day.
- B. Alcoholic beverages are authorized to be sold on any election day as defined herein.
- C. All licensees who open their place of business on Sunday for purposes other than the sale of alcoholic beverages shall post signs at all locations where alcoholic beverages are displayed and at each check out place stating in one-inch block capital letters: "NO SUNDAY SALE OF ALCOHOLIC BEVERAGES."

1.170. Sale, dispensing and miscellaneous regulations.

- A. License holders may not sell malt beverages or wines on the licensed premises to any person who is in an intoxicated condition.
- B. License holders shall not permit any disorderly conduct or breach of the peace on the licensed premises.
- C. License holders may not sell, offer for sale, possess or permit the consumption on the licensed premises of any kind of alcoholic or malt beverages and wines which a license holder is not authorized to sell under his license. The license holder shall not allow "brown bagging" on the licensed premises.
- D. Malt beverages or wines may not be sold or offered for sale through vending machines on the licensed premises.
- E. Deliveries of malt beverages and wines to the licensed premises may be made only by a conveyance owned and operated by a wholesale dealer.
- F. No license holder shall accept delivery of malt beverages and wines from any wholesale dealer unless the wholesale dealer has fully

complied with the state laws regulating and taxing the sale of such beverages at wholesale.

G. No consumption license holder shall deliver malt beverages and wines at any location other than the licensed premises.

H. All licensees shall store all malt beverages and wines in their possession only on the premises for which the license was issued.

I. Every license holder shall have available on the licensed premises a copy of this chapter and shall be responsible for compliance with the resolution [this chapter] by all persons on the premises.

J. In any case of discrepancies, as to fees or requirements, the higher standard shall apply.

K. No bottle or other container of alcoholic beverages shall be opened or consumed by any person on the premises, upon which the place of business is conducted and licensed under this chapter, whether the bottle or other container so opened or consumed was bought or obtained at that place of business or elsewhere unless the premises is licensed for consumption on the premises under this chapter. "Brown bagging" shall not be permitted in any restaurant located within the unincorporated area of Fannin County.

L. No establishment licensed under this chapter to sell alcoholic beverages shall allow a person to leave those premises with alcoholic beverages in an open cup, bottle, can or other open container.

1.180. Grounds for revocation or suspension of license.

The following shall be grounds for the suspension or revocation of a malt beverage and wine license. The existence of such grounds shall be determined by the board of commissioners in its sole discretion, to wit:

- A. Violation by the licensee of any state or federal law or regulation, except misdemeanors, or of any resolution or ordinance of the county, other than traffic violations.
- B. The failure of the licensee or his employees to report promptly to the sheriff's department any violation of law, regulation, county resolution or breach of the peace, disturbance, or altercation occurring on the premises.
- C. Any conduct on the part of the licensee or his employees contrary to the public welfare, safety, health or morals.
- D. Operating or conducting a business in a manner contrary to the public welfare, safety, health or morals, or in such a manner as to constitute a nuisance.
- E. The violation of any state or federal law or regulation, municipal ordinance, or county resolution or ordinance pertaining to alcoholic and malt beverages and wines. This ground specifically includes any violation of any provision of this chapter.
- F. The violation by the licensee of the Georgia Controlled Substances Act.
- G. The violation by the licensee of any federal, state or local law prohibiting the sale of pornographic materials.
- H. Failure of the licensee to furnish to the business license director any report required by this chapter or any report requested in writing by the director.
- I. Allowing a person to work in the licensed business who had an alcoholic beverage license revoked by any jurisdiction for violation of its laws or rules within a period of five years immediately preceding the filing of an application for a license under this chapter.

- J. Allowing a person to work in the licensed business who has been convicted of or pled guilty to any federal, state or local law classified as a felony involving moral turpitude.
- K. Allowing a person to work in the licensed business who has been convicted of or pled guilty to any federal, state or local law classified as a felony not involving moral turpitude within ten years from date of conviction.
- L. Allowing a person to work in the licensed business who has violated the provisions of this chapter or any law of the United States or any state law pertaining to the sale of malt beverages, wines or alcoholic beverages within the past five years from date of conviction.
- M. The conviction of the license holder or his employee(s) for driving under the influence within the past five years from date of conviction.

1.190. Hearing on revocation or suspension of license.

- A. A license holder shall be entitled to a hearing by the board of commissioners concerning any alleged violation which could lead to revocation or suspension of the license.
- B. Upon the report of any violation of this chapter by the license holder or agents to the board of commissioners, the business license director shall give notice to the registered agent in writing that the managing agent shall show cause before the commission why the license should not be revoked or suspended.
- C. A written notice from the director shall specify the time and place for the hearing, which shall be not less than three days nor more than 14 days from the date of service of the notice.
- D. The board of commissioners shall have the power to suspend any license issued under this chapter for a period of time not to exceed 14 days pending the hearing before the board of commissioners on the

question of whether or not the license shall be further suspended or revoked for cause.

E. At the hearing the licensee shall have the opportunity to show cause why the license should not be suspended or revoked.

F. The board of commissioners shall hear relevant evidence as to the alleged violation of the chapter.

G. The hearing need not be at a regular meeting of the commission but may be at such time and place as shall be fixed in the notice.

H. The decision of the board of commissioners shall be by majority vote of the members present at the hearing; provided, however, three members must concur to pass any order.

I. Within three days from the date of the hearing, the board of commissioners shall render a decision in writing and furnish a copy of the decision to the registered agent. A decision of the board shall be effective immediately, whether or not the licensee, managing agent, or registered agent can be personally served with a written copy of the decision.

J. Except as otherwise provided herein, a licensee who has had his license revoked may reapply for a license after 30 days have passed from the effective date of the revocation. Such a reapplication shall conform with all procedural requirements applicable to a new application. The board of commissioners shall consider all matters relevant to the application, including the previous revocation.

K. If the sheriff of Fannin County shall find that a business holding a license under this chapter is in violation of a law of the State of Georgia, or in violation of a law or resolution of Fannin County, and that the continued operation of the business would create a clear and present danger to the health, safety and general welfare and security of Fannin County, the sheriff shall be empowered to seize and

temporarily suspend the license of the business. The sheriff shall deliver the license to the business license director on the next working day. The chairman of the board shall then schedule a special hearing of the board to consider further action upon the order within five days of the date upon which the business license director received the license from the sheriff.

1.200. Excise taxes.

A. There is levied and imposed upon each wholesale dealer selling malt beverages outside municipalities in the county an excise tax in the following amounts:

1. Where malt beverages, commonly known as tap or draft beer, are sold in and from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15 1/2 gallons and a proportionate tax at the same rate on all fractional parts of 15 1/2 gallons;
2. Where malt beverages are sold in bottles, cans, or other containers except barrel or bulk containers, a tax of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

B. There is levied and imposed upon each wholesale dealer selling wine outside municipalities of the county an excise tax in the following amounts:

1. An excise tax on the first sale or use of wine by the package which tax shall be \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- [2. Reserved.]

C. The taxes imposed by this provision shall not be levied with respect to any sales of wine or beer which are exempt from taxation by federal or state law.

1.210. Use of revenue.

A. Revenue produced from this chapter shall be used entirely for county uses outside municipalities.

B. No revenue produced by this chapter shall be used for purposes within any municipality in the county.

C. Ten (10%) of the revenue produced pursuant to Section 1.200 shall be allocated to a library capital improvement / construction/ materials account.

D. Ten (10%) of the revenue produced pursuant to Section 1.200 shall be allocated to recreation.

1.220. Distribution of required forms.

A. Any forms required by this chapter shall be printed by the county and furnished to applicants and license holders.

B. License forms shall be printed by the county and signed by the person in charge of issuing licenses for the county.

C. A copy of this chapter shall be furnished to each license holder by the county.

1.230. Violations; penalty.

Any person, firm, corporation, association or partnership violating any provision of this chapter as the same exists or as it may hereinafter be amended, or shall fail to do anything required by this chapter as the same exists or as it may hereafter be amended, shall

be guilty of a misdemeanor, amenable to the process of the Magistrate or State Court of Fannin County, and upon conviction, shall be punished as provided in the by law for each violation in the discretion of the court.

1.240. Additional remedies.

In the event any provision of this chapter has been violated or is being violated, in addition to other remedies, the county may institute injunction, mandamus, or other appropriate action or proceeding to prevent or abate such violation.

1.250 Prohibited activities

Notwithstanding anything to the contrary contained in Provisions 1.0 10 thru 1.240, the following is strictly prohibited under the terms of this Ordinance:

A. No person, firm or corporation owning or operating a place of business licensed under this chapter shall permit any person to drink any wine or malt beverage upon the business premises between the hours of 12:00 midnight on any given date and 11:00 AM.

B. No person shall drink any wine or malt beverage or (any other alcoholic beverage) while upon the streets, sidewalks, parks or public places of the county, upon or within any vehicle upon the premises or in any adjacent parking area of any business establishment holding a license under this chapter.

C. Curb service for consumption on the premises licensees under this chapter or delivery of any alcoholic beverages off the

licensed premises, other than by wholesalers licensed by the state, is prohibited.

D. Drive-in service windows at premises licensed under this chapter are prohibited.

E. No bars as defined in this chapter shall be allowed within the unincorporated areas of the County.

F. No lounges separate from a restaurant shall be allowed within the unincorporated areas of the County.

G. No retail sales of packages wine, malt beverage or distilled spirits of any type (with the exception of farm wineries hereinafter addressed) shall be allowed in the unincorporated areas of Fannin County.

H. Lewd dancing prohibited. No licensee under this division shall permit professional belly dancers, strip dancing, exotic dancing or any exhibitions of any like kind by whatever name called in connection with the operation of a restaurant, lounge or private club. Neither shall any licensee sponsor or allow on its premises, any type of lewd dancing contest or exhibition by its patrons. This shall include activities such as a wet t-shirt contest.

I. Dangerous weapons prohibited.

(a) No person, either employee or patron, shall have on his person any firearm or other dangerous weapon while on any premises licensed under this article.

(b) It shall be the responsibility of the owners, operators, managers and their employees to immediately report all violations of this section to the police department. Failure to report these violations shall be a violation of this section.

(c) This section shall not apply to county law enforcement officers

J. Happy hour promotions.

(a) All on-premises licensees are prohibited from selling or giving away alcoholic beverages under the following circumstances:

(1) Serving multiple drinks for a single price or offering all you can drink for a set price during a set time.

(2) Making a single price the basis for a required purchase of two or more servings.

(3) Serving alcoholic beverages by the pitcher, except to two or more persons at any one time.

(4) Offering free drinks or reduced-price drinks to any segment of the population for any period of time as an inducement to patronize the premises.

(5) Selling alcoholic beverages for less than half the normal retail price, or selling alcoholic beverages in pitchers or in jumbo sizes for less than the normal retail price.

Nothing contained in this subsection shall be construed to prohibit the dispensing of drinks in pitchers or in jumbo sizes, provided that such pitchers or jumbo sizes shall be available at all times that the licensee is open for business and the usual, customary or established retail price for such drinks shall not be reduced.

(6) Using coupons or other special promotional items as an inducement to purchase alcoholic beverages.

(7) Sponsoring, conducting or allowing contests or other promotions which have as their primary purpose increasing the consumption of alcoholic beverages.

(8) Offering or delivering any free alcoholic beverage to the general public.

(9) Offering alcoholic beverages under any special pricing or promotion of any nature whatsoever after 7:00 p.m.

(b) This section shall not apply to private functions not open to the public. The term "private function not open to the public" shall mean any function wherein the licensee has agreed to the use of the licensee's establishment by a person, firm or organization for a set period of time for valuable consideration.

1.260 Modification and Amendment

Nothing contained herein shall prohibit the governing authority to amend or modify the same so as to provide for additional licenses and to make modifications to the fee structure or any other provision herein. However, in no event will the same be modified more than once per calendar year.

2.010 Farm Wineries

Farm wineries shall be permitted in accordance with the provisions hereinafter set forth.

2.020. Definitions

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

Commissioner shall have the meaning set forth and further defined in O.C.G.A. § 3-1-2(5).

Farm winery shall have the meaning set forth and further defined in O.C.G.A. § 3-6-21.1(a)(1).

Tasting room shall have the meaning set forth and further defined in O.C.G.A. § 3-6-21.1(a)(3).

2.030. Farm Wineries.

Notwithstanding any provision in the Code of Ordinances of Fannin County Georgia to the contrary, Farm Wineries shall be lawful in the unincorporated area of Fannin County, Georgia and shall be governed by this ordinance in conjunction with the provisions of O.C.G.A. § 3-6-21.1, *et. seq.*

2.040. Lawful activities permitted by Farm Wineries.

A Farm Winery may conduct all of the lawful activities permitted unto it by O.C.G.A. § 3-6-21.1, *et. seq.* Notwithstanding the foregoing, a Farm Winery may sell at retail samples of its wine and samples of the wine of any other Georgia Farm Winery licensee in tasting rooms on the premises of the winery.

2.050. Licensee Requirements and Qualifications.

A Farm Winery shall obtain and have a license as set forth in O.C.G.A. § 3-6-21.1, *et. seq.*

2.060. Notice Requirements.

Any Farm Winery in the unincorporated area of Fannin County, Georgia that has been duly licensed under O.C.G.A. § 3-6-21.1 shall provide written notice to the office of the Commissioner of Fannin County of its intention to commence operations in the county as required by O.C.G.A. § 3-6-40(a).

2.070 Sunday Sales by Farm Wineries.

Sunday sales shall be governed by O.C.G.A. § 3-6-21.2.

2.080 Severability.

If any paragraph, sub-paragraph, sentence, clause, phrase, or any portion of this Ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction or if a provision of any part of this Ordinance is applied to any particular situation or set of circumstances in such a manner as to be declared invalid or unconstitutional, then any such invalidity shall not be construed to affect the portions of this Ordinance not held to be invalid and the application of this Ordinance to other circumstances shall not be held to be invalid. The Fannin County Board of Commissioners hereby declares the intent of the Fannin County Board of Commissioners is to provide for separable and divisible parts, and the Fannin County Board of Commissioners hereby adopts any and all parts hereof as may not be held invalid for any reason.

2.090. Repealer.

All resolutions or ordinances or parts thereof in conflict with the terms of this Ordinance are hereby repealed.