



Chapter 3

Alcoholic Beverages

Section 3.1.1 - Purposes.

The purposes of this chapter shall include, without necessarily being limited to, the following:

- (a) Compliance with and effectuation of the general state law;
- (b) Prevention of the sale of alcoholic beverages by unfit persons;
- (c) The protection of schools, homes, churches, parks, and other institutions;
- (d) Promotion of appropriate land use and zoning and the effectuation of the city's land use and zoning policies;
- (e) Protection of the public health, safety, and welfare.

To the maximum extent possible under state and federal law, the business of selling alcoholic beverages shall under this chapter be considered to be a privilege to be accorded in conformity with the foregoing and other public policies of the city, rather than a right.

Section 3.1.2 - Definitions.

- (a) Unless a contrary intention is clearly apparent from the context, any term used in this chapter shall have the same meaning as when used in a comparable provision of the "Georgia Alcoholic Beverage Code," O.C.G.A. §§ 3-1-1 to 3-12-3.
- (b) As used in this chapter the singular and the plural shall each include the other, the masculine and feminine shall each include the other, and any verb tense may include any other verb tense.
- (c) As used in this chapter the term "may" is permissive and the term "shall" is mandatory.
- (d) Unless a contrary intention is clearly apparent from the context, the following terms used in this chapter shall have the following meanings:

Alcoholic beverage caterer means any retail dealer licensed pursuant to the Alcoholic Beverage Ordinance of the City of Roswell who provides alcohol at special events or special events facilities.

Alcoholic beverage license board is the body comprised of the city administrator or his designee, the director of finance or his designee, and the director of community development or his designee vested with authority to preside over the public hearing for applicants for alcoholic beverage licenses and with authority to grant or deny licenses to sell, serve, or handle alcoholic beverages. Also present at the public hearing as non-voting members of the board shall be the chief of police or his designee and the city attorney or his designee.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form.

Chief of police means the Chief of Police of the City of Roswell.

Church means any permanent place of public religious worship.

City means the City of Roswell and when used in a geographical sense means the territorial limits of the City of Roswell.

Eating establishment means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Erotic dance establishment means a nightclub, theater or other establishment which features live performances by topless or bottomless dancers, go-go dancers, strippers or similar entertainers, which such performances are distinguished or characterized by an emphasis on specified sexual activities or anatomical areas.

Farm winery means a domestic winery that is licensed as a farm winery by the State of Georgia.

Food caterer means any person who prepares food for consumption off the premises.

Immediate family of a person means all persons related to such person by consanguinity or affinity within the first degree, as computed according to civil law.

Interest includes any pecuniary interest and any ownership interest, whether present or future, whole or partial, legal or beneficial, contingent or vested, direct or indirect, and any right, power, or authority of control.

Licensed premises includes not only the room wherein alcoholic beverages are sold or served but also the entire building in which and lot on which such room is located, except that when such a room is located in a hotel, motel, or similar facility or in a shopping center only such room and any adjoining storage, office, toilet, and other similar rooms shall constitute the licensed premises. "Licensed premises" may include any sidewalk immediately adjacent to and abutting the main building of an eating establishment if such eating establishment maintains tables for service pursuant to a license or permit issued by the city and such area is enclosed by a fence or other barrier containing only one (1) opening for entering and exiting.

Licensee includes an individual designated as licensee and in the case of a partnership or corporation includes both the partnership or corporation and the individual designated by such legal entity as licensee.

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

- (A) In the case of distilled spirits, any person engaged in distilling, rectifying or blending any distilled spirits;
- (B) In the case of malt beverages, any brewer; and
- (C) In the case of wine, any vintner.

Microbrewery means a manufacturer of malt beverages that produces fewer than fifteen thousand (15,000) barrels per year.

Mixed drink means any distilled spirits served for consumption on the premises, whether or not diluted by water or any other substance.

Named licensee means the person acting as such for a partnership or corporation pursuant to section 3.2.7.

School building means a building in which the traditional subjects and learning processes associated with education are taught.

Special entertainment district means a certain area within the city designated by mayor and council pursuant to O.C.G.A. § 3-6-21.2 solely for the purpose of allowing Sunday sales in a farm winery tasting room.

Special event pouring license means a temporary license issued for a limited amount of time pursuant to section 3.7.9 of this chapter.

Supper club means an entertainment venue pursuant to section 3.7.5 of this chapter.

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 retail sale of such wine as provided by law. Samples of wine can be given complimentary or for a fee.

Section 3.1.3 - Review of Board Actions.

In any case where this chapter calls for an action to be taken or a decision to be made by the alcoholic beverage licensing board, such action or decision may be appealed to the city council by any person aggrieved thereby. If such an appeal is not timely made (within thirty (30) days of the decision), the action or decision of the board shall be final.

Article 3.2 - Licensing

Section 3.2.1 - License Required.

It shall be unlawful for any person to sell or offer for sale any alcoholic beverages within the city except under a valid license issued under this chapter and in compliance with the provisions of this chapter.

Section 3.2.2 - Retail Package Licenses.

Applicants may apply for one (1) or more of the following type retail licenses:

- (a) *Package malt beverage license*: Retail sale of malt beverages in the original package.
- (b) *Package wine license*: Retail sale of wine in the original package.
- (c) *Package distilled spirits license*: Retail sale of distilled spirits in the original package.

The fee for each such license shall be set by the mayor and council and approved by resolution.

Section 3.2.3 - Retail Consumption on the Premises Licenses.

Five (5) classes of retail consumption on the premises licenses are available:

- (a) *Full pouring license*: Retail sale of distilled spirits, wine, and beer by the drink.
- (b) *Limited pouring license*: Retail sale of wine and malt beverages by the drink.
- (c) *Brewpub*: See subsection 3.1.2(d)(1) of this chapter.
- (d) *Farm winery tasting room*: See section 3.7.8 of this chapter.
- (e) *Special event pouring license*: See section 3.7.9 of the chapter.

The fee for each such license shall be set by the mayor and council and approved by resolution. Sunday sales may be made upon payment of an additional fee.

Section 3.2.4 - Wholesale Dealers.

- (a) Any wholesale dealer in alcoholic beverages who is licensed by the State of Georgia and who has a place of business in the city shall procure a license under the same provisions applicable to retail licensees. The license fee for a resident wholesale dealer's license shall be set by mayor and council and approved by resolution.
- (b) Any wholesale dealer in alcoholic beverages who is licensed by the State of Georgia, who does not have a place of business in the city but who does business in the city, shall be registered in the city and subject to excise tax due from wholesale dealers pursuant to article 3.8, section 3.8.5. Such registration shall be renewed annually with:
 - (1) Submittal of annual renewal affidavit;
 - (2) The presentation of satisfactory evidence that he understands the alcoholic beverage rules and regulations of the city and the conditions under which retail licenses are issued; and

- (3) A registration fee of \$100.00 as authorized by O.C.G.A. § 3-5-43.

Section 3.2.5 - Manufacturer.

- (a) *Brewery* means a facility involved in the creation of malt beverages that produces fifteen thousand (15,000) barrels or more (or the equivalent) per year of malt beverages.
- (b) *Brewpub* means an eating establishment in which malt beverages are manufactured subject to state law production limits. As used in this chapter, the term "eating establishment" means a business which is licensed to sell distilled spirits, malt beverages, and/or wines and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of prepared meals or food; provided, however, that when determining the total annual gross food and beverage sales, barrels of malt beverages sold to licensed wholesale dealers, or to the public for consumption off the premises, as authorized by state law and City of Roswell ordinances, shall not be considered.
- (c) *Distillery* means a facility involved in the creation of any alcoholic spirits beverage with an alcohol volume greater than twenty-one (21) percent.
- (d) *Microbrewery* means a facility involved in the creation of malt beverages that produces fewer than fifteen thousand (15,000) barrels per year.

Section 3.2.6 - Alcoholic Beverage Caterers.

- (a) *License Requirements—Resident Caterers.*
- (1) Any alcoholic beverage retailer possessing a valid license from the City of Roswell to sell malt beverages, wine or distilled spirits by the drink at a fixed location within the city may apply for an off-premises license that authorizes sales at authorized catered event(s) or function(s).
 - (2) Each off-premises catering license as authorized herein shall be valid only for the calendar month in which the license is issued or for an individual event only. The fee for each such license shall be set by mayor and council and approved by resolution.
 - (3) It shall be unlawful for any person to engage in, carry on or conduct the sale or distribution of alcoholic beverages off-premises and in connection with a catered event or function without first having obtained a license as provided herein.
- (b) *Permit Requirements—Nonresident Caterers.* Entities within the City that wish to host a special event using an alcoholic beverage caterer from another jurisdiction shall obtain a special event application from the community development department. The application for the special event permit shall include:
- (1) The name of the nonresident alcoholic beverage caterer desired;
 - (2) A copy of the alcoholic beverage license and catering license issued by the jurisdiction in which the business is located;
 - (3) The quantity of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event(s) or functions(s).
 - (4) The original event permit shall be kept in the vehicle transporting the alcoholic beverages to the catered event(s) or function(s).
 - (5) It shall be unlawful for a licensed alcoholic beverage caterer to distribute or sell alcoholic beverages off-premises except as authorized by the event permit.
- (c) *[Limitation of License.]* A licensed alcoholic beverage caterer may sell only that which is authorized by his alcoholic beverage license. For example, if the alcoholic beverage caterer possesses a valid license to sell malt beverages, he may sell only malt beverages at the authorized catered event or function.
- (d) *Sunday Sales.* An alcoholic beverage caterer wishing to cater an event or function on Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.

Section 3.2.7 - Duration of Licenses.

All licenses, except catering licenses, shall be granted for the full calendar year or for the number of months remaining in the calendar year after July 1. Any applicant granted a license before July 1 shall pay the full license fee for the calendar year. License fees for licenses granted on or after July 1 shall be prorated based on the number of months remaining in the calendar year; partial month shall be counted as a full month. License fees are not refundable.

Section 3.2.8 - Individual, Business or Association Entities; Named Licensee.

A license issued to an individual shall be issued in the name of the individual. A license issued to a partnership shall be issued in the name of the partnership and in the name of the partner or employee primarily responsible for the operation of the licensed premises who shall be the named licensee. A license issued to a corporation shall be issued in the name of the corporation and in the name of the stockholder, officer of the corporation, or employee primarily responsible for the operation of the licensed premises who shall be the named licensee. A license issued to a purely nonprofit civic, fraternal, patriotic, or social club or corporation which is organized and conducted in the city solely as a mutual benefit membership group, shall be issued in the name of the club or corporation and in the name of the individual primarily responsible for the club or corporation's compliance with this chapter; and such individual shall be the named licensee.

Section 3.2.9 - Joint Responsibility.

In the case of a partnership, each partner shall be responsible for the actions of the named licensee and the conduct of the licensed business. In the case of a corporation, the corporation, its officers and directors shall be responsible for the actions of the named licensee and the conduct of the licensed business. In the case of a nonprofit organization, the organization and its officers, directors, or governing authority shall be responsible for the actions of the named licensee and the conduct of the licensed business.

Section 3.2.10 - Eligibility for License.

- (a) Every licensee shall, prior to applying for a license, read and familiarize himself with the provisions of this chapter, and an application shall constitute a certification by the applicant that he has done so. Every licensee shall maintain a copy of this chapter on the licensed premises and shall instruct each employee engaged in the sale or handling of alcoholic beverages concerning the relevant provisions of this chapter.
- (b) The named licensee shall be active in the operation of the licensed business and shall be personally present on the licensed premises sufficiently to assure compliance with the provisions of this chapter. For purposes of this section, a licensee shall be not be considered active unless he is an owner, stockholder, or full-time employee of the licensed business and is present on the licensed premises a minimum of twenty (20) hours per week.
- (c) A licensee must be of good moral character and a citizen of the United States or an alien lawfully admitted for permanent residence. Any such alien shall have been lawfully admitted for permanent residence for at least one (1) year prior to application. The City of Roswell may use any federal and/or state resources available to verification of status.
- (d) In addition to the requirements of subsection (c), a licensee for the retail sale of distilled spirits in the original package must have been a resident of a county or municipality in the State of Georgia for one (1) year immediately preceding the filing of the application for such license in which the retail sale of distilled spirits in the original package is legal.
- (e) A licensee shall not have been convicted within the fifteen (15) years preceding his application of any felony, any misdemeanor involving moral turpitude, or any criminal offense relating to alcoholic beverages, taxes, or gambling. This subsection shall apply with respect to the laws of this state, other states, the United States, and other countries. Sentencing as first offender status, a plea of nolo contendere or the forfeiture of a bond shall be considered a conviction for purposes of this subsection. The alcoholic beverage license board may

in its discretion waive the conviction of a misdemeanor for purposes of this subsection if the board determines that the misdemeanor does not have a bearing on the applicant's fitness for a license.

- (f) A licensee shall not have been denied or had revoked, within the five (5) years next preceding his application, any license to sell alcoholic beverages issued by any governmental entity.

Section 3.2.11 - Training Certification Required.

- (a) The applicant for a license under this article shall present to the alcoholic beverage licensing board current certification of attendance at a TIPS (Training Intervention Procedures) or other approved program. Such TIPS certification or approved alternative program shall be verified and signed off by the chief of police or his designee.
- (b) If the applicant lacks such training and certification, applicant shall have six (6) months from the date of the granting of the license to complete such training and submit certification to the alcoholic beverage licensing board. Upon due cause being shown, the chief of police may grant an extension of time, not to exceed sixty (60) days, to complete said training. Failure to timely obtain such certification shall be grounds for revocation of the alcoholic beverage license.

Section 3.2.12 - Reserved.

Section 3.2.13 - Application Fee.

Each application for a license under this chapter shall be accompanied by a non-refundable application fee in an amount to be determined by mayor and council. Application fees shall be paid at the time the application is filed and shall not be refunded under any circumstances.

Section 3.2.14 - Application; Investigation Consent.

- (a) All applications for licenses shall be made upon application forms provided by the city. All applications shall contain a full and complete sworn and notarized statement by each applicant of all material facts relevant to the requirements of this chapter.
- (b) Each applicant shall be fingerprinted and have a complete background check provided to the City of Roswell. Instructions for this process are attached to the application.
- (c) The application form shall be accompanied by a copy of the lease to the premises, if any, and the articles of incorporation or partnership agreement where applicable.
- (d) Each applicant authorizes the city and its agents to secure from any court, law enforcement agency, or other public agency his criminal and civil history and to use such information in determining whether the license applied for shall be issued. Each applicant further authorizes the city and its agents to use such information in any public hearing with respect to the license applied for, either before or after the issuance of the license. Each applicant waives any right that he would otherwise have to preclude the city or its agents from obtaining and using such information and each applicant further waives any liability of the city or its agents for obtaining and using such information.

Section 3.2.15 - Procedure for Consideration of Application.

- (a) Each application for an alcoholic beverage license shall be referred to the chief of police or his designee for a thorough investigation. The chief of police or his designee shall report his findings to the alcohol beverage license board. Such finding shall include a recommendation as to the qualifications of the applicant.

- (b) No application shall be considered by the alcoholic beverage license board until the city attorney or the assistant city attorney has indicated that in his/her opinion, upon the facts as stated by the report of the chief of police, no violation exists as to any ordinance in effect as of the date of the opinion.
- (c) No application for an original license shall be granted until a public hearing has been held thereon before the alcoholic beverage license board, after notice as provided in section 3.2.16 below. The board will hold public hearings for the consideration of alcoholic beverage license applications on the first Thursday of each month, or at such other time as the board adopts upon proper notice. Any person may appeal actions or decisions of the alcoholic beverage license board within thirty (30) days of the board's decision to the full city council.

Section 3.2.16 - Notice Requirements.

- (a) The applicant for an original license shall, at his own expense, post a notice on the premises to be licensed. The notice shall be posted for at least fifteen (15) days prior to the date of the hearing. The notice shall be on a sign having a surface of not less than twelve (12) square feet. The notice shall be painted or printed in black letters at least three (3) inches in height against a white background. The notice shall state:
 - (1) That an application for a license to sell alcoholic beverages on the premises has been filed with the City of Roswell;
 - (2) The type of license applied for;
 - (3) The time and place of the public hearing to be held on such license application; and
 - (4) The names in which the license is to be issued.

The sign shall be placed facing the most traveled street and shall be situated so that passing motorists can read the sign.

- (b) The applicant for an original license shall at his own expense publish a notice in a newspaper of general circulation within the city containing the information specified in subsection (a) for two (2) consecutive weeks. The first publication shall appear not more than twenty-eight (28) days prior to the date of the hearing and the second notice shall appear not more than fifteen (15) nor less than three (3) days prior to the date of the hearing. This notice shall be printed in letters no smaller than ten-point capital and lower case with at least a one-inch, two-column arrangement.

Section 3.2.17 - Transferability of License.

- (a) Except as provided in this section, no license shall be transferable to any other person or location.
- (b) If a licensee seeks to move his place of business from the licensed premises to another place within the city, application shall be made as for an original license.
- (c) In the case of death of an owner of a license or financial interest therein, such license or interest therein may be transferred to the administrator, executor, or adult heir or heirs of the deceased unless the alcoholic beverage license board determines that it would otherwise violate this chapter. If the transferee cannot meet all requirements of this chapter, when the time comes to renew the license, it shall not be renewed.
- (d) Nothing in this section shall prohibit one (1) or more partners in a partnership from retiring therefrom in favor of one (1) or more of the other partners; provided, such withdrawal shall not, without application for and issuance of a new license, introduce any new partner or result in any new person acquiring an interest in the licensed business.
- (e) Where a license is issued to a corporation having as its principal business an activity other than the sale of alcoholic beverages, a change in the named licensee may be permitted by the alcoholic beverage license board if the new named licensee meets the requirements of new license applicants.
- (f) In the circumstances described in subsections (c), (d), and (e) of this section, the license may be revoked if the alcoholic beverage license board determines that the change results in a failure to meet requirements of this chapter.

Section 3.2.18 - Provisions for Temporary License.

- (a) If any licensee withdraws from, sells, or otherwise transfers the licensee's interest in the licensed business, the licensee shall immediately notify the city.
- (b) In the case of the sudden withdrawal or transfer of the holder of the alcoholic beverage license, or sale of the licensed business, the alcoholic beverage license board or designee may issue a temporary license to the successor in interest if such successor in interest has properly completed an application form and paid the appropriate fee. The city attorney must verify that the successor in interest meets the qualifications for licensure and that no ordinance violations exist. Such temporary license shall be valid for sixty (60) days or until the application for a permanent license is granted or denied by the alcoholic beverage license board. A temporary license may be issued if the denial of such would create an undue hardship or cause an existing business to close. The fee for a temporary license shall be set by the mayor and council and is in addition to the regular application fee.
- (c) Revocation of Temporary License. A temporary license issued under section 3.2.18 may be revoked, with or without cause, by the city administrator at any time, and the grant or denial of a temporary license under such sections shall not affect or have any bearing upon the grant or denial of a permanent license.

Section 3.2.19 - License Renewal.

- (a) An application for renewal may, if such is the case, be in the form of a sworn and notarized statement by the named licensee, on a form provided by the city, stating that there have been no changes in any of the information contained in the original application. If there have been any substantive changes, the application for renewal shall be in the same form as an original application.
- (b) An application for renewal shall be filed during the month of October.
- (c) Renewal applications not received by November 15 shall incur a late fee.
- (d) No public hearing shall be required for the renewal of a license unless one (1) of the following conditions is present:
 - (1) A written objection or complaint regarding such licensee or licensed business is filed forty-five (45) days prior to the expiration of such license;
 - (2) Any enforcement officer of the City of Roswell has submitted a report that the licensee or licensed premises are not in compliance with this ordinance or any provision of the City of Roswell Code of Ordinances or any state law;
 - (3) The licensee or an employee of the licensed business has been cited for sale or service of alcoholic beverages to an underaged purchaser;
 - (4) The licensee or an employee of the licensed business has been charged with serving or selling alcoholic beverages to a visibly intoxicated individual;
 - (5) The issuance of the license was conditioned by the alcoholic beverage license board; or
- (6) The licensee has not provided proof of licensing by the State of Georgia.

In the event a public hearing is required, the applicant shall be apprised of the condition(s) necessitating such hearing and given ten (10) days' notice of the date of such hearing. The City of Roswell, at its expense, shall publish a notice describing the purpose of the hearing at least three (3) days prior to the hearing. The license for which renewal is sought shall continue until such hearing is held.

Section 3.2.20. - Reserved.

Article 3.3 - Penalties for Violation of Chapter

Section 3.3.1 - General Penalty.

Except as otherwise provided in this chapter, any person who violates any provision of this chapter shall upon conviction be punished by a fine not to exceed \$1,000.00, by imprisonment not to exceed one hundred eighty (180) days, or by both such fine and imprisonment. Any such punishment, if imposed, shall be in addition to and not in lieu of any license suspension or revocation under this chapter.

Section 3.3.2 - Suspension or Revocation of License.

- (a) A license may be suspended or revoked by the city council for any violation of this chapter; for any violation of state laws and regulations relating to alcoholic beverages; for any material misrepresentation or omission in the application for the license; or if the licensee or the licensed business ceases to meet the eligibility requirements for licensure.
- (b) If a licensee or employee of such licensee is convicted for the first time of violating O.C.G.A. § 3-3-21 or Section 3.5.4 of this Code, relating to the sale of alcoholic beverages to any person under twenty-one (21) years of age, the following penalties shall apply. For purposes of this paragraph, a plea of nolo contendere or the forfeiture of bond shall constitute a conviction.

(1) *Server or Handler.*

Upon the first offense, a server or handler providing alcoholic beverage to an individual under twenty-one (21) years of age shall be subject to a court appearance, a fine of \$500.00, and suspension or revocation of such individual's handling permit for one (1) year;

A second offense within five (5) years will subject the server or handler to court appearance, a fine of at least \$500.00, but not more than \$1,000.00, and suspension or revocation of his handling permit for three (3) years;

A third offense within ten (10) years will subject the server or handler to court appearance, a fine of at least \$500.00, but not more than \$1,000.00, and forfeiture of the right to sell or serve alcoholic beverages in a licensed establishment in Roswell.

(2) *Licensee.*

Upon the first offense, the licensee whose establishment provides alcoholic beverage to an individual under the age of twenty-one (21) shall be subject to suspension of his alcoholic beverage license for a minimum of one (1) to ten (10) consecutive business days or revocation of his alcoholic beverage license, and a \$1,000.00 to \$2,000.00 fine, subject to mitigation.

A second offense within twenty-four (24) months: a mandatory court appearance, a minimum license suspension of ten (10) to fifteen (15) consecutive business days or revocation of his alcoholic beverage license, and a fine from \$2,500.00 to \$10,000.00, subject to mitigation; and

A third offense within twenty-four (24) months: a mandatory court appearance, a minimum license suspension of thirty (30) consecutive business days or revocation of his alcoholic beverage license, and a fine of \$10,000.00 to \$20,000.00, subject to mitigation.

In the event an employee without a valid handling permit, or whose permit is suspended makes the underage sale, mitigation shall not be available. Nothing in this paragraph shall preclude the city council from suspending a license for a period of time exceeding thirty (30) days, or from revoking such license if the city council, in its discretion, determines such is necessary.

(3) *Underage Purchaser.*

Upon the first offense an underage person in possession of, or attempting to purchase alcoholic beverages shall be subject to mandatory court appearance and a fine of \$500.00; and

A second offense: a mandatory court appearance, a fine of from \$500.00 to \$1,000.00, and possible court ordered counseling; and

A third offense: a mandatory court appearance, a fine of from \$1,000.00 to \$2,000.00, mandatory court ordered counseling and possible time in jail.

- (c) Prior to suspending or revoking a license, the city council shall give at least ten (10) days' prior written notice to the licensee of the time, place, and purpose of the hearing at which such suspension or revocation will be considered. Service of such notice shall be by personal service at the licensed premises on the named licensee or an employee of the licensee by a city police officer or code enforcement officer. If personal service fails, tacking a copy of the notice to the door of the licensed premises and mailing the original to the named licensee at the licensed premises with a copy mailed to any other address of the named licensee contained in the most recent license application on file with the city shall suffice.

Section 3.3.3 - Mitigating Factors.

The penalties for establishments may be mitigated if such establishments are found to have maintained an effective compliance program with the chapter. Factors to be considered are:

- (a) Whether and to what extent the establishment requires its servers to attend alcohol ordinance compliance seminars.
- (b) Whether the establishment conducts its own "secret shopper" or internal "sting" operations.
- (c) Whether the establishment has a written policy dealing with the problem of minors attempting to obtain alcohol at such establishment.
- (d) Whether the establishment has appropriate signs and other displays such as "We I.D." or "If you're a minor, the soft drinks are this way."
- (e) The degree to which the establishment has procedures in place to monitor its servers for compliance with the ordinance.
- (f) Whether the establishment makes available a copy of the ordinance to its servers.
- (g) Extent to which the establishment has met the other requirements of the ordinance.
- (h) Whether the establishment enforces a zero tolerance policy in which employees are terminated for any violation of this chapter.
- (i) Other evidence demonstrating, the establishment's compliance with the ordinance and prevention of underage drinking in the establishment and the community at large.

Section 3.3.4 - Voiding of License.

A license shall become void by operation of law if:

- (a) The licensee's state alcoholic beverage license is revoked;
- (b) The business does not have a City of Roswell Business License;
- (c) Payment of the annual license fee is not received by the city within fourteen (14) days after issuance of the license is approved by the city council or the alcoholic beverage license board;
- (d) Operation of the licensed activity is not commenced within nine (9) months after the license is issued;
- (e) Operation of the licensed activity is commenced and then suspended for a period of thirty (30) days or more;
- (f) The licensed business enters receivership, is the subject of levy or legal process, or fails to properly account for and pay any excise tax levied under this chapter; or
- (g) Failure to submit proof of Alcoholic Beverage Training Intervention Procedures (TIPS), or other such training approved by the chief of police to the alcoholic beverage licensing board pursuant to section 3.2.10 of this chapter.

Any licensed business for which a license has been voided by operation of law may make application to appeal such action to the mayor and council within five (5) business days of receipt of notice of the voiding of such license. Such hearing shall be afforded to show cause as to why the license should be reinstated. The mayor and council shall hear such appeal, if properly filed, at the next regularly scheduled meeting of council and may take any such action as deemed appropriate by a majority of councilmembers present regarding the reinstatement of such license.

Section 3.3.5 - Emergency Suspension of Sales.

The city administrator is authorized to suspend the sale of alcoholic beverages under any license for any emergency situation when it deems such suspension necessary for the protection of the public health, safety, or welfare. Such suspension may be made effective immediately and shall remain in force until the mayor and council determine that the emergency is over or until the next meeting of the city council, at which time the suspension shall cease unless it is extended by mayor and city council.

Section 3.3.6 - Revocation of Temporary License.

See subsection 3.2.18(d).

Article 3.4 - Location of Sales

Section 3.4.1 - Zoning Requirements; Existing Licenses.

- (a) No alcoholic beverage license shall be granted unless the premises to be licensed are located in the NX, CX, SH, CC, PV, CH, OR, IX or Historic Overlay District. No pouring license shall be granted in PV or the District formerly known as the Parkway Village Overlay District except at outlets licensed as restaurants under section 3.7.3 of this article. No package malt beverage license or package wine license shall be granted in PV or the District formerly known as the Parkway Village Overlay District except in retail supermarkets having a gross building area of at least twenty-four thousand (24,000) square feet or in drug stores having a gross building area of at least eight thousand (8,000) square feet. Any license application shall meet the distance requirements of section 3.4.2 of this article.
- (b) The number of licenses already granted for similar businesses within the city limits in the trading area of the place for which a license is sought shall be considered a factor in issuing licenses.

Section 3.4.2 - Distance from Churches, Schools, Etc.

- (a) No package malt beverage license, package wine license, or consumption on the premises license shall be issued for any place of business which is located within one hundred (100) yards of any school building, school grounds, or college campus. This subparagraph shall not apply to any location for which a license was issued prior to July 1, 1981, or to the renewal of such license. Further, this subparagraph shall not apply to any location for which a new license is applied for if such license could have been lawfully obtained at such location at any time during the twelve (12) months immediately preceding such application. Nothing in this subparagraph shall prohibit a grocery store holding a valid package malt beverage, package wine license or both from selling malt beverages or wine within one hundred (100) yards of any school building, school grounds, or college campus. For purposes of this subparagraph, the term "grocery store" shall mean a properly zoned retail establishment which has a total retail floor space of at least ten thousand (10,000) square feet of which at least eighty-five (85) percent is reserved for the sale of food and nonalcoholic beverages and which conducts all of its sales inside the building containing its retail floor space.
- (b) No package distilled spirits license shall be issued for any place of business which is located within one hundred (100) yards of any church building or alcoholic treatment center or which is located within two

hundred (200) yards of a school building, educational building, school grounds, or college campus or which is located within five hundred (500) yards of another licensed package distilled spirits business.

- (c) No package license shall be issued for any place of business which is located within two hundred (200) feet of a private single-family or two-family dwelling; provided, however, this prohibition shall not apply with respect to a private dwelling located in a zoning district in which alcoholic beverage outlets are authorized and which dwelling is on the same street as the premises for which a package license is applied.
- (d) Unless otherwise provided by law for all retail package licenses, measurements to determine the distances referred to in this section shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:
 - (1) In a straight line from the front door of the structure from which beverage alcohol is sold or offered for sale;
 - (2) To the front door of the building of a church, government owned treatment center or a retail package store; or
 - (3) To the nearest property line of the real property being used for school or educational purposes.
- (e) Unless otherwise provided by law for all consumption on the premises licenses, measurements to determine the distances referred to in 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 structure from which alcoholic beverages are sold or proposed to be sold;
 - (2) In a straight line to the nearest public sidewalk, street, road or highway;
 - (3) Along such public sidewalk, walkway, street, road, or highway by the nearest route; and
 - (4) To the front door of the building or to the nearest portion of the grounds whichever is applicable under this chapter.

No license shall be revoked and no application for a license or renewal shall be denied by reason of the method of measurement set out in this subsection, if such license or license application or renewal application is for premises for which a license was granted prior to the enactment of this chapter in reliance on another method of measurement.

- (f) No application for a license shall be approved which does not include, or have attached thereto, a current certificate from a registered surveyor which shows a scale drawing of the premises and the location at which the applicant desires to operate an alcoholic beverage outlet and which shows, with linear foot measurements where appropriate, such location's compliance or noncompliance with the provisions of this section, or a certificate from a registered surveyor which states that the subject alcoholic beverage outlet meets all of the location and distance requirements of this ordinance, and shows such location's compliance or noncompliance with linear foot measurements where appropriate or required.
- (g) When a license application is for premises not yet constructed or not yet completed, a license may be issued if the application includes the plans for the premises and a surveyor's certificate, as required under subsection (e) of this section, clearly showing that the premises will when completed meet the requirements of this section.

Section 3.4.3 - Sales on Public Property.

- (a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to sell or serve any alcoholic beverage in a street, alley, or parking lot commonly used by the public or in any other public place or on public property.
- (b) Private parties and organizations may secure a permit from the city administrator or his/her designee to serve or sell alcoholic beverages on property owned or leased by the City of Roswell.

Article 3.5 - Business Regulations

Section 3.5.1 - Rent Based on Sales Volume Prohibited; Exceptions.

- (a) Except as otherwise provided in this section, it shall be unlawful for a licensee to enter into any agreement whereby the rental paid for licensed premises is based in whole or in part on the volume of sales of alcoholic beverages by the licensed business or whereby the lessor otherwise shares in the profits or receipts from the sale of alcoholic beverages by the licensed business.
- (b) Subsection (a) of this section shall not apply where the primary business of a package licensee is an activity other than the package sale of alcoholic beverages, for example, a grocery store selling package beer and wine.
- (c) Mayor and council may grant a licensee an exemption from the provisions of subsection (a) of this section.

Section 3.5.2 - Display of License and License Number.

- (a) Each place of business licensed under this chapter shall have displayed on the front window or door the correct number of the license. Such display shall be in uniform letters not less than one and one-half (1½) inches in height in substantially the following form:
"City Retail License No. XXXXXXXX"
- (b) Each license issued under this chapter shall at all times be kept plainly exposed to view upon the licensed premises.

Section 3.5.3 - Purchase and Sales Records.

Every licensee shall keep and preserve records of all alcoholic beverages purchased and sold by the licensee. All consumption on the premises licensees shall keep and preserve records of all food and nonalcoholic beverages purchased and sold by them. Such records shall at all times be open for inspection by any authorized agent of the city. Such records shall be maintained for a period of at least three (3) years, unless the city administrator, upon approval by mayor and council authorizes the disposal of records prior to the expiration of three (3) years.

Section 3.5.4 - Sale To, Purchase or Possession by Underage Person.

- (a) Except as otherwise provided in this section:
 - (1) No person, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under twenty-one (21) years of age.
 - (2) No person under twenty-one (21) years of age shall purchase or possess any alcoholic beverage.
 - (3) No person under twenty-one (21) years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining unlawfully any alcoholic beverage.
 - (4) No person shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under twenty-one (21) years of age.
 - (5) No person under twenty-one (21) years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (b) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:
 - (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
 - (2) At a religious ceremony.

- (c) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this section shall not apply when the parent or guardian of the underage person gives the alcoholic beverage to the underage person and when possession is in the home of the parent or guardian and such parent or guardian is present.
- (d) The prohibition contained in subsection (a)(1) of this section shall not be violated when a person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is twenty-one (21) years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and which gives such person's date of birth. Proper identification includes, without being limited to, a passport, military identification, driver's license, or an identification card authorized under O.C.G.A., §§ 40-5-100—40-5-104. "Proper identification" shall not include a birth certificate.
- (e) This section shall not prohibit employment of a person under twenty-one (21) years of age in licensed premises if such employment is lawful under section 3.6.1.
- (f) In any case where a reasonable or prudent person could doubt whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is twenty-one (21) years of age or older, the person selling or otherwise furnishing such alcoholic beverage shall request to see and be furnished with proper identification as provided in subsection (d) of this section. The failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than twenty-one (21) years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so in violation of subsection (a)(1) of this section.
- (g) In any case where a person selling or otherwise furnishing alcoholic beverages checks for a proper identification, such person shall carefully inspect such identification. If a reasonably prudent person could determine that such identification has been altered and if such person sells or otherwise furnishes alcoholic beverages to the holder of such altered identification, then such may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so in violation of subsection (a)(1) of this section.
- (h) Violation of the provisions of this section shall be punishable as set forth in subsection 3.3.2(b).

Section 3.5.5 - Days When Sales Unlawful.

- (a) No licensee shall permit the sale of alcoholic beverages on any day or during any time of day when such sales are prohibited by state law.
- (b) No person shall permit the sale of alcoholic beverages on Sunday unless such person is a licensee for a bona fide eating establishment, retail package licensee, caterer, private club or special events facility as defined by this chapter and the requisite fee for Sunday sales is paid.

Section 3.5.6 - Hours of Operation.

- (a) A package licensee shall not engage in the sale of alcoholic beverages except between the hours of 8:00 a.m. and 11:30 p.m. Monday through Saturday, provided that if such package licensee is authorized for Sunday sales such package licensee may also engage in the sale of alcoholic beverages on Sunday between the hours of 12:30 p.m. and 11:30 p.m. Package licensees shall not permit their places of business to be open when sales of alcoholic beverages are not permitted except that where the primary business of the package licensee is other than the sale of alcoholic beverages, such restrictive hours shall apply only with respect to the sale of alcoholic beverages.
- (b) Consumption on the premises licensees shall engage in the sale of alcoholic beverages only between the hours of 9:00 a.m. and 2:00 a.m., Monday through Saturday, and at any time from 11:55 p.m. on Saturdays until 1:55 a.m. on Sundays. Sunday sales may be made between the hours of 12:30 p.m. and 12:00 midnight and at any time in private clubs, provided application for Sunday sales is made and the fee paid.
- (c) The business hours of wholesale dealers shall be from sunup to sundown only on days on which package licensees are authorized to sell alcoholic beverages at retail.

Section 3.5.7 - Prohibited Acts, Sexual Display.

- (a) No licensee shall permit the sale of alcoholic beverages to any person who is in a state of noticeable intoxication or allow persons who are noticeably intoxicated to congregate on licensed premises.
- (b) No licensee shall permit any gambling, betting, lottery, or other device for the hazarding of any money or other thing of value on the licensed premises, except that this prohibition shall not apply with respect to a properly licensed bingo game.
- (c) No licensee shall permit on the licensed premises any: disorderly conduct; breach of the peace; lewd, immoral, or improper entertainment, conduct, or practices; or noise which is disturbing to the surrounding neighborhood.
- (d) No licensee shall use any person, in any capacity, in the sale or service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or of any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva and genitals.
- (e) No licensee shall allow live entertainment where any person appears in the manner described in subsection (d) of this section, or where such persons (or person) perform(s) acts of or acts which simulate any of the following:
 - (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act prohibited by law.
 - (2) The caressing or fondling of the breast, buttocks, anus or genitals.
 - (3) The displaying of the male or female pubic hair, anus, vulva or genitals.
- (f) No licensee shall allow the holding, promotion, or sponsoring of any contest, promotion, special night, event or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct described in subsections (d) or (e) above. Nothing contained in subsections (d) through (f) shall apply to the premises of any mainstream performance house, museum or theatre which derives less than twenty (20) percent of its gross annual income from the sale of alcohol beverages.

Section 3.5.8 - Delivery and Storage.

- (a) Alcoholic beverages shall be delivered to and received at licensed premises in the original container and in a conveyance owned and operated by a licensed wholesale dealer (or a licensed common carrier acting for a wholesaler) with a permit from the city to make deliveries in the city. Alcoholic beverages shall be sold at retail only on the licensed premises.
- (b) A retail licensee shall store alcoholic beverages only on the licensed premises and at no other place. All stock shall be available at all times for inspection by any authorized agent of the city. Any alcoholic beverages found in any retail licensee's stock which were not received from a wholesaler licensed to make deliveries in the city shall be subject to immediate confiscation.

Section 3.5.9 - On-Premises Consumption Unlawful.

It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises except as provided in section 3.5.10 of this chapter.

Section 3.5.10 - Ancillary Wine, Beer and Malt Beverage Tasting License.

- (a) The holder of a package beer and wine license shall be eligible for an ancillary wine, beer and malt beverage tasting license to provide samples of wine, beer and malt beverages offered for sale to customers under the conditions set forth in this section.
- (b) Wine, beer and malt beverage sampling shall be on limited occasions when a customer requests a sample of a wine, beer or malt beverage offered for sale within the premises, or in conjunction with education classes and sampling designed to promote wine, beer and malt beverage appreciation and education.
- (c) Wine, beer or malt beverage tasting for customers shall be conducted only at a counter area constituting no more than ten (10) percent of the entire floor area of the premises.
- (d) Such sampling for customers shall be limited to no more than one (1) time per day, on the days of the week authorized by State law to sell beer and wine by the package, for a period of not to exceed two (2) consecutive hours. Samples shall not exceed two (2) ounces, and no customer shall consume more than eight (8) ounces in any two-hour period; and
- (e) The holder of an ancillary wine, beer and malt beverage tasting license may conduct educational classes and sampling for classes not more than two (2) times per week for a period of not to exceed two (2) consecutive hours. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted.
- (f) Wine, beer and malt beverage bottles shall be opened by the licensee or an employee only, and samples shall be poured only by the licensee and/or an employee.
- (g) No open containers of wine, beer or malt beverage shall be removed from the licensed premises.
- (h) Holders of an ancillary wine, beer and malt beverage tasting license shall not charge for samples or tastings, but may accept donations for a charitable organization of their choice.
- (i) Such sampling and tasting is permitted within the enclosed portion of the premises only.
- (j) The annual fee for an ancillary wine, beer and malt beverage tasting license shall be set and may be revised by resolution of the mayor and council.

Section 3.5.11 - Reserved.

Section 3.5.12 - Regulation of Signs and Lighting.

- (a) Outside signs shall not be illuminated, nor shall the place of business or its premises be otherwise illuminated except at such times as the place of business is lawfully open for business. This prohibition, however, shall not prohibit a night light for safety purposes.
- (b) The exterior of each building in which alcoholic beverages are sold for consumption on the premises shall contain sufficient lighting so that all sides of the building and all entrances thereto are clearly visible at all times when the premises are open for business.

Section 3.5.13 - Sanitary Condition of Premises Required.

All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with all regulations governing the condition of premises used for the storage and sale of food for human consumption. All licensed premises shall be open at all times for inspection by the chief of police, the fire marshal, and other authorized agents of the city.

Section 3.5.14 - Change of Ownership, Profit Distribution Report Required.

A licensee shall file with the city a written, sworn report of any of the following changes:

- (a) Any change in any legal relationship between any parties named in the application for the license;

- (b) Any change in the payment of rent for leased premises or any change in the ownership of the licensed premises;
- (c) Any loss or damage to goods or premises of the licensee which results in a claim against an insurance policy;
- (d) Any change in the division of the profits from the licensed business;
- (e) Any change for any purpose in division of net or gross sales of the licensed business;
- (f) Any change in any material facts contained in the application for the license;
- (g) Such report shall be filed within five (5) days after the date of the change.

Article 3.6 - Employment Restrictions and Handling Requirements

Section 3.6.1 - Age Requirements.

- (a) Except as provided in subsection (d) of this section, no wholesale dealer or package licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (b) No consumption on the premises licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (c) A licensed alcoholic beverage caterer shall not employ any person under eighteen (18) years of age who, in the course of such employment would dispense, serve, sell, or handle alcoholic beverages.
- (d) This section shall not prohibit the employment of persons under the above ages on licensed premises where such persons do not dispense, sell, serve, take orders for, or handle alcoholic beverages.
- (e) This section shall not prohibit persons sixteen (16) years of age or older from selling or handling alcoholic beverages in grocery stores or supermarkets. For purposes of this subsection, the term grocery stores or supermarkets shall not include convenience stores.

Section 3.6.2 - "Handling" not to Include Bagging and Carrying Out.

For the purposes of this article, the bagging or carrying out of wine or malt beverages in the original package in the course of employment by a grocery store, convenience store, or similar establishment shall not constitute the handling of alcoholic beverages.

Section 3.6.3 - Handling Permit Required.

- (a) An employee handling permit shall be required for:
 - (1) Any employee of a package licensee whose primary business is the sale of alcoholic beverages.
 - (2) Any employee of a package licensee who sells alcoholic beverages in a convenience store or service station.
 - (3) Any employee of a consumption on the premises licensee who serves or works in the serving area, including bar or lounge area of the licensed premises.
 - (4) Any employee of an alcoholic beverage caterer who is engaged in handling, selling or serving alcoholic beverages.

- (5) On or after April 15, 2000, any employee of a grocery store, drug store, variety store, membership warehouse, or department store who serves as a cashier at a check-out station where alcoholic beverages are sold.
- (b) No licensee shall employ any person required to have a handling permit until such person has procured such permit.
 - (c) Any person required to obtain a handling permit shall apply to the city police department for such permit. Only one (1) handling permit per individual will be issued for employment at any establishment within the city. The permit will be valid for a period of two (2) years and shall be renewed on or before its expiration. The fee for a handling permit is set by mayor and council. Persons applying for the permit shall make themselves available for photographing, fingerprinting, and such other investigation as may be required by the police department.
 - (d) The police department may provisionally grant a handling permit to a person applying for a card, pending investigation and report. Where said report, when received, is unfavorable, the chief of police may revoke the permit and demand its return.
 - (e) The chief of police may revoke an employee's handling permit and demand its return where the employee violates the provisions of this chapter or becomes one who adversely affects the public health, safety, or welfare.
 - (f) Any conviction for violation of the provisions of this chapter, or of state law shall result in the automatic suspension of the handling permit.
 - (g) It shall be unlawful for an employee whose handling permit has been revoked and upon whom demand for return of the card has been made to refuse to return the card or to alter, conceal, deface, or destroy the card.
 - (h) When a person applies for a handling permit, the chief of police or his designee shall have a complete and extensive search made to determine if there is a police record of such person. If there is a record of conduct prohibited by this chapter or evidence that the person's employment would adversely affect the public health, safety, or welfare, issuance of a permit shall be denied.
 - (i) A new search may be conducted on any person issued an employee handling permit if the chief of police receives information which warrants such a new search. If the new search reveals evidence that warrants revocation of the card, the card may be revoked following notice and a hearing.
 - (j) When any employee's handling permit is denied or revoked, the chief of police shall issue to the applicant or permit holder a letter stating that the person does not meet the requirements of this chapter and that upon request the chief of police will refer the matter and any evidence the person cares to submit in his behalf to alcoholic beverage license board for consideration. If the person requests consideration by the alcoholic beverage license board, the entire record will be sent to the alcoholic beverage license board. The alcoholic beverage license board shall consider all matters presented and make a decision as to whether the person qualifies for handling the sales or service of alcoholic beverages under this chapter.

Section 3.6.4 - Employment of Certain Persons Prohibited.

No licensee shall employ on any licensed premises, in any capacity whatsoever, including performers, entertainers, and musicians, any person who has been convicted within the preceding ten (10) years of any crime involving moral turpitude.

Section 3.6.5 - Licensee to Report Disciplinary Action.

Any licensee who has any arrest, citation or other disciplinary action taken against him or any of his employees who sell, take orders for, deliver, or handle alcoholic beverages by any governmental authority (municipal, county, state, or federal) shall notify the chief of police and the city attorney in writing of such action within five (5) days of such action, naming the offense(s), date(s), location of such action and outcome if known. The following shall be considered to be "disciplinary action:" any arrest; the issuance of any citation; any indictment, presentment, or accusation; any conviction, including the acceptance of a plea of nolo contendere; any penalty imposed by any regulatory agency; and any other written charge or reprimand against the licensee or any of his employees. The provisions of this section shall not apply with respect to traffic offenses.

Article 3.7 - Requirements for Consumption On-Premises Licenses

Section 3.7.1 - Eligibility for License.

A consumption on the premises license may be granted only to the establishments described in this article and subject to the specified conditions. No consumption on the premises license shall be issued to any erotic dance establishment.

Section 3.7.2 - Hotel.

- (a) In order to be eligible for a consumption on the premises license, a hotel must:
 - (1) Be used and held out to the public as a place where food is served and consumed and sleeping accommodations are offered to guests for adequate pay;
 - (2) Contain fifty (50) or more rooms used for the sleeping accommodations of guests; and
 - (3) Contain one (1) or more public dining rooms, with adequate and sanitary kitchen facilities and staff and a seating capacity, at tables, of at least one hundred (100) persons, where meals are regularly served.
- (b) A hotel may consist of a single building or may consist of two (2) or more buildings located on the same premises and used in connection with the hotel operation.
- (c) A facility which is styled as a motel, motor lodge, inn, or other similar appellation may be licensed as a hotel if it meets the requirements of this section.
- (d) A hotel may grant a franchise for the operation of a lounge, restaurant, or supper club on its premises; such a franchised operation may be granted a consumption on the premises license if it meets the other applicable requirements of this chapter.

Section 3.7.3 - Restaurant.

- (a) In order to be eligible for a consumption on the premises license, a restaurant must:
 - (1) Be used and held out to the public as a place where meals are regularly served to the public for adequate pay;
 - (2) Contain one (1) or more public dining rooms, with adequate and sanitary kitchen facilities and staff to prepare, cook, and serve suitable food for its guests;
 - (3) Serve at least one (1) meal per day at least five (5) days per week, with the exception of holidays, vacations, and periods of redecoration; and
 - (4) Have at least fifty (50) percent of its total sales be the sale of food and nonalcoholic beverages consumed on the premises, exclusive of sales from vending machines. For this purpose, if a restaurant makes a minimum charge or cover charge, the amount so charged shall not be counted in computing total sales and shall not be counted as a food or beverage sale.
 - (5) Brewpubs, as defined in subsection 3.1.2(d)(1) of this chapter and O.C.G.A. § 3-1-2(3) shall be allowed in eating establishments.
- (b) In order to be eligible for a consumption on the premises license, a restaurant shall legally maintain either a seating capacity of sixty (60) people at tables (which total may include approved outdoor seating) or an indoor seating capacity, at tables, equal to at least sixty (60) percent of its maximum occupancy load (as set by the fire safety code or building code, whichever is less, as determined by the fire marshal or chief building official of the City of Roswell). If a restaurant meets the requirements of this section and all other requirements of local and state law, it shall be eligible for either a limited pouring license or a full pouring license.

Section 3.7.4 - Lounge.

- (a) A lounge is a separate room that has a seating capacity, at tables of at least one hundred (100) persons and which is:
 - (1) Connected with, a part of, and adjacent to a restaurant; or
 - (2) Located in a hotel.
- (b) In order to be eligible for a consumption on the premises license, a lounge must be arranged and maintained such that all booths, stools, and tables are open and unobstructed to the view of other customers in the lounge.
- (c) A lounge which is operated on a different floor from or in a separate building from, or which is not connected or adjacent to, another licensed facility shall be considered a separate establishment from such other licensed facility and shall pay a separate annual license fee.

Section 3.7.5 - Supper Club.

In order to be eligible for a consumption on the premises license, a supper club must:

- (a) Have a seating capacity, at tables, of at least one hundred (100) persons;
- (b) Have adequate and sanitary kitchen facilities and staff to prepare, cook, and serve suitable food for its patrons, except that this requirement shall not apply to a supper club which is located in a hotel having separate kitchen facilities of which the supper club makes use;
- (c) Provide a band or other professional entertainment a minimum of twenty (20) days in each calendar month, each and every calendar month of the calendar year, with the exception of holidays, vacations, and periods of redecorating;
- (d) Be arranged and maintained such that all booths and tables are open and unobstructed to the view of other persons in the facility;
- (e) Serve at least one (1) meal per day at least five (5) days per week, with the exception of holidays, vacations, and periods of redecoration; and
- (f) Have as at least fifty (50) percent of its total sales the sale of food and nonalcoholic beverages consumed on the premises, exclusive of sales from vending machines; and for this purpose, if a supper club makes a minimum charge or cover charge, the amount so charged shall not be counted in computing total sales and shall not be counted as a food or beverage sale.

Section 3.7.6 - Private Clubs.

- (a) In order to be eligible for a consumption on the premises license, a private club must be a nonprofit association which is organized under the laws of this state and which:
 - (1) Has been in existence at least one (1) year prior to the filing of its application for a license;
 - (2) Has at least seventy-five (75) regular dues-paying members;
 - (3) Is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes;
 - (4) Owns, hires, or leases a building or space within a building for the reasonable use of its members, which building or space:
 - (A) Has suitable kitchen and dining room space and equipment;
 - (B) Is staffed with a sufficient number of employees for cooking, preparing, and serving meals for its members and guests; and
 - (C) Has no member, officer, agent, or employee directly or indirectly receiving in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond a fixed salary.

- (b) For purposes of subsection (a)(3) of this section, a "fixed salary" means the amount of compensation paid any member, officer, agent, or employee of a private club as may be fixed for him by its members at a prior annual meeting or by the governing body out of the general revenue of the club and shall not include any commission or any profits from the sale of alcoholic beverages.
- (c) No alcoholic beverage license shall be granted to a private club organized or operated primarily for the selling or serving of alcoholic beverages.

Section 3.7.7 - Special Events Facility.

In order to be eligible for a consumption on the premises license, a special events facility must:

- (a) Be available to public or private groups of persons;
- (b) For monetary consideration on a rental, fee, percentage, or similar basis, be used primarily for special occasions, including but not limited to, receptions, meetings, banquets, conventions, parties, catered events, or similar gatherings; and
- (c) Be open to or attended by invited or selected guests or paying patrons; or
- (d) Be a multi-sport complex situated on at least twenty (20) acres in the DX district.

Section 3.7.8 - Farm Winery Tasting Room.

- (a) As used in this section, the following definitions shall apply:

Farm winery means a domestic winery that is licensed as a farm winery by the State of Georgia.

Special Entertainment District means a certain area within the city designated by mayor and council pursuant to O.C.G.A. § 3-6-21.2 solely for the purpose of allowing Sunday sales in a farm winery tasting room.

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 retail sale of such wine as provided by law. Samples of wine can be given complimentary or for a fee.

- (b) There is hereby created a license for the business of operating a Georgia farm winery tasting room in conformance with the laws of the State of Georgia and the City of Roswell, Georgia.
- (c) Under this section, the licensee shall be authorized to carry on the business of operating a farm winery tasting room in the licensed premises. For the purposes of this chapter, upon application, a certain location may be designated by the mayor and council as a Special Entertainment District pursuant to O.C.G.A. § 3-6-21.2. Such designation is made solely for the purpose of allowing Sunday sales in a farm winery tasting room.
- (d) The farm winery tasting room created by this section is limited to farm wineries licensed by the State of Georgia and allows the licensee to deal in its farm winery products pursuant to state law. No license is created by this section authorizing any other person to deal in any other alcoholic beverage.

Section 3.7.9 - Catering Permits in Conjunction with a Special Event.

- (a) A special event permit applicant that does not have a current City of Roswell alcoholic beverage license and is not a bona fide nonprofit civic organization who desires to sell or serve alcoholic beverages temporarily (no more than three (3) days) for consumption on a non-licensed premises during a special event shall employ, use or contract with an alcoholic beverage caterer for such service.
- (b) If an existing alcoholic beverage licensee desires to sell or serve alcoholic beverages temporarily (no more than three (3) days) for consumption on a non-licensed premises, said licensee shall obtain an alcoholic beverage catering license pursuant to Section 3.2.5 of this chapter in conjunction with a special event permit.

- (c) If an existing alcoholic beverage licensee desires to sell or serve alcoholic beverages temporarily for consumption beyond the licensed premises but either connected to the licensed premises or on the same property under their sole possession, said licensee shall obtain a special event permit but is not required to obtain a catering license since the special event is an extension of the licensed premises.
- (d) A bona fide nonprofit civic organization that desires to sell or serve alcoholic beverages temporarily (no more than three (3) days) for consumption on a non-licensed premises during a special event shall pay a fee of fifty dollars (\$50.00) to obtain a permit authorizing the organization to sell or serve alcoholic beverages for consumption on the premises of the special event. No more than two (2) permits may be issued to an organization in any one (1) calendar year. The organization shall hire an off-duty police officer of competent jurisdiction to be present during the event. For the purposes of this section, a bona fide "nonprofit civic organization" is defined as an organization which is an exempt organization under Section 501(c) or (d) of the Internal Revenue Code of 1986, as amended.

Section 3.7.10 - Physical Requirements of Premises.

All lounge and restaurant areas, including all tables, booths, and other areas where customers are served and including all passageways for customers, shall be sufficiently well illuminated so that they may be viewed by those inside the premises. The sale of alcoholic beverages in any back room or side room that is not open to the general public is prohibited, except that this prohibition shall not apply with respect to:

- (a) Private parties which have been scheduled in advance;
- (b) Sales to hotel guests in their hotel rooms;
- (c) Private clubs; or
- (d) Special events facilities.

Section 3.7.11 - Employees of Supper Club or Lounge not to Mingle with Customers.

It shall be unlawful for an employee of a supper club or lounge to dance or sit with customers on the premises. It shall be unlawful for any customer to purchase food or drink for an employee of a lounge or supper club on the licensed premises.

Section 3.7.12 - Live Music and Dancing.

Bands or orchestras and patron dancing shall be permitted at facilities licensed for consumption on the premises sales only where:

- (a) Adequate space exists;
- (b) All fire and safety regulations are met;
- (c) Prior approval of the chief of police and the chief of the fire department has been obtained.

Section 3.7.13 - Purchase of Alcoholic Beverages by Licensee.

Licensees under this chapter shall purchase distilled spirits in sizes of one (1) liter or larger unless a particular brand is not packaged in these size containers, in which case the licensee may purchase such brand in the nearest size to such size containers.

Section 3.7.14 - Package Sales Prohibited.

It shall be unlawful for any alcoholic beverages to be sold by the package from premises licensed for consumption on the premises.

Section 3.7.15 - Carry-Out of Alcoholic Beverage Unlawful.

- (a) All alcoholic beverages sold by consumption on the premises licensees shall be consumed only on the licensed premises unless allowed by state law or as provided in subsection (c) of this Section. It shall be unlawful for any person to remove from the licensed premises any alcoholic beverages sold for consumption on the premises unless specifically permitted by state law (See O.C.G.A. § 3-6-4) or as specifically permitted by the Roswell Mayor and Council. The licensee shall be responsible for ensuring that no person removes any unauthorized alcoholic beverages from the premises in any type of container.
- (b) Each consumption on the premises licensee shall post in a prominent place at each exit from the licensed premises a sign in substantially the following form:

"It is a violation of the Code of Ordinances of the City of Roswell to take any type alcoholic beverage out of this establishment unless specifically permitted by State law or City of Roswell Ordinance."

Such sign shall be in uniform letters not less than one (1) inch in height.

- (c) Exceptions - Outside consumption of alcoholic beverages permitted - Carry Districts.
 - (1) For the purposes of this Chapter only, a Carry District is defined as follows: A specifically authorized and pedestrian oriented area of the City as established by resolution of Mayor and Council that allows those establishments with valid consumption on the premises licenses within such area to dispense and/or serve an alcoholic beverage for "carry out" purposes provided all other laws, rules and ordinances are followed.
 - (2) *One drink per person on-street limit.* Within a Carry District, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, or other container other than a can, bottle, or glass, for removal from the premises; provided, however, that no person shall remove more than one such alcoholic beverage from the licensed premises at a time.
 - (3) *Size limited to a maximum of sixteen (16) ounces.* Within a Carry District, no container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size. No person shall hold in its possession on the streets and sidewalks, in parks and squares, or in other public places within a Carry District any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.
 - (4) *Drinking from can, bottle, or glass prohibited.* It shall be unlawful within a Carry District for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private.
 - (5) *Consumption limited to certain areas in the Carry District.* No alcoholic beverage purchased pursuant to this provision may be consumed outside of the Carry District, upon any sidewalk adjacent to a church, school or park (unless specifically authorized by the City of Roswell) or upon any private property without the express written consent of the property owners.
 - (6) *Consumption limited to lawful hours of operation.* Unless authorized by Mayor and Council in the Resolution creating the Carry District, no alcoholic beverage purchased within the Carry District pursuant to this provision shall be consumed within the Carry District on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private, prior to 10 a.m. or later than 11:00 p.m.

Section 3.7.16 - Brown-Bag, "BYOB."

Except as provided in this section, it is prohibited for any person to bring in his own alcoholic beverage in any retail establishment without regard to whether such establishment is licensed to sell alcoholic beverages, provided however, alcohol may be furnished at a special event if a valid permit for such event is issued by the City of Roswell. For the purposes of this section, the term "retail establishment" shall not include a private hotel room or similar guest room or a private club.

Notwithstanding any other contrary provision of this chapter, any restaurant which is licensed to sell wine for consumption on the premises may permit a patron to bring into the restaurant one (1) unopened bottle of wine for consumption on the premises if the patron purchases a meal and consumes a portion of the bottle of wine during

the meal on the restaurant's premises. Should the patron wish to take the unfinished portion of the bottle of wine from the premises, such bottle of wine shall be resealed in accordance with section 3.7.15 of this chapter. In order for this provision to apply, the restaurant must establish a policy for permitting this practice and may in its own discretion charge a corkage fee. Nothing in this section shall be deemed to require a restaurant to establish such a policy.

Section 3.7.17 - "Happy Hour" Discounts; Other Unlawful Practices.

- (a) No consumption on the premises licensee shall engage in any of the following practices:
 - (1) The sale of alcoholic beverages during any special period of the day at prices lower than those customarily charged during the remainder of the day;
 - (2) The giving away of any alcoholic beverages in conjunction with the sale of any other alcoholic beverages;
 - (3) The sale of two (2) or more alcoholic beverages for a single price or the sale of all the alcoholic beverages a customer can or desires to drink;
 - (4) The sale or serving of two or more alcoholic beverages at substantially the same price customarily charged for one (1) alcoholic beverage;
 - (5) Requiring or encouraging the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased or before the first such beverage has been consumed;
 - (6) Selling distilled spirits in containers or glasses containing more than one and one-half (1½) ounces of distilled spirits;
 - (7) Sponsoring, conducting, or allowing contests or promotions which have as their primary purpose the increasing of the consumption of alcoholic beverages on the premises.
- (b) This section shall not apply with respect to private functions not open to the public with respect to which 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 a valuable consideration.

Sections 3.7.18, 3.7.19 - Reserved.

Section 3.7.20 - Hotel, In-Room Service.

- (a) Notwithstanding any other provisions of this chapter to the contrary, any hotel (as the term " hotel" is commonly used and without regard to the requirements of section 3.7.2), inn, or other establishment which offers overnight accommodations to the public for hire, may provide "in-room service" of alcoholic beverages if such establishment:
 - (1) Holds a valid city package license or a valid city consumption on the premises license or both; and
 - (2) Has been authorized to provide "in-room service" by the state revenue commissioner.
- (b) For purposes of this section, "in-room service" consists of:
 - (1) The delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room when such alcoholic beverages have been ordered by the guest and when the guest shall be billed for the cost of such alcoholic beverages at the time of delivery and when the sale of such alcoholic beverages is completed at the time of delivery; and
 - (2) The provision of a cabinet or other facility located in a hotel's guest room which contains alcoholic beverages and which is provided upon request of the guest and which is accessible by lock and key only to the guest and for which the sale of alcoholic beverages contained therein is final at the time requested except for a credit which may be given to the guest for any unused portion.

- (c) Except as otherwise provided in this section, in-room service of alcoholic beverages shall be subject to all restrictions and limitations in this chapter relative to the sale of alcoholic beverages. In-room service sales shall be authorized only on such days and only during such hours as the sale of alcoholic beverages is otherwise authorized.
- (d) Distilled spirits sold pursuant to this section shall not be sold in packages containing less than fifty (50) milliliters each.
- (e) All alcoholic beverages sold pursuant to this section shall be purchased from a licensed wholesale dealer and shall be subject to all taxes imposed under this chapter, including the excise tax on mixed drinks where alcoholic beverages are sold as a mixed drink or the ingredients for a mixed drink.

Article 3.8 - Excise Tax

Section 3.8.1 - Tax Imposed on Sale of Mixed Drinks.

There is imposed upon the sale of mixed drinks in the city a tax in the amount of three (3) percent of the purchase price of the mixed drink to the consumer. A record of each sale will be made in writing and maintained for inspection by any authorized agent of the city.

Section 3.8.2 - Licensee to Collect and Remit.

Every consumption on the premises licensee shall collect the tax imposed by this article from purchasers of mixed drinks. The licensee shall furnish such information as may be required by the city administrator to facilitate the collection of the tax.

Section 3.8.3 - Customer Receipts; Credit Sales.

If requested by the purchaser, a consumption on the premises licensee shall give to the purchaser a receipt on which the purchase price and the tax imposed by this article shall be itemized separately. In all cases where the purchase is by deferred payment or credit, the licensee becomes liable for the collection and payment of the tax at the time of delivery of the mixed drink to the purchaser.

Section 3.8.4 - Payment and Returns by Licensee.

- (a) Each licensee shall pay over the amount of taxes collected and coming due under this article in any calendar month to the city not later than the twentieth day of the following calendar month.
- (b) On or before the twentieth day of each month, a return for the preceding month shall be filed with the city finance director or her designee by each licensee liable for the payment of tax under this article. Returns shall be in such form as the city administrator may specify and shall show the licensee's gross receipts from the sale of mixed drinks and the amount of taxes collected or coming due thereon. Any amounts collected in excess of three (3) percent of the taxable sales shall be reported and paid to the city.
- (c) Licensees shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if said amount is not delinquent at the time of payment. The rate of deduction shall be the same rate authorized for deductions from state sales and use tax under O.C.G.A. § 48-8-50.

Section 3.8.5 - Excise Tax—Wholesalers.

- (a) There is imposed by the city an excise tax on the first sale or use of malt beverages in the city, as follows:
 - (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container containing not more than fifteen and one-half (15½) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and one-half (15½) gallons;
 - (2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents (\$0.05) per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.
- (b) There is imposed by the city an excise tax on the first sale or use of wine in the city at a rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (c) There is imposed by the city an excise tax on the first sale or use of distilled spirits in the city at the rate of twenty-two cents (\$0.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.
- (d) The excise taxes provided for in this section shall be imposed upon and paid by the licensed wholesale dealer. Such taxes shall be paid on or before the twentieth day of the month following the month in which the alcoholic beverages are sold or disposed of by the wholesaler within the city.

Section 3.8.6 - Reserved.

Section 3.8.7 - Deficiency Assessment.

- (a) If the city finance director has cause to believe that a return or the amount of tax paid to the city by a licensee is not proper, she may compute and determine the amount due on the basis of any information available to her. One (1) or more deficiency determinations may be made of the amount due for any month.
- (b) The amount of a deficiency determination shall bear interest at the rate of one and one-half (1½) percent per month, or fraction thereof, from the due date of the taxes.
- (c) The city finance director shall give notice of a deficiency determination to the licensee. The notice may be served by a code enforcement officer or by mail. Service by mail shall be addressed to the named licensee at the licensed premises, shall be made by certified mail, and is complete when delivered with a receipt signed by the addressee or by the receipt of mailing.
- (d) Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of the month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever is later.

Section 3.8.8 - Failure to File Return.

- (a) If a licensee fails to make a return, the city finance director shall make an estimate of the amount of the tax due for the period or periods for which a return was not filed. Such estimate may be based on any information available to the city finance director. Written notice of the estimate shall be given to the licensee in the manner specified by subsection 3.8.7(a).
- (b) The amount of the determination shall bear interest at the rate of one and one-half (1½) percent per month, or fraction thereof, from the last day on which the return could have been timely filed.

Section 3.8.9 - Penalties and Interest.

Any licensee who fails to pay to the city within the time required any amount required to be paid under this article shall pay a penalty of twenty (20) percent of the amount not timely paid, in addition to the principal unpaid amount and interest at the rate of one and one-half (1½) percent per month.

Section 3.8.10 - Actions for Collection; Overpayment.

- (a) At any time within three (3) years after the delinquency of any amount due under this article, the city administrator or his designee may, subject to the approval of the mayor and council, bring an action in the courts of this state, any other state, or the United States in the name of the city to collect the amount delinquent, together with penalties, interest, court fees, filing fees, attorneys' fees, and other legal fees incident thereto.
- (b) Whenever any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be offset against any future liability for the tax.
- (c) If the licensee determines that he has overpaid or paid more than once and such fact has not yet been determined by the city, the licensee shall have three (3) years from the date of payment to file a claim with respect to such overpayment or double payment. Such claim shall be in writing and shall state the specific grounds upon which it is based. The claim shall be audited. If mayor and council approves the claim, the excess amount paid may be credited against any other amounts due from the licensee or refunded.

Section 3.8.11 - Administration and Enforcement of Article.

- (a) The city finance director or her designee shall administer and enforce the provisions of this article.
- (b) The mayor and council may promulgate rules and regulations for the enforcement of this article.
- (c) Every licensee engaging in the sale of mixed drinks shall keep such records, receipts, invoices, and other pertinent papers in such form as may be required by the city.
- (d) The city administrator or any person authorized in writing by the mayor and council may examine the books, papers, records, financial reports, equipment, and facilities of any licensee engaging in the sale of mixed drinks in order to verify the accuracy of any return, or if no return is made to ascertain the amount of tax due.
- (e) In administration of the provisions of this article, mayor and council may require the filing of reports by any person or class of persons having in their possession or custody any information relating to purchases subject to taxation under this article.