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ALCOHOLIC BEVERAGES

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ORDINANCE NUMBER 120902A
ORDINANCE REPEALING CHAPTER 6 OF CODE OF ORDINANCE

BE IT ORDAINED by the City Council of the City of Elba as follows:

That Chapter 6 - Section 6-1 and 6-2 of the Code of Ordinances as set out fully below are hereby repealed.

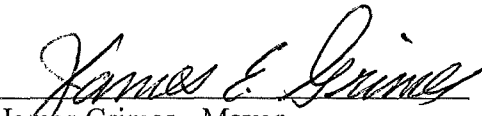
Section 6-1:

Any person committing an offense in the city which is declared to be a misdemeanor by any prohibition law of the state shall be guilty of an offense.

Section 6-2:

Except as authorized in Code of Ala. 1975, §28-4-200, it is unlawful for any person to possess, transport or deliver in the city any prohibited liquors and beverages as defined in Code of Ala. 1975, § 28-4-1.

The ordinance being considered by unanimous consent of the City Council at a regular Council meeting of December 9, 2002 and there being 6 votes in favor and 0 votes opposed.


James Grimes - Mayor

ATTEST:


City Clerk

ORDINANCE NUMBER 120902B
**ORDINANCE REGULATING THE SALE
AND DISTRIBUTION OF ALCOHOLIC BEVERAGES**

WHEREAS, The City Council of the City of Elba, Alabama has determined it is in the best interest of the health, safety and general welfare of its citizens and the City to adopt an ordinance to regulate the sale, distribution and delivery of alcoholic beverages within the Corporate City Limits and Police Jurisdiction.

BE IT ORDAINED by the City Council of the City of Elba as follows:

That Chapter 6 of the Code of Ordinances, the City of Elba is hereby amended by adding Sections 6-1 through 6-62 as set out fully below.

ALCOHOLIC BEVERAGES

ARTICLE I
IN GENERAL

Sec. 6-1. Definitions.

Whenever used in this chapter, the following words and phrases shall have the respective meanings ascribed to them:

Alcoholic beverages: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquors, a part of which is spirituous, vinous, fermented, or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes which contain one-half of one (1) percent or more of alcohol by volume and shall include liquor and beer, and wine, both fortified and table wine.

Alcoholic beverage control law: Title 28 of the Code of Alabama 1975, as amended.

Alcoholic beverages for off-premises consumption: Except for beer and wine, no alcoholic beverages for off-premises consumption shall be sold, furnished or given away in the city by any city alcoholic beverage retail licensee or under any city alcoholic beverage retail liquor license except by a class II lounge or package store licensee under a license, as that term and that license are defined and provided for herein. Nothing in this section is intended to conflict with the provisions of Code of Ala. 1975, § 28-3A-13.

Association: A partnership, limited partnership, or any form of unincorporated enterprise owned by two (2) or more persons.

Beer licensed place: A place at which malt or brewed beverages are licensed by the state alcoholic beverage control board to be so sold or served.

Beer licensee: A person licensed by the state alcoholic beverage control board to sell or serve malt or brewed beverages to consumers.

Carton: The package, container or containers in which alcoholic beverages are originally packaged for shipment to market by the manufacturer, its designated representatives or the importer.

Church: Church shall mean an entire house or structure set apart primarily for use for purposes of

public worship, and whose sanctuary is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure is kept for that use and not put to any other use inconsistent therewith.

Corporation: A corporation or joint stock association organized under the laws of this state, the United States, or any other state, territory, or foreign country or dependency.

Engaged in business: A wholesaler or retailer shall be deemed "engaged in business" in the city or within the police jurisdiction of the city if such person has a fixed place of business therein, or if, pursuant to agreement of sale, express or implied, such person delivers beverages regulated by this chapter within the city or within its police jurisdiction regardless of where else such person may also sell or deliver such commodities.

Fortified wine or vinous liquor: Any wine containing more than 14.9 percent alcohol by volume but not more than 24 percent, or such other percentages as may be designated by the Legislature of Alabama. Fortified wine is vinous liquor.

Hotel: A building or buildings held out to the public for housing accommodations of travelers or transients, and shall include motel and bed and breakfast, but shall not include a rooming house or boarding house.

Importer: Any person, association or corporation engaged in importing alcoholic beverages, liquor wine or beer, manufactured outside the United States of America into this state or for the sale or distribution in this state, or to the Board or to a wholesale licensee of the Board authorized to receive such product.

Licensee: Any person, corporation, association or partnership holding a valid and duly issued ABC Board license and licensed by the city council to sell liquor, wines, or malt and brewed beverages under the terms of this chapter. Said terms shall include both masculine and feminine gender and shall include both singular and plural when appropriate.

License inspector: The license inspector, deputy license inspector, assistant license inspector and any employee of the city who may be designated by the license inspector to aid or assist in the enforcement of this chapter.

Licensed Premises: Any portion of the interior of any building or structure accessible to the public, employees, owners, licensees or agents of licensees, together with the curtilage thereof, and any living quarters contained therein.

Liquor: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented, or otherwise alcoholic and all drinks or drinkable liquids, preparations or mixtures, intended for beverage purposes which contain more than one-half of one (1) percent or more of alcohol by volume except malt or brewed beverages and table wine as defined herein.

Liquor licensed place: A place at which liquor is licensed by the state alcoholic beverage control board to be so sold or served.

Liquor licensee: A person licensed by the state alcoholic beverage control board to sell or serve liquor to consumers.

Liquor store: A liquor store operated by the ABC Board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

Lounge:

(1) **Class I lounge:** Any place or premises operated by a responsible person or good reputation in which alcoholic beverages of all types may be offered for sale for on premises consumption only but which does not meet the requirement for a restaurant-lounge, restaurant-pub, or private club lounge as these establishments are defined herein and which meets the requirements of the city zoning ordinance and the following additional requirements:

- (a) lounge area of at least one thousand (1,000) square feet on one (1) floor in one (1) room, such area to be equipped with tables and chairs and capable of seating at least fifty (50) persons.
- (b) A minimum of five (5) off-street parking spaces shall be provided for each one hundred (100) square feet of lounge area, provided that this requirement shall be in addition to the parking requirements for any other uses in the same building.

(2) **Class II lounge package store:** A class II lounge retail liquor licensee who operates the licensed premises for the sale of all classes of alcoholic beverages for off-premises consumption only. In addition to meeting all other legal requirements, such licensee must also comply with the following additional conditions or requirements:

- A. The licensee must have a minimum of five hundred (500) square feet of floor space for the display and sale of alcoholic beverages. The square footage herein required shall not include areas of the licensed premises which are not open to the patrons or general membership of licensee and which are used for office space, storage or restroom facilities.
- B. The licensee is authorized to sell only alcoholic beverages, ice, mixers, snack items and tobacco products. The licensee shall not sell general grocery items, novelties, clothing or any other item of general merchandise.
- C. The licensed premises shall not contain any interior door, window or passageway of any kind or description which opens or may be opened into an adjoining building. So-called "service doors" and "pass-through windows" are strictly prohibited. If the state fire marshal or the local fire chief determines that such a passageway would be necessary for the safety of the employees, members or patrons of the licensee, than in such event such passageway shall be allowed but the same shall be kept closed except for emergency or employees' use and must be behind the counter.
- D. The licensed premises shall be located not less than two hundred (200) feet from any gasoline dispensing business in which licensee shall in any way be interested either directly or indirectly in the ownership or leasehold thereof as owner, operator or affiliated company, the measurement to be used in determining the distance herein set forth shall be a straight line from the center of the front door of the licensed premises to the nearest gasoline pump available to the general public.
- E. The licensee shall at all times when open for business have in its possession a

minimum inventory of five thousand (\$5,000.00) wholesale value of liquor or wine. The liquor must have been produced by at least two (2) distilleries, and the wine produced by at least two (2) wineries.

- F. The licensee shall not advertise or identify its premises, prices or location by the use of a flashing or blinking signs whether operated by electricity, gas or otherwise.
- G. No person under the age of twenty-one (21) years shall be issued such license, nor shall any corporation be issued such license unless the president thereof shall be over the age of twenty-one (21) years.
- H. No person under twenty-one (21) years of age shall be admitted on the premises of any class II lounge package store as a patron or employee and it shall be unlawful for any class II lounge package store licensee to admit any minor to the premises as a patron or employee.

Malt or brewed beverage: Any beer, lager beer, ale, porter, malt or Brewed beverage or similar fermented malt liquor containing one-half of one (1) percent or more of alcohol by volume and not in excess of four (5) percent alcohol by weight and five (6) percent by volume, by whatever name the same may be called.

Meal: A diversified selection of food, some of which is not susceptible of being consumed in the absence of at least some articles of tableware and which cannot be conveniently consumed while a person is standing or walking about.

Minimum age: A person is under the minimum legal drinking age as established by state law for the purposes of purchasing, consuming, possessing or transporting alcohol, liquor or malt or brewed beverages if such person is less than twenty-one (21) years of age, subject to the exceptions of section 28-1-5, Code of Alabama, 1975.

Minor: Any person under twenty-one (21) years of age, subject to the exceptions of section 28-1-5; provided, however, in the event section 28-1-5, Code of Alabama, 1975, shall be repealed or otherwise shall be no longer in effect, thereafter the provisions of section 26-1-1, Code of Alabama, 1975, shall govern (see section 28-3-1, Code of Alabama, 1975).

Person: As defined in section 1-2, specifically including a natural person, association, or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment, or both, such terms as applied to "association" shall mean the partners or members thereof and as applied to "corporation" shall mean the officers thereof, except that as to private clubs, the term "person" shall mean such individuals who, under the by-laws of such club, shall have jurisdiction over the possession and sale of alcoholic beverages therein.

Private club:

(1) **Class I.** A corporation or association organized or formed in good faith by authority of law and which must have at least one hundred fifty (150) paid-up members. It must be the owner, lessee or occupant of an establishment operated solely for the objects of a national, social, patriotic, political or athletic nature or the like, but not for pecuniary gain as evidenced by U.S. Internal Revenue Service qualified exemption status, and the property as well as the advantages of which belong to all the members and which maintains

an establishment provided with special space and accommodations where, in consideration of payment, food, with or without lodging, is habitually served. The club shall hold regular meetings, continue its business through officers regularly elected, admit members by written application only and five-day waiting period, investigation and ballot and charge and collect dues from elected members. Licensee may offer for sale all classes of alcoholic beverages for on-premises consumption.

(2) **Class II.** A corporation or association organized or formed in good faith by authority of law and which must have at least one hundred (100) paid-up members. It must be the owner, lessee or occupant of an establishment operated solely for the objects of a national, social, patriotic, political or athletic nature or the like. The club shall hold regular meetings, continue its business through officers regularly elected, admit members by written application only and five-day waiting period, investigation and ballot and charge and collect dues from elected members. Licensee may offer for sale all classes of alcoholic beverages for on-premises consumption.

Private package store/private liquor store: Those lounge retail liquor licensees or club liquor retail licensees who declare to the ABC Board that their primary business shall be the sale of alcoholic beverages for off-premises consumption and who further declare their compliance with Regulations of the Alcoholic Beverage Control Board (ABC).

Restaurant: A reputable place licensed as a restaurant, operated by a responsible person of good reputation and habitually and principally used for the purpose of preparing and serving meals for the public to consume on the premises.

Restaurant-lounge: Any place or premises in which foods, refreshments, and liquor are offered for consumption within the building in which the establishment is located, which is operated by a responsible person of good reputation and which meets the requirements of the city zoning ordinance, and the following additional requirements:

(1) The combined dining and kitchen areas total at least one thousand (1,000) square feet on one (1) floor; dining area to be equipped with tables and chairs accommodating at least fifty (50) person sat one (1) time. Storage areas are not considered in meeting square footage requirements.

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

(3) At least one (1) meal per day shall be served at least six (6) days a week, with the exception of holidays, vacations, and periods of redecorating.

(4) Such place shall be duly licensed by the alcoholic beverage control board of the state for the sale of liquor for on-premises consumption.

(5) The serving of such food or meals shall constitute the principal business of such establishment, which the serving of liquor, malt or brewed beverages, wines, or other alcoholic beverages being only an incidental part of such business. During any ninety-day period, the gross receipts from the serving of meals and food shall constitute more than sixty (60) percent of the gross receipts of the business.

Restaurant-pub: Any place or premises in which foods, refreshments, and malt or brewed beverages and/or table wines (but not liquor) are offered for sale for consumption within the building in which the establishment is located, which is operated by a person of good reputation and which meets the requirements

of the city zoning ordinance, and the following additional requirements:

(1) The combined dining and kitchen areas total at least six hundred (600) square feet on one (1) floor. Dining area to be equipped with tables and chairs accommodating at least thirty-five (35) persons at one (1) time. Storage areas are not considered in meeting square footage requirements.

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

(3) At least one (1) meal per day shall be served at least six (6) days a week, with the exception of holidays, vacations, and periods of redecorating.

(4) Such place shall be duly licensed by the alcoholic beverage control board of the state for the sale of malt or brewed beverages and/or table wines for on-premises consumption.

(5) The serving of such food or meals shall constitute the principal business of such establishment, with the serving of malt or brewed beverages and/or table wines being only an incidental part of such business. During any ninety-day period, the gross receipts from the serving of meals and food shall constitute more than sixty (60) percent of the gross receipts for the business.

Retailer: A person engaged in the business of selling or serving beverages regulated by this chapter to consumers.

School: School shall include buildings used for the purpose of imparting instruction to children in Grade K-12, when provided by a public, private, denominational, and parochial school, except those buildings used primarily for adult education or college extension courses. School does not include a proprietary trade or occupational school.

State law definitions: All of those words and phrases which have been defined or to which meanings have been ascribed in sections 28-3-1 and 28-4-1 of Title 28 of the Code of Alabama 1975, shall have the same meanings in this chapter as ascribed to them in such sections of the Code of Alabama, unless the context clearly indicates otherwise or a different meaning is ascribed to it in this chapter.

Table wine: Any wine containing not more than 14.9 percent alcohol by volume or such other percentages as may be designated by the Legislature of Alabama. Table wine is not liquor, spirituous or vinous.

Wholesaler: Any person licensed by the ABC Board to engage in the sale and distribution of table wine and beer, or either of them, within this state, at wholesale only, to be sold for export or to retail licensees or other wholesale licensees or others within this state lawfully authorized to sell table wine and beer, or either of them, for the purpose of resale.

Wine: All beverages made from the fermentation of fruits, berries, or grapes, with or without added spirits and produced in accordance with the laws and regulations of the United States, containing not more than twenty-four (24) percent alcohol by volume, and shall include all sparkling wines, carbonated wines, special natural wines, rectified wines, vermouths, vinous beverages, vinous liquors and like products.

(1) Fortified wine: Any wine containing more than fourteen (14) percent alcohol by volumen, but not more than twenty-four (24) percent.

(2) Table wine: Any wine containing not more than fourteen (14) percent alcohol by volume.

Sec. 6-2. Purpose of chapter; liberal construction.

This chapter shall be deemed, in addition to revenue purposes within the corporate limits, the exercise of the police power of the city for the protection of the public welfare, health, peace and morals of the people of the city, and all the provisions of this chapter shall be liberally construed for the accomplishment of this purpose. This chapter shall have application within the corporate limits of the city, not otherwise.

Sec. 6-3. Territorial application of chapter.

This chapter shall have force and effect in the city and its police jurisdiction.

Sec. 6-4. Interstate commerce and federal government business excluded.

This chapter shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof.

Sec. 6-5. Chapter cumulative.

This chapter shall not be construed to repeal any of the provisions of any other ordinance or the general license code of the city, but shall be held to be cumulative.

Sec. 6-6. Violation of state law or rules and regulations.

It shall be unlawful and a violation of this chapter for any person to do anything or commit any act constituting a misdemeanor under the state alcoholic beverage control law or under any rule or regulation of the state alcoholic beverage control board. The rules and regulations adopted and promulgated by the Alcoholic Beverage Control Board in effect at the time of adoption of this ordinance and as may be adopted or amended thereafter are adopted as laws of the City.

Sec. 6-7. Punishment generally.

Any person violating any of the provisions of this chapter shall upon conviction be punished as provided in section 1-8, in addition to any penalties provided herein.

Sec. 6-8. Unstamped beer-Sale.

It shall be unlawful for any retail beer dealer to have, hold, possess, sell or offer for sale within the corporate limits or jurisdiction of the city, any alcoholic beverage including but not limited to beer, malt or brewed beverage, wine or liquor the container of which does not have securely affixed there to decal stamps of the nature and in the amount as provided and required by law.

Sec. 6-9. Delivery

It shall be unlawful for any wholesale beer dealer to ship or deliver directly or otherwise, any beer to or within the corporate limits or police jurisdiction of the city which does not have securely affixed to each container thereof as provided and required by law, the decal stamps issued therefor.

Sec. 6-10. Possessing open containers or consuming in public places

It shall be unlawful for any person to possess open containers of alcoholic beverages or consume any alcoholic beverage or to have unconcealed possession or custody of any alcoholic beverage while upon or along any public street, road or highway in the city or while in or on any automobile or other motor vehicle on or along any public street, road or highway in the city, or in any public place, except on the premises of a business duly licensed for the retail sales of alcoholic beverages for on-premises consumption. Public place shall include without limitation any "public place" as defined by Section 13A-11-1(2) Code of Alabama, 1975.

Sec. 6-11. Advertising of alcoholic beverages

There shall be no electric signs, painted signs or signs of any kind displayed outside any place of business advertising alcoholic beverages.

Sec. 6-12. Location of certain Establishments Restricted.

a. No privilege license shall be issued for the off premises retail sale of malt or brewed beverages or wine where any entrance of the establishment for which such licences applied for is less than one hundred seventy five (175) feet from the main entrance of any church, public or private school or daycare, funeral home, public playground or public recreational facility. Such distance shall be set out and measured in a straight line.

b. No privilege license shall be issued for the retail sale of alcoholic beverages (except off premises sale of malt or brewed beverages or wine) where any entrance of the establishment for which such license applied for is less than five hundred (500) feet from the main entrance of any church, public or private school, or daycare, funeral home, public playground or public recreational facility. Such distance shall be set out and measured in a straight line.

Sec. 6-13. Hours of closing

All lounges, clubs, restaurants, or places serving alcoholic beverages will abate the sale of all whiskey, wine, beer, or liquor at 2:00 a.m. These businesses may commence the sale of such beverage at 6:00 a.m., except Sunday. No sales shall be made between 2:00 a.m. Sunday and 6:00 a.m. Monday.

Sec. 6-14. Bringing or allowing alcoholic beverages onto premises; seating required, changing tables.

a. It shall be unlawful for any person other than the licensee to bring on the premises of a licensee to bring on the premises of a licensee any bottle, can or other container of any alcoholic beverage if the seal is broken.

b. It shall be unlawful for a business licensed by the City of Elba (whether or not the business is licensed to sell or furnish alcohol) to allow patrons, customers, invitees or guests to bring alcoholic beverages onto the licensed premises.

c. It shall be unlawful for patrons, customers, invitees or guests to bring alcoholic beverages onto premises licensed to do business by the City of Elba, whether or not the business is licensed to sell or furnish alcohol.

d. No person shall be served for on-premises consumption unless seated, and no patron shall move drinks from one (1) table to the other.

Sec. 6-15. Drinking outside of establishment

It shall be unlawful for any person to drink or consume any alcoholic beverage outside of the licensee's establishment or to have in such person's possession any opened bottle, can or other container of an alcoholic beverage outside of the licensee's establishment.

Sec. 6-16. Purchase by, sale to, etc., minors; misrepresentations as to age

(1) It shall be unlawful:

1. For any minor person, directly or indirectly, to purchase any alcoholic beverage, or to attempt to purchase any of such beverages.
2. For any minor person to possess or to consume any alcoholic or intoxicating beverages in any public place, or in any business establishment or club.
3. For any person to sell, furnish, give to, or purchase for any minor person any alcoholic beverages.
4. For any person, directly or indirectly, to falsely represent or attempt to falsely represent that a minor person is not a minor or is not under twenty-one (21) years of age, and, by means of such false representation, to aid or abet, or attempt to aid or abet, such minor person to buy, receive or otherwise obtain, or otherwise to aid or abet such minor person to buy, receive or otherwise obtain any malt or brewed beverage, any wine or liquor, or any alcoholic or intoxicating beverages.
5. For a licensee, employee or agent thereof to accept any proof of age from a person purchasing or attempting alcoholic beverages, except for the following:
 1. A valid driver's license of any state.
 2. A valid United States Uniformed Service Identification.
 3. A valid passport.
 4. A valid identification issued by any agency of a state for the purpose of identification, bearing a photograph and date of birth of the individual in question.
6. It shall be unlawful for any minor to sell, serve, dispense or consume alcoholic beverages on any licensed premises. It shall be permissible to employ persons under legal drinking age in an on premises licensed establishment such as professional entertainers, show people, musicians, cashiers, hostesses, ushers, waiters and waitresses, busboys or busgirls, and the like; provided they do not serve, dispense or consume alcoholic beverages, and there is an adult in attendance at all times.
7. It shall be unlawful for any minor to be in, upon or on the licensed premises of any establishment licensed by the Alcoholic Beverage Control Board of the State of Alabama as a lounge retail liquor licensee subject to exemptions for certain persons under the legal drinking age as set forth in §28-1-5, Code of Alabama, 1975.
8. It shall be unlawful for any establishment licensed by the Alcoholic Beverage Control Board of the State of Alabama as a lounge retail liquor licensee either directly or by its servants, agents or employees to admit or allow any minor to be in, on or upon said licensed premises subject to exemptions for certain persons under the legal drinking age as set forth in §28-1-5, Code of Alabama, 1975.
9. It shall be unlawful for any establishment licensed as on-premises by the Alcoholic Beverage Control Board of the State of Alabama either directly or by its servants, agents or employee(s) of the same, to allow the possession or consumption of alcoholic beverages by or to any minor or to permit any such minor to drink,

- consume or possess any alcoholic beverage on any such licensee's premises.
10. It shall be unlawful for any person under twenty-one (21) years of age to possess, consume, purchase or attempt to purchase, any alcoholic beverage; provided, it shall not be unlawful for any alcoholic beverage control board licensee to employ any person under the age of twenty-one (21) to work pursuant to §28-1-5, Code of Alabama, 1975.

(2) It shall be considered a false representation that a person is not a minor or is not under twenty-one (21) years of age, that the purchaser fails to disclose that the person making the purchase, obtaining, or securing such alcoholic beverage, is a minor person or has not reached the age of twenty-one (21) years.

Sec. 6-17. Consumption by licensee's employees

It shall be unlawful for any owner, operator or employee of any licensee who is engaged in the sale of alcoholic beverages to consume or allow any employee to consume any alcoholic beverage while performing work or duty on the premises of the licensee.

Sec. 6-18. Duty to maintain order on premises; report of assaults, affrays, etc.

It shall be the duty of each owner and of each manager or supervisor at any time charged with the management and supervision of any retail liquor, retail table wine or retail malt or brewed beverage licensed premises, while the same is open to the public, to maintain order upon the premises and to exclude from the premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned. It shall be the duty of each officer, owner, manager or person in charge of any retail liquor, retail table wine or retail malt or brewed beverage licensed premises within the city immediately to make an appropriate report to the police department of the city of each assault, assault and battery, or affray, occurring on the licensed premises while said premises are open for business. It shall further be the duty of such person to make a written report of each of such incidents to the police department of the city and to the local field office of the state alcoholic beverage control board within thirty-six (36) hours thereof.

Sec. 6-19. Refusal to leave licensed premises on request.

Any person who, after having been requested to quit the premises at any beer licensed place or at any liquor licensed place by the proprietor, or the agent or employee of the proprietor of such licensed place, fails or refuses to immediately do so shall be guilty of a misdemeanor.

Sec. 6-20. Sale on public grounds.

Any person who gives away, sells, serves or drinks any alcoholic beverage in or on any public building or public property including city school building or grounds, recreation building, city and city school playgrounds, city parks, athletic fields and its complete ground area which property is owned by the city or its instrumentalities is guilty of a misdemeanor.

Sec. 6-21. Sexual conduct and nudity in establishments dealing in alcoholic beverages-purpose

The purpose of Section 6-21 through 6-23 is to prohibit sexual conduct and nudity in establishments dealing in alcoholic beverages and prohibit person owning, maintaining or operating such establishments from permitting any such prohibited activity.

Sec. 6-22. Additional definitions

For the purpose of Sections 6-21 and 6-23, the following terms shall have the meaning respectively ascribed to them:

Establishment Dealing in Alcoholic Beverages: Any business establishment operating within the corporate limits of the city which sells, dispenses or allows the consumption of alcoholic beverages on the premises.

Person: As defined in Section 6-1, including specifically any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, or any combination, thereof, or other entity.

Sec. 6-23. Prohibited Acts on Premises.

It shall be unlawful for any person to perform or allow any of the prohibited acts listed below.

- (1) No person shall expose to public view such person's genitals, pubic area, vulva, anus, anal cleft or cleavage or any simulation thereof in an establishment dealing in alcoholic beverages.
- (2) No person shall expose to public view any portion of such person's breasts below the top of the areola or any simulation thereof in an establishment dealing in alcoholic beverages.
- (3) No person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view such person's genitals, pubic area, vulva, anus, anal cleft or cleavage or simulation thereof within the establishment dealing in alcoholic beverages.
- (4) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view any portion of such person's breasts below the top of areola or any simulation thereof within the establishment dealing in alcoholic beverages.
- (5) No person shall engage in, and no person maintaining, owning or operating an establishment dealing in, alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or the simulation thereof within an establishment dealing in alcoholic beverages.
- (6) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall allow any sexual demonstration, entertainment, exposition or contest to include wet shirt or any other vulgar, distasteful or immoral act on the premises. "Vulgar, distasteful or immoral act" shall be defined as any act performed for the purpose of arousing the sexual desires or attitudes of patron, employees, owners or operators.
- (7) No licensee shall permit the showing of films, still pictures, electronic reproductions or other visual reproductions depicting any of the acts prohibited by this section, or any such acts which are prohibited by law.

Sec. 6-24. Requirement for cabaret or dancing license.

It shall be unlawful for any person possessing a license authorizing the sale, for on-premises consumption of alcoholic beverages, to permit dancing on or in the licensed premises, unless such person is also the holder of a valid unrevoked cabaret or "dancing" license duly authorized and issued by the city.

Sec. 6-25. Exhibition dance or dance-type performance.

(a) It shall be unlawful for any person, firm, private club or corporation, or its officers, agents, servants, employees or members to permit, allow, condone or conduct any dance or dance-type performance, in the nature of an exhibition, in any liquor or beer licensed place within the corporate limits of the City of Elba or the police jurisdiction thereof, by any person or persons in their employment, under contract or present upon the premises at sufferance, or upon invitation, express or implied, without having complied with the following provisions:

- (1) Any such dance or dance-type performance, in the nature of an exhibition, shall be conducted on a stage, runway, raised platform or dance floor, of a permanent nature, with a floor area of not less than fifteen (15) square feet and located not less than five (5) feet from any area within which patrons or customers are allowed;
- (2) No dance or dance-type performance, in the nature of an exhibition, shall be conducted upon any surface upon which food or drink is also served, or upon any table, chair or other item of furniture, or upon any moveable box or other moveable item;
- (3) No physical contact between performers or entertainers shall be permitted or allowed during any dance or dance-type performance in the nature of an exhibition;
- (4) No patrons, customers, club members, guests or members of the general public shall be permitted, suffered or allowed to participate, touch, fondle, or assist in any form or manner in any dance or dance-type performance in the nature of an exhibition upon the stage, runway, raised platform or dance floor;
- (5) Performers shall not be permitted or allowed to mingle with patrons, customers, club members or guests while in costume, either before, during or after any dance or dance-type performance in the nature of an exhibition;
- (6) No dance or dance-type performance in the nature of an exhibition shall be permitted or allowed unless there shall be posted at two (2) or more places upon the premises a notice, of not less than eight (8) inches in height and not less than twenty-four (24) inches in width, which shall read: "No Participation By Patrons Or Touching Of Performers Permitted."

(b) The violation of any provision of this section shall be punishable by a fine of not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00). In addition thereto, any person so convicted may be imprisoned or sentenced to hard labor for the city for a period not exceeding six (6) months in the discretion of the court trying the case.

Sec. 6-26. Nuisances.

Any place used for selling, serving or dispensing liquor or malt or brewed beverages for reward contrary to state law or to the provisions of this chapter is a nuisance, and it shall be unlawful for any person to maintain or aid or abet in maintaining any such nuisance.

Sec. 6-27. Records and Reports - Records of Purchases, Sales and Deliveries.

It shall be the duty of each person subject to the license tax imposed by this chapter to keep full and complete records of all purchases, sales and deliveries of liquor, wine and brewed or malt beverages, from which records there can be readily obtained information as to the correct amount of license tax due the city. Such records shall be preserved for not less than one (1) year, and shall be open to inspection and checking at all times during regular business hours, as the city clerk, or the clerk's representative, may request. In the

event that any retailer fails to keep such records, or to open them to the city clerk or authorized representative for inspection and checking as such clerk or representative may request, the city clerk shall proceed to levy and collect the license tax in the manner and form provided for by law or ordinance.

Sec. 6-28. Monthly reports generally.

The person liable for any license tax imposed by this chapter shall file with the city clerk, on or before the twentieth day of each month, such reports and in such form as the city clerk may prescribe, duly sworn, to, evidencing the amount of business done during the preceding month and the amount of license tax due thereon.

Sec. 6-29. Separate retailer license required for each state license.

Each retailer shall procure a separate city license under this chapter for each state license used by such person.

Sec. 6-30 Inspection of books, records, etc., of beer wholesalers and retailers.

It shall be unlawful for any wholesaler or any retailer to refuse to allow the license inspector of the city to inspect or audit the books and records of such wholesaler or retailer pertaining to the receipt, storage, transfer, sale or distribution of malt or brewed beverages, or to refuse to permit the license inspector access to any warehouse or to any place where malt or brewed beverages may be stored or kept, or to refuse to allow the inspector to take inventory of the stock of malt or brewed beverages.

Sec. 6-31. Disposition of contraband beverages.

Whenever any person shall have been convicted in any court of possession or custody of any liquor, wine or malt or brewed beverage contrary to the provisions of this chapter or of any state law or any regulation of the state alcoholic beverage control board, or for engaging in the business of selling malt or brewed beverages without a license, and it shall appear that the police department has seized such liquor, wine or malt or brewed beverages and has the same in custody as evidence or otherwise, the court shall enter an order declaring such liquor, wine or malt or brewed beverages to be contraband and ordering the chief of police to destroy the same or to sell the same to the state alcoholic beverage control board for account of the city. An appeal from any conviction upon which any such order depends shall carry with it an appeal from such order.

Sec. 6-32. Sale of malt or brewed beverages by other than licensee or at other than licensed place.

(a) It shall be unlawful for any person, other than a beer licensee, to sell or offer to sell to a consumer, or to serve or dispense for reward to a consumer, or offer to serve or dispense for reward to a consumer, or to have in possession or custody for any such purpose, any malt or brewed beverage at any place in the city or its police jurisdiction.

(b) It shall likewise be unlawful for any person, whether or not a beer licensee, to sell or offer to a consumer, or to serve or dispense for reward to a consumer, or to offer to serve or dispense for reward to a consumer, or to have in possession or custody for any such purpose, any malt or brewed beverage at any place in the city or its police jurisdiction other than in a licensed beer place.

(c) The keeping by any person other than a beer licensee or the keeping at any place other than a licensed beer place, at one or more places in the city or in its police jurisdiction, in the aggregate, of more

beverages, wine liquor, or any alcoholic or intoxicating beverage to any person visibly intoxicated.

Sec. 6-39. Limitations on Happy Hour and similar price reductions.

- (1) It shall be unlawful for any licensee to:
 - (a) Serve multiple drinks for a single price.
 - (b) Establish a single retail price based upon the required purchase of two or more drinks.
 - (c) Sell or otherwise furnish drinks before 10:00 a.m. or after 9:00 p.m. at a price which is reduced from the usual customary or established price charged for such drinks.
 - (d) Sell or provide one person or group of persons drinks at prices less than those charged the general public for that day.

(2) The term "drink" or "drinks" is defined herein to mean any beverage containing any quantity of alcohol. "Multiple drinks" is defined to mean two or more drinks containing any quantity of alcohol or a single container which contains more than the normal quantity of alcohol for an individual drink in accordance with Alcohol Beverage Control Board Regulations.

(3) This section does not apply to legitimate, prearranged private parties, functions, or events where guest thereof are served in a room so designated and used exclusively thereof.

Sec. 6-40. Prohibition against gambling.

- (1) It shall be unlawful:
 - (a) For any person to knowingly advance or profit from unlawful gambling activities as a player.
 - (b) For any person to knowingly advance or profit from unlawful gambling activities otherwise than as a player.
 - (c) For any person to promote gambling by conspiring to advance or profit from gambling activities otherwise than as a player.

(2) A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

- (a) A slot machine.
- (b) Any other gambling device with the intention that it be used in the advancement of unlawful gambling activity.

(3) Any licensee, agent, member or employee thereof, violating any of the provisions herein, or allowing or permitting patrons to engage in said activities, shall subject the licensee to disciplinary action, including a fine, suspension or revocation of the license.

Sec. 6-41. Service of alcoholic beverages on patios or around swimming pool areas.

Any licensee may serve alcoholic beverages as authorized by their license on patios or around swimming pool areas adjacent to or connected with the main licensed premises. Said serving area shall be located so as not to be a nuisance; not readily visible from a church, school, daycare or playground.

ARTICLE II

LICENSES AND TAXES

Sec. 6-42. Applicability of article

The provisions of this article shall apply to the sale of alcoholic beverages.

Sec. 6-43. License required; renewal; transfer fee

No person shall engage in business as wholesaler, distributor, jobber or retailer of any alcoholic beverage in the corporate limits of the city without first having obtained from the city a license to do such business. Such license shall be issued by the city clerk, and shall first be approved by the city council at a regular meeting thereof, before the same shall be valid. Such license shall be renewed on the first day of October of each year thereafter. No reduction or proration of the fee for the license shall be allowed on account of not commencing its business on the first day of October, nor shall any rebate be allowed upon revocation, suspension, or surrender of such license before the expiration thereof. License issued under this article may not be assigned. In the event that fifty-one (51) percent of the ownership of a corporate license or partnership is sold or transferred to a person not previously an owner of the business and licensee during the license year, such sale or transfer shall be deemed to terminate the license issued under this article, and shall require a new license to be purchased and issued for the continuation of such business. Applications for the transfer of the location of any license issued under this article shall be administered as a new license, and the written application for such transfer shall be submitted with a transfer fee of fifty (\$50.00) dollars, which shall be refunded if the transfer is denied.

Sec. 6-44. Licensee qualifications

(1) It shall be unlawful for any person to engage in the on-premise retail sale of alcoholic beverages within the city without first obtaining a license as herein provided. No person shall be granted a license for the sale of alcoholic beverages within the city, unless such person operates a restaurant, hotel, restaurant-lounge, restaurant pub, private club-lounge, or lounge as defined by Section 6-1 this chapter or is granted other retail license as provided herein, and unless such person is duly licensed by the Alcoholic Beverage Control Board of the State of Alabama, and unless such person is licensed to do so by the city and conforms to all the regulations herein provided, and to all regulations promulgated by the Alcoholic Beverage Control Board of the State of Alabama, and unless such person pays all the license fees levied under this article. In addition, such person shall file written application on the form provided with the city clerk of the city prior to consideration of the application by the city council of the City of Elba. Licenses will be granted and issued by the city only to reputable individuals or to reputable corporations organized under the laws of the State of Alabama or duly qualified thereunder to do business in the State of Alabama, and then only when it appears that all officers and directors of the corporation are reputable individuals. In addition, no license shall be granted under this article if the establishment seeking such license is within the prohibited distance from any church building, public or private school building, or public playground. Such distance shall be set out and measured in a straight line as defined in Sec. 6-12.

(2) No license shall be approved by the city council for the retail sale of malt and brewed beverages or wine for off-premises consumption unless the business of the licensed establishment is at least sixty (60) percent in the sale of groceries, foodstuffs and/or general merchandise. The retail sales of groceries, foodstuffs and/or general merchandise shall constitute the principal business of the licensed establishment with the sale of malt or brewed beverages or wine being only on incidental part of the business.

than three (3) cases or seventy-two (72) bottles or cans of beer or other malt or brewed beverages shall be prima facie evidence that such beer or malt or brewed beverages are kept for sale or with the intent to sell, contrary to this section.

(d) As used in this provision, the term "case" means a box, containers or packaging containing twenty-four (24) or more bottles or cans and a "bottle" or "can" means a bottle or can of not more than sixteen (16) fluid ounces capacity.

Sec. 6-33. Sale of liquor by other than licensee or state store.

It shall be unlawful for any person, other than a liquor licensee or a state liquor store, to sell or offer for sale to a consumer, or to serve or dispense for reward to a consumer, or offer to serve or dispense for reward to a consumer, or have in possession or custody for any such purpose, any liquor or wine at any place in the city or in its police jurisdiction.

Sec. 6-34. Sale of liquor at other than licensed place or state store.

It shall be unlawful for any person, whether or not a liquor licensee, to sell or offer for sale to a consumer, or to serve or dispense for reward to a consumer, or to offer to serve or dispense for reward to a consumer, or have in possession or custody for any such purpose, any liquor or wine at any place in the city or in its police jurisdiction other than in a liquor licensed place or a state liquor store.

Sec. 6-35. Delivery of malt or brewed beverages for off-premises consumption generally; curb service prohibited.

A person holding a retailer's license for off-premises consumption of malt or brewed beverages shall deliver such beverages to the purchaser only within the retailer's place of business for which licensee has a license for off-premises consumption; curb service of any kind shall be unlawful.

Sec. 6-36. Packaging for off-premises consumption.

Malt or brewed beverages, when sold or delivered by the retailer for off-premises consumption, shall be contained in a sealed carton or sealed case, or wrapped in a package which is sealed or securely tied, the intent being that bottles or cans containing such beverages shall be entirely concealed and that access to such bottles or cans cannot be obtained without breaking the seal of such carton, case or package or untying the package.

Alcoholic beverages sold for off premises consumption shall be contained in a bag in order to conceal the bottles, cans, carton or container.

Sec. 6-37. Retailers not to purchase malt or brewed beverages from unqualified wholesalers.

It shall be unlawful for any retailer to purchase for resale or accept delivery of any malt or brewed beverages from any person unless such person has qualified to engage in the business of a wholesale distributor of malt or brewed beverages in this county, as required by the laws of the State of Alabama.

Sec. 6-38. Sale of disposition to intoxicated persons prohibited.

It shall be unlawful for any beer licensee or liquor licensee, or any servant, agent or employee of any such licensee, or for any other person to sell, furnish, give away or otherwise dispose of any malt or brewed

beverages, wine liquor, or any alcoholic or intoxicating beverage to any person visibly intoxicated.

Sec. 6-39. Limitations on Happy Hour and similar price reductions.

(1) It shall be unlawful for any licensee to:

- (a) Serve multiple drinks for a single price.
- (b) Establish a single retail price based upon the required purchase of two or more drinks.
- (c) Sell or otherwise furnish drinks before 10:00 a.m. or after 9:00 p.m. at a price which is reduced from the usual customary or established price charged for such drinks.
- (d) Sell or provide one person or group of persons drinks at prices less than those charged the general public for that day.

(2) The term "drink" or "drinks" is defined herein to mean any beverage containing any quantity of alcohol. "Multiple drinks" is defined to mean two or more drinks containing any quantity of alcohol or a single container which contains more than the normal quantity of alcohol for an individual drink in accordance with Alcohol Beverage Control Board Regulations.

(3) This section does not apply to legitimate, prearranged private parties, functions, or events where guest thereof are served in a room so designated and used exclusively thereof.

Sec. 6-40. Prohibition against gambling.

(1) It shall be unlawful:

- (a) For any person to knowingly advance or profit from unlawful gambling activities as a player.
- (b) For any person to knowingly advance or profit from unlawful gambling activities otherwise than as a player.
- (c) For any person to promote gambling by conspiring to advance or profit from gambling activities otherwise than as a player.

(2) A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

- (a) A slot machine.
- (b) Any other gambling device with the intention that it be used in the advancement of unlawful gambling activity.

(3) Any licensee, agent, member or employee thereof, violating any of the provisions herein, or allowing or permitting patrons to engage in said activities, shall subject the licensee to disciplinary action, including a fine, suspension or revocation of the license.

Sec. 6-41. Service of alcoholic beverages on patios or around swimming pool areas.

Any licensee may serve alcoholic beverages as authorized by their license on patios or around swimming pool areas adjacent to or connected with the main licensed premises. Said serving area shall be located so as not to be a nuisance; not readily visible from a church, school, daycare or playground.

During any ninety-day period, the gross receipts from the sales of groceries, foodstuffs and/or general merchandise shall constitute more than sixty (60) percent of the gross receipts. For the purpose and consideration of this paragraph, gasoline and fuel oil may be deducted from the gross receipts of the licensed business. This paragraph shall not be applicable to a "Class II lounge package store" or "private club."

(3) In addition, no license shall be granted under this article until after the required alcoholic beverage control license shall have been duly issued by the alcoholic beverage control board of the state.

Sec. 6-45. Presentation of application; application fee

- (a) All initial applications for a license shall be presented in writing at a regular meeting of the city council. Such application shall be upon the appropriate form supplied by the city clerk and shall be signed and verified by oath or affirmation by the owner, or in the case of a partnership, association or unincorporated enterprise, by a partner or member thereof; or in the case of a corporation by an executive officer thereof. The applicant shall deposit with the city clerk the amount of publication costs to be incurred hereunder, as required by Section 6-47, and a fifty (\$50.00) dollar filing fee, and the actual cost of a criminal background check.
- (b) An application seeking the consent and the approval of the city council shall contain all the information required by the appropriate form, for the classification of alcoholic beverage license being applied for. Failure to submit the information as prescribed therein shall render the application to the city void.

Sec. 6-46. Bond of applicant for certain license.

- (a) If the city council decides to approve a lounge retail liquor license, a club retail liquor license, a restaurant retail liquor license for a restaurant, the city council shall approve same only upon condition that the lounge, club, hotel, or restaurant licensee shall deliver to and maintain with the city a bond executed by the licensee and by some surety company authorized to do business in the city payable to the city in the sum of two thousand (\$2,000.00) dollars as liquidated damages and conditioned that the licensee will comply with the laws of the state and the ordinances, including, but not limited to, this article, of the city relating to a lounge retail liquor licensee, a club retail liquor licensee, a restaurant retail liquor licensee for a hotel, a restaurant retail liquor licensee for a restaurant, as the case may be.
- (b) The bond shall be a forfeiture or liquidated damages bond and not an indemnity bond. Such bond shall include an endorsement to the effect that it shall not be canceled without the consent of the city council. The city may declare the bond forfeited as liquidated damages in its full amount of two thousand (\$2,000.00) dollars upon the breach of any one (1) or more of the conditions. In lieu of the bond, such lounge club, hotel or restaurant licensee may deposit with the director of finance of the city cash in the amount of two thousand (\$2,000.00) dollars upon the same conditions and subject to forfeiture as set forth above. Failure by the city to declare the bond or deposit forfeited in the case of a breach of any one (1) or more of the conditions shall not operate as a waiver of the right to do so in the event of any subsequent breach of any one (1) or more of the conditions.

Sec. 6-47. Advertisement of fact of pending license; application for sale of alcoholic beverages and of hearing

- (a) Except as provided in subsection (c) below, in every case of application made to sell any alcoholic beverage at any location within the corporate limits of the city and its jurisdiction, in, addition to other advertisement required by law, the applicant shall, at applicant's own expense, post on the premises where the business or sale is to be conducted, continuously for a period of not less than seven (7) days prior to the consideration of the application by the city council, a posted notice of the pending application meeting the following minimum specifications: The notice shall be painted or printed in black letter three (3) inches or more in height against a white background on a board or metal sign having a surface of not less than six (6) square feet, shall be placed with the bottom of the sign not more than three (3) feet from the ground on the most conspicuous part of the premises facing the street, road or drive not more than ten (10) feet therefrom, and shall state clearly the nature and purpose of the application and the name of the person making the application. The sign to be posted on the proposed location shall read as below:

"I, _____ have made application to the City Council of the City of Elba for a _____ (on)(off) premises consumption, at this location, _____, Elba, Alabama.

(Applicant's Name)

- (b) Except as provided in subsection (c) below, all other requirements having been met, the city clerk will publish in the local newspaper a copy of the publication as stated below, which is the size shall be two (2) columns wide and two (2) inches in depth and which shall be bordered in heavy black lines. After advertisements have been published in three (3) consecutive publications, and a police survey report, the application will be placed on the agenda to be heard before the city council. Notice shall read as follows:

"I, _____ have made application of the City of Elba for a _____ (on)(off) premises consumption at this location, _____, Elba, Alabama. A public hearing will be held by the City Council in their regular meeting in the Council Chamber in City Hall at _____ p.m., Monday, _____, 2002.

- (c) The cost of publication must be paid by cash or certified funds to the city prior to publication. The cost of publication is non-refundable. The requirements for posting notice on the premises and publication of notice in the newspaper under subsections (a) and (b) above shall not apply to the following applicants:

- (1) Applicant for a retail table wine license for off-premises consumption who at the time of such application has a retail beer license for off-premises consumption.
- (2) Applicant for a retail wine license for on-premises consumption who at the time of the application has a retail beer license for on-premises consumption.

Sec. 6-48. Notice to adjacent occupants of hearing on certain applications

All applicants for a lounge retail liquor license, a club retail liquor license, a restaurant retail liquor license for a hotel, a restaurant retail liquor license for a restaurant or a restaurant pub shall certify to the city council that notice of the application stating the day and time it is to be heard and considered at said public hearing has been circulated to residents, real property owners, and businesses within five hundred (500) feet of the property sought to be licensed by leaving a copy of said notice with each such resident or business or

with some person over eighteen (18) years of age at the home of each such resident or at each such business at least one (1) week before the public meeting at which it is expected to be heard and considered by the city council.

Sec. 6-49. Denial and approval factors considered

In rendering a decision on each application, the city council shall consider, among others, the following factors:

- (1) The wishes and desires of the residents, real property owners, and businesses within five hundred (500) feet of the property for which a license is sought.
- (2) Character and reputation of the applicant, each partner, member, officer, member of board of directors, landlord and club manager.
- (3) The criminal court records of the applicant, each partner, member, officer, member of board of directors, landlord and club manager.
- (4) Location of premises for which a liquor license is sought and the number of establishments presently holding liquor license for lounges, clubs, hotels and restaurants whose place or places of business are within five hundred (500) feet of the property for which a liquor license is sought.
- (5) The compliance by applicant, each partner, member, officer, member of the board of directors, landlord and club manager with the laws of the state and ordinances of the city.
- (6) The city council may refuse to approve a liquor license for a club when it appears that the operation would inure to the benefit of individual members, officers, agents or employees of the club rather than to the benefit of the entire membership of the club, or the licensee shows intent to sell alcoholic beverages for off premises consumption on Sunday.
- (7) The truthfulness and veracity of all information contained within a license application.
- (8) Incorrect information or statements found on an application.
- (9) Any potential annoyance or disturbance to the neighboring property owner because of additional noise, additional traffic congestion or hazard, additional parking requirements, or additional litter or debris.
- (10) Any and all zoning ordinances.

Sec. 6-50. Application presented to City Council.

License shall not be finally approved or denied until the next regular meeting of the city council; however, any application may be held under advisement for a longer period. No initial license shall be issued except on approval of the city council in a regular meeting, and the city council may in such regular meeting direct that any renewal license, specifying the particular license, be withheld.

Sec. 6-51. Denial when previous license revoked.

Where it is in the public interest to do so, and where the health, welfare and safety of the general public requires it, the city council may, at its discretion, deny a municipal license application for the sale or storage of alcoholic beverages where the facility for which license application is made has, within one (1) year preceding the application, held a license for the sale or storage of alcoholic beverages, and the same having been repealed, suspended or revoked for the violation of state or local alcoholic beverage laws, ordinances or regulations.

Sec. 6-52. Levy of license fees.

In addition to all other taxes now imposed by law, any person prior to the sale of any alcoholic beverage and prior to receiving of a license from the city for such purpose shall pay to the city an annual license fee; which license fee is hereby fixed and shall be in the amounts indicated herein. Failure to continuously meet the requirements of a license specified, shall be sufficient reason for revoking the license.

(1)	Importer's license.....	\$ 250.00
(2)	Liquor wholesale license.....	500.00
(3)	Wholesale beer license.....	250.00
(4)	Wholesale wine license.....	275.00
(5)	Wholesale beer and wine license.....	375.00
(6)	Warehouse license.....	100.00
(7)	Lounge retail liquor license.....	650.00 - Class I
(8)	Restaurant retail liquor license.....	650.00 - Class II
(9)	Club liquor license:	
	Class I.....	1,000.00
	Class II.....	1,250.00
(10)	Retail table wine license (consumption off-premises).....	75.00
(11)	Retail table wine license (consumption on- or off-premises).....	75.00
(12)	Retail beer license (consumption on- or off-premises).....	75.00
(13)	Retail beer license (consumption off-premises).....	50.00
(14)	Special retail license fee:	
	30 days or less.....	100.00
	More than 30 days.....	250.00
(15)	Special events retail license.....	150.00

Sec. 6-53. Marking of licensed vehicles.

Each person making distribution sales or deliveries of alcoholic beverages in the city shall clearly display the company markings for license identification on the side panels of each vehicle making such delivery.

Sec. 6-54. Taxes-Levied.

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities as follows:

- (1) Upon every person engaged in the business of selling whiskey, wine or liquor at retail there is hereby levied an additional privilege or license tax to ten (10) percent of the gross purchases made by the licensee from the state alcoholic beverage control board or other wholesale dealer, other than the purchases of table wine.
- (2) Taxes on the sale of beer and malt beverages shall be the maximum allowed in accordance with Code of Ala. 1975, tit. 28, cg. 3, art. 5B, excise tax on beer.
- (3) Taxes on the sale of table wine are taxed the maximum allowed under Code of Ala. 1975, tit. 28, ch. 7, the Table Wine Act, and shall be deducted from the amount considered gross receipts considered hereunder.

Sec. 6-55. Reports and payment; delinquency penalty.

- (a) The tax levied under provisions of section 6-54 shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which sales are made. On or before the fifteenth day of each month after the tax herein provided shall take effect, every person upon whom the tax is hereby levied shall render to the city, on a form prescribed by the city, a true and correct statement showing the gross receipts of whiskey, wine or liquors, purchased during the preceding month, which report shall accompany payments of the tax herein levied.
- (b) The city shall receive a purchasing statement from the state alcoholic beverage store on the first of each month. Each licensee shall have until the fifteenth of the month to pay these taxes.
- (c) The tax imposed by section 6-54 shall be paid by each retail beer dealer to the wholesale dealer from whom the retail dealer purchases or otherwise acquires the retail stock, at the rates fixed on or before the fifteenth day of the month next succeeding the date of purchase by the retailer.
- (d) Any person who fails to pay the tax herein levied within the time prescribed, shall pay, in addition to the tax, a penalty of fifteen (15) percent of the amount of tax, together with the interest thereon, at the rate of one and one-half (1½) percent per month or fraction thereof, from the date on which the tax herein levied became payable, such penalty and interest to be assessed and collected as part of the tax.

Sec. 6-56. Collection from purchasers.

All persons subject to the provisions of the tax levied in section 6-54 may add the same to the sales price of the whiskey, wine or liquor sold, and collect from the purchasers, but this is not mandatory; the seller may pay the tax without collecting same from the purchaser.

Sec. 6-57. Records to be kept.

All persons subject to provisions of the tax levied in section 6-54 shall keep and preserve for a period of three (3) years all invoices, sales slips or evidences received from or issued by the state alcoholic beverage store or agency from whom purchases are made, which will be subject to examination at all reasonable times by authorized representatives of the city.

Sec. 6-58. Reporting delinquencies.

It shall be the duty and responsibility of the city clerk's office to inform the chief of police of the delinquent privilege taxes and license fees that are imposed by this chapter.

Sec. 6-59. Failure to pay license fee or tax.

It shall be unlawful for any person who is required to pay the license or privilege tax herein provided for to fail to pay the same at the time herein specified, and such offense shall be a continuing offense against the city and each day during which such person shall sell or store such beverages in the city during such default shall constitute a separate offense.

Sec. 6-60. Delinquency in paying tax-Liquor or wine.

If any amount of the license tax on liquor is not paid at or prior to the due date thereof, an additional tax equal to fifteen (15) percent of such amount shall be added thereto and paid by such retailer.

Sec. 6-61. Failure to comply.

The governing body will not consider any application in which the applicant has failed to comply with the requirements as enacted by this chapter.

Sec. 6-62. Information required from applicants for alcoholic beverage licenses.

1. Every applicant for a license, in addition to information and statements required under Title 28, Code of Alabama (1975), shall also give the City, as part of such application, the following:

- a. The name, date, place of birth, address, telephone number, race, gender, driver's license number, and social security number of every person who has any proprietary or profit interest in the licensed establishment, except in the case of public corporations, whose shares are traded on a recognized stock exchange.
- b. The true, correct, and complete criminal court record of all arrests and subsequent dispositions for the past ten years of such applicant and any other person having a proprietary or profit interest therein; and in the case of corporations, clubs and associations, of each officer and/or member of the board of directors of such corporation, club, or association. Minor vehicular offenses may be omitted; however, driving while under the influence and reckless driving cases shall be disclosed. In giving such information, there shall be included the name of the court(s) and the disposition of each matter.
- c. In the case of applications by corporations, clubs, and associations, the person(s) making such application shall certify to the correctness, truthfulness and completeness of the application and shall provide the City with their authority to proffer such application.
- d. An agreement by invitation from the licensee, allowing duly authorized agents of the ABC Board or other duly commissioned law enforcement officers of the state, county, or municipality in which the licensed establishment is located, to enter and search, without a warrant, the licensed premises or any building owned or occupied by the licensee in connection therewith, adjoining, adjacent to, or part of the curtilage thereof, whether used as a private dwelling or not, at any time.
- e. Evidence of primary source of funds, whether owned or borrowed, to be applied in the establishment or acquisition of the business.
- f. Evidence of ownership or lease of the real property where the licensee's business will be located, as follows:

1. If applicant owns property, a copy of the recorded deed as evidence of ownership.
2. If applicant has a contract to purchase property, a copy of the recorded sales contract.

2. Of applicant is leasing the property, a copy of the lease agreement, including information regarding:

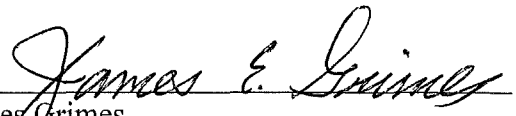
- a. Lessor's primary business;
- b. Lessor's involvement in any way with the alcoholic beverage business; and
- c. Any further interest in or connection with the licensee's business by the lessor.

- g. Such other information as may, at their discretion, be requested by the City or agents thereof.

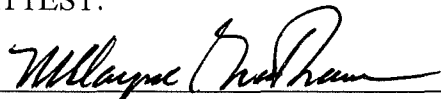
3. In the event any false, incorrect, or incomplete information or statements are found on an application for a license, the license is subject to denial, revocation, or other disciplinary action by the City, at its discretion, and no waiver, estoppel, or laches will run against the City, in connection with any false, incorrect, or incomplete information or statements made by an applicant on an application.

4. It shall be the prerogative of the City as part of the license application procedure to verify the truthfulness and veracity of all information contained within a license application. Verification may include, but not limited to, personal interviews and community comment, as well as criminal background information analysis through the Alabama Criminal Justice Information Center (ACJIC).

The ordinance being considered by unanimous consent of the City Council at a regular Council meeting of December 9, 2002 and there being 6 votes in favor and 0 votes opposed.


James Grimes
Mayor

ATTEST:


City Clerk

During any ninety-day period, the gross receipts from the sales of groceries, foodstuffs and/or general merchandise shall constitute more than sixty (60) percent of the gross receipts. For the purpose and consideration of this paragraph, gasoline and fuel oil may be deducted from the gross receipts of the licensed business. This paragraph shall not be applicable to a "Class II lounge package store" or "private club."

(3) In addition, no license shall be granted under this article until after the required alcoholic beverage control license shall have been duly issued by the alcoholic beverage control board of the state.

Sec. 6-45. Presentation of application; application fee

- (a) All initial applications for a license shall be presented in writing at a regular meeting of the city council. Such application shall be upon the appropriate form supplied by the city clerk and shall be signed and verified by oath or affirmation by the owner, or in the case of a partnership, association or unincorporated enterprise, by a partner or member thereof; or in the case of a corporation by an executive officer thereof. The applicant shall deposit with the city clerk the amount of publication costs to be incurred hereunder, as required by Section 6-47, and a fifty (\$50.00) dollar filing fee, and the actual cost of a criminal background check.
- (b) An application seeking the consent and the approval of the city council shall contain all the information required by the appropriate form, for the classification of alcoholic beverage license being applied for. Failure to submit the information as prescribed therein shall render the application to the city void.

Sec. 6-46. Bond of applicant for certain license.

- (a) If the city council decides to approve a lounge retail liquor license, a club retail liquor license, a restaurant retail liquor license for a restaurant, the city council shall approve same only upon condition that the lounge, club, hotel, or restaurant licensee shall deliver to and maintain with the city a bond executed by the licensee and by some surety company authorized to do business in the city payable to the city in the sum of two thousand (\$2,000.00) dollars as liquidated damages and conditioned that the licensee will comply with the laws of the state and the ordinances, including, but not limited to, this article, of the city relating to a lounge retail liquor licensee, a club retail liquor licensee, a restaurant retail liquor licensee for a hotel, a restaurant retail liquor licensee for a restaurant, as the case may be.
- (b) The bond shall be a forfeiture or liquidated damages bond and not an indemnity bond. Such bond shall include an endorsement to the effect that it shall not be canceled without the consent of the city council. The city may declare the bond forfeited as liquidated damages in its full amount of two thousand (\$2,000.00) dollars upon the breach of any one (1) or more of the conditions. In lieu of the bond, such lounge club, hotel or restaurant licensee may deposit with the director of finance of the city cash in the amount of two thousand (\$2,000.00) dollars upon the same conditions and subject to forfeiture as set forth above. Failure by the city to declare the bond or deposit forfeited in the case of a breach of any one (1) or more of the conditions shall not operate as a waiver of the right to do so in the event of any subsequent breach of any one (1) or more of the conditions.

Sec. 6-47. Advertisement of fact of pending license; application for sale of alcoholic beverages and of hearing

with some person over eighteen (18) years of age at the home of each such resident or at each such business at least one (1) week before the public meeting at which it is expected to be heard and considered by the city council.

Sec. 6-49. Denial and approval factors considered

In rendering a decision on each application, the city council shall consider, among others, the following factors:

- (1) The wishes and desires of the residents, real property owners, and businesses within five hundred (500) feet of the property for which a license is sought.
- (2) Character and reputation of the applicant, each partner, member, officer, member of board of directors, landlord and club manager.
- (3) The criminal court records of the applicant, each partner, member, officer, member of board of directors, landlord and club manager.
- (4) Location of premises for which a liquor license is sought and the number of establishments presently holding liquor license for lounges, clubs, hotels and restaurants whose place or places of business are within five hundred (500) feet of the property for which a liquor license is sought.
- (5) The compliance by applicant, each partner, member, officer, member of the board of directors, landlord and club manager with the laws of the state and ordinances of the city.
- (6) The city council may refuse to approve a liquor license for a club when it appears that the operation would inure to the benefit of individual members, officers, agents or employees of the club rather than to the benefit of the entire membership of the club, or the licensee shows intent to sell alcoholic beverages for off premises consumption on Sunday.
- (7) The truthfulness and veracity of all information contained within a license application.
- (8) Incorrect information or statements found on an application.
- (9) Any potential annoyance or disturbance to the neighboring property owner because of additional noise, additional traffic congestion or hazard, additional parking requirements, or additional litter or debris.
- (10) Any and all zoning ordinances.

Sec. 6-50. Application presented to City Council.

License shall not be finally approved or denied until the next regular meeting of the city council; however, any application may be held under advisement for a longer period. No initial license shall be issued except on approval of the city council in a regular meeting, and the city council may in such regular meeting direct that any renewal license, specifying the particular license, be withheld.

Sec. 6-51. Denial when previous license revoked.

Where it is in the public interest to do so, and where the health, welfare and safety of the general public requires it, the city council may, at its discretion, deny a municipal license application for the sale or storage of alcoholic beverages where the facility for which license application is made has, within one (1) year preceding the application, held a license for the sale or storage of alcoholic beverages, and the same having been repealed, suspended or revoked for the violation of state or local alcoholic beverage laws, ordinances or regulations.

Sec. 6-52. Levy of license fees.

In addition to all other taxes now imposed by law, any person prior to the sale of any alcoholic beverage and prior to receiving of a license from the city for such purpose shall pay to the city an annual license fee; which license fee is hereby fixed and shall be in the amounts indicated herein. Failure to continuously meet the requirements of a license specified, shall be sufficient reason for revoking the license.

(1)	Importer's license.....	\$ 250.00
(2)	Liquor wholesale license.....	500.00
(3)	Wholesale beer license.....	250.00
(4)	Wholesale wine license.....	275.00
(5)	Wholesale beer and wine license.....	375.00
(6)	Warehouse license.....	100.00
(7)	Lounge retail liquor license.....	650.00 - Class I
(8)	Restaurant retail liquor license.....	650.00 - Class II
(9)	Club liquor license:	
	Class I.....	1,000.00
	Class II.....	1,250.00
(10)	Retail table wine license (consumption off-premises).....	75.00
(11)	Retail table wine license (consumption on- or off-premises).	75.00
(12)	Retail beer license (consumption on- or off-premises).....	75.00
(13)	Retail beer license (consumption off-premises).....	50.00
(14)	Special retail license fee:	
	30 days or less.....	100.00
	More than 30 days.....	250.00
(15)	Special events retail license.....	150.00

Sec. 6-53. Marking of licensed vehicles.

Each person making distribution sales or deliveries of alcoholic beverages in the city shall clearly display the company markings for license identification on the side panels of each vehicle making such delivery.

Sec. 6-54. Taxes-Levied.

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities as follows:

- (1) Upon every person engaged in the business of selling whiskey, wine or liquor at retail there is hereby levied an additional privilege or license tax to ten (10) percent of the gross purchases made by the licensee from the state alcoholic beverage control board or other wholesale dealer, other than the purchases of table wine.
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- b. The true, correct, and complete criminal court record of all arrests and subsequent dispositions for the past ten years of such applicant and any other person having a proprietary or profit interest therein; and in the case of corporations, clubs and associations, of each officer and/or member of the board of directors of such corporation, club, or association. Minor vehicular offenses may be omitted; however, driving while under the influence and reckless driving cases shall be disclosed. In giving such information, there shall be included the name of the court(s) and the disposition of each matter.
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- d. An agreement by invitation from the licensee, allowing duly authorized agents of the ABC Board or other duly commissioned law enforcement officers of the state, county, or municipality in which the licensed establishment is located, to enter and search, without a warrant, the licensed premises or any building owned or occupied by the licensee in connection therewith, adjoining, adjacent to, or part of the curtilage thereof, whether used as a private dwelling or not, at any time.
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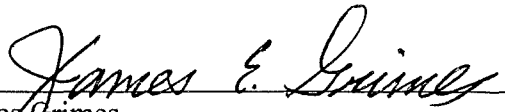
- a. Lessor's primary business;
- b. Lessor's involvement in any way with the alcoholic beverage business; and
- c. Any further interest in or connection with the licensee's business by the lessor.

- g. Such other information as may, at their discretion, be requested by the City or agents thereof.


3. In the event any false, incorrect, or incomplete information or statements are found on an application for a license, the license is subject to denial, revocation, or other disciplinary action by the City, at its discretion, and no waiver, estoppel, or laches will run against the City, in connection with any false, incorrect, or incomplete information or statements made by an applicant on an application.

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James Grimes
Mayor

ATTEST:


City Clerk