

Chapter 4 - ALCOHOLIC BEVERAGES ^[14]

ARTICLE I. - IN GENERAL

Sec. 4-1. - Definitions.

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

Adult entertainment establishment means any one (1) or more of the following:

- (a) *Adult bookstore*. An establishment having a significant portion of its stock in trade, books, magazines, printed material, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as "adult material." It may be presumed that a business has a "significant portion of its stock in trade" in adult material if any one (1) of the following criteria is satisfied:
 - (1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - (2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - (3) Twenty (20) percent or more of all inventory consists of adult material; or
 - (4) Twenty (20) percent or more of the retail floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public); or
 - (5) Twenty (20) percent or more of the gross sales (including rentals) result from the sale or rental of adult material; or
 - (6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.
- (b) *Adult business*. An establishment, other than those expressly specified in this section, where employees or patrons expose specified anatomical areas or engage in specified sexual activities.
- (c) *Adult motion picture theater*. An enclosed building with a capacity of fifty (50) or more persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- (d) *Adult minimotion picture theater*. An enclosed building, or enclosed or semi-enclosed room or booth within an enclosed building, with a capacity of less than fifty (50) persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified anatomical areas for observation by patrons therein.
- (e) *Adult motion picture arcade*. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

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- (f) *Adult video store.* An establishment having a significant portion of its stock in trade, video tapes, digital video devices (DVDs), movies or other reproductions, whether for sale or rent, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as "adult material." It may be presumed that a business has a "significant portion of its stock in trade" in adult material if any one (1) of the following criteria is satisfied:
- (1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - (2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - (3) Twenty (20) percent or more of all inventory consists of adult material; or
 - (4) Twenty (20) percent or more of the floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public);
 - (5) Twenty (20) percent of the gross sales (including rentals) result from the sale or rental of adult material; or
 - (6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.
- (g) *Erotic entertainment/dance establishment.* A nightclub, theater, or other establishment which features live performances by dancers, entertainers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas. These establishments are also regulated pursuant to [section 4-104](#) of the Code.

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

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

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than six (6) percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "malt beverage" does not include sake, known as Japanese rice wine.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Day means a period of time from 12:00 a.m. through 11:59 p.m.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than twenty-one (21) percent alcohol by volume including, but not limited to, all fortified wines.

Family means and includes any person related to the person indicated within the first degree of consanguinity or affinity, as determined according to civil law.

Fixed salary means the amount of compensation paid any member, officer, agent or employee of a bona fide private club as may be fixed 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 a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities that are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages.

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Full service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the health director and the police department.

Licensee means the individual to whom a license is issued or, in the case of partnership or corporation, all partners, officers and directors of the partnership or corporation.

Liter means metric measurement currently used by the United States.

Mainstream performance establishment means: theater, movie theatre, concert hall, museum, educational institution which regularly features live or other performances or showings which are not distinguished or characterized by an emphasis on the depiction, display, or description, or the featuring of specified anatomical areas or specified sexual activities in that the depiction, display, description, or featuring is incidental to the primary purpose of any performance. An adult entertainment establishment within the meaning of [section 15-401](#) of this Code is not a traditional or mainstream performance establishment within the meaning of this section.

Manufacturer means any maker, producer or bottler of an alcoholic beverage. "Manufacturer" 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.
- (c) In the case of wine, any vintner.

Package means a bottle, can, keg, barrel or other original consumer container.

Private club means any nonprofit association organized under the laws of this state that meets all of the following criteria:

- (a) Has been in existence at least one (1) year prior to the filing of its application for a license to be issued pursuant to this chapter.
- (b) Has at least seventy-five (75) regular dues-paying members.
- (c) Owns, hires or leases a building space within a building for the reasonable use of its members with all of the following:
 - (1) Full service kitchen and dining room space and equipment.
 - (2) A sufficient number of employees for cooking, preparing and serving meals for its members and guests.
- (d) 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.

Retailer, retail dealer, retail licensee or retail outlet means any person or other legal entity selling alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale.

Specified anatomical areas shall include any of the following:

- (a) Less than completely and opaquely covered human genitals or pubic region, buttocks, or female breasts below a point immediately above the top of the areola; or
- (b) Human male genitalia in a discernibly turgid state, even if completely or opaquely covered.

Specified sexual activities shall include any of the following:

- (a) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation or unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of

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the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism, zooerasty; or

- (b) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
- (c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- (d) Fondling or touching of nude human genitals, pubic regions, buttocks or female breasts; or
- (e) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
- (f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
- (g) Human excretion, urination, menstruation, or vaginal or anal irrigation.

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

Secs. 4-2—4-25. - Reserved.

ARTICLE II. - LICENSING AND TAXATION OF RETAIL SALES ^[15]

DIVISION 1. - GENERALLY

DIVISION 2. - LICENSES

DIVISION 3. - TAX ON SALES BY THE DRINK

DIVISION 1. - GENERALLY

Sec. 4-26. - Inspection of premises.

The police department, the development department, and/or the finance department may inspect establishments licensed under the alcoholic beverage ordinances of the city during the establishments hours of operation. Such inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law.

Sec. 4-27. - Agent for service of process.

All establishments licensed under this article must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the city in such form as the city prescribes.

Sec. 4-28. - Collection of delinquent sums.

If any person fails to pay the sum due under this article, the finance department shall issue an execution against the person so delinquent and such person's property for the amount of the delinquent fee or tax.

Sec. 4-29. - Audits.

If the finance department deems it necessary to conduct an audit of the records and books of a licensee under the provisions of this article, it shall so notify the licensee of the date, time and place of the audit.

Sec. 4-30. - Temporary permits.

Any nonprofit civic organization may be issued a temporary alcoholic beverage permit for two (2) events annually for a period of one (1) day per event. Such a permit shall have the effect of a license issued pursuant to the provisions of this article and shall authorize sale by the drink of such alcoholic beverages as are specified in the permit. The nonprofit civic organization must make application and pay a fee in the amount established by action of the City Council, a copy of which is on file with the clerk of the City. Such civic organizations shall comply with all the general ordinances and the licensing and regulations for a consumption-on-the-premises establishment, with the exception of having a full-service kitchen requirement.

Secs. 4-31—4-45. - Reserved.

DIVISION 2. - LICENSES

Sec. 4-46. - Required.

- (a) It shall be unlawful for any person to sell or possess for the purpose of sale any alcoholic beverage without a license from the city to sell or possess for sale alcoholic beverages, or to sell or make deliveries beyond the boundaries of the premises covered by the license.
- (b) The city license shall not be valid without current state license(s).
- (c) A retail establishment shall not have alcoholic beverages on the sales floor or in cooler unless the establishment has a current city alcoholic beverage license.

Sec. 4-47. - Sale in incorporated area of city; scope of license.

- (a) Alcoholic beverages may be sold in the incorporated area of the city under a license granted by the city council upon the terms and conditions provided.
- (b) All licenses herein shall be a mere grant or privilege to carry on the business during the term of the license subject to all terms and conditions imposed by this Code and state law.
- (c) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be revoked and annulled, and is subject to any future ordinances which may be enacted."

Sec. 4-48. - Separate license for each location.

A separate application for an alcoholic beverage license must be made for each location and a separate license must be issued.

Sec. 4-49. - Application.

- (a) All persons or entities desiring to sell alcoholic beverages shall make application on the form prescribed by the finance department.
- (b) The application shall include but not be limited to the following:
 - (1) The name and address of the applicant;
 - (2) The proposed business to be carried on;
 - (3) If a partnership, the names and residence addresses of the partners;
 - (4) If a corporation, the names and addresses of the officers;
 - (5) The name and address of the agent for service of process;
 - (6) The name and address of the manager;
 - (7) The names and addresses of all stockholders holding more than ten (10) or more percent or of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment; and
 - (8) Such other information as may be required by the finance department and/or the police department. If the manager changes, the applicant must furnish the finance department and the police department with the name and address of the new manager and other information as is requested within ten (10) days of such change.
- (c) All applications for a package liquor license, both original and renewals, must be accompanied by a full and complete statement relative to any and all interest in retail liquor stores. This shall include names and addresses of all persons possessing a legal ownership in the subject establishment, together with any interest that each person or that any family member of each person has in any other retail liquor store located in the city or any other place; the ownership of the land and building where such retail business is operated; the amount of rental paid for the land and building, the manner in which such rental is determined, and to whom and at what intervals the rental is paid; the names and addresses, by affidavit from the owner, lessor or sublessor of the land and building, of all persons having any whole, partial, beneficial or other legal interest in and to the land and building on and in which the retail liquor store is located; and any other information called for by the finance department to ensure compliance with the provisions of this division. Any change in relationship herein declared must be filed when made with the finance department and failure to so file within a period of ten (10) days after this change is made shall be grounds for the city to cancel the license.
- (d) All applicants shall furnish all data, information and records requested of them by the finance department or the police department and failure to furnish this data, information and records within thirty (30) days from the date of the request shall automatically dismiss, with prejudice, the application. By filing an application, applicants agree to produce for oral interrogation any person requested by the finance department or the police department and considered as being important in the ascertainment of the facts relative to the license. The failure to produce the person within thirty (30) days after being requested shall result in the automatic dismissal, with prejudice, of the application. An application shall not be considered complete until the applicant has furnished all data, information and records requested of them by the finance department or the police department.
- (e) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.

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- (f) In all instances in which an application is denied or dismissed with prejudice under the provisions of this section, the applicant may not reapply for a license for at least one (1) year from the final date of such denial.
- (g) The finance department shall provide written notice to any applicant whose application is denied under the provisions of this chapter within thirty (30) days of filing a properly completed application. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal to the alcohol beverage review board under the provisions of this division within fifteen (15) days from date of notice.

Sec. 4-50. - Persons eligible.

- (a) No license for the sale of alcoholic beverages shall be granted to any person or entity, where the majority of stock or partnership interests are controlled by individual(s) who are not citizens of the United States or aliens lawfully admitted for permanent residence. If, an entity is owned by other entities, then this requirement shall apply to the majority stockholders of the other entities to insure that a license is not granted to an ineligible person or entity.
- (b) No license for the sale of alcoholic beverages shall be granted to any person that has not attained the age of eighteen (18).
- (c) No retailer or consumption on premises license for the sale of distilled spirits shall be granted where the applicant is not a resident of the county or municipality within the state where the sales of distilled spirits is authorized.
- (d) If the applicant is a corporation or partnership, the provisions of this section shall apply to all stockholders with ownership of ten (10) or more percent, corporate officers and all partners. Where the majority stockholder is not an individual, the license shall be issued to jointly to the corporation and local manager of the business or to the registered agent designated pursuant to [section 4-27](#). In the case of a partnership, the license shall be issued to the partner(s) with the highest ownership percentage. In the case of a sole proprietorship, the sole proprietor shall be the applicant and the licensee.
- (e) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any felony within the last ten (10) years, has been on felony probation or parole within the last five (5) years, or released from prison on felony charges within the last five (5) years prior to filing an application. The term conviction includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.
- (f) No license for the sale of alcoholic beverages shall be granted to any person, or the spouse of any person, who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten (10) years prior to filing an application. The term "conviction" includes any adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime. The term "moral turpitude" shall include any violation that involves gambling, drugs, or a driving while intoxicated conviction in less than five (5) years from a prior driving while intoxicated conviction, and sale of alcohol with the exception of any violations of sections [4-106](#) or [4-108](#).
- (g) It shall be unlawful for any city employee of a department regulating alcoholic beverages, or the employee's spouse or minor children, to have any whole, partial or beneficial interest in any license to sell alcoholic beverages in the city.
- (h) No license for the sale of alcoholic beverages shall be granted to any person who has had any license issued under the police powers of the city previously revoked within two (2) years prior to the filing of the application.
- (i) No license for the sale of alcoholic beverages shall be granted to any person or entity that has violated this Code section within one (1) year prior to the filing of the application for such license.

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- (j) The finance department may decline to issue a license when any person having any interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth in this article for the licensee.
- (k) The inability of the finance department or the police department to verify any statement or information required to be disclosed or to be able to adequately conduct a full investigation of an applicant or a place of business due to foreign background, ties or interest or for any reason beyond the finance department or the police department's control shall be, in addition to all other grounds, cause for dismissal of any license, with prejudice and if any license has been granted shall be cause for revocation of the license.

Sec. 4-51. - Issuance of license and employee permits; adult entertainment employee permits; employee permit fees.

- (a) Before a license shall be granted under this division, the applicant shall comply with all rules and regulations adopted by the City Council regulating the sale of alcoholic beverages and each applicant for a license to sell alcohol shall pay a license fee in the amount to be established by action of the City Council.
- (b) A license will be issued or the issuance of a license will be denied within thirty (30) days after submission of a properly completed application. If a license is not issued or denied within the time frame specified herein, the license shall be automatically approved.
- (c) All employees of any licensed establishment must hold a permit. A permit fee shall be paid prior to the issuance of the permit the amount of which shall be established by action of the City Council. The conditions and procedures governing the issuance of alcohol permits for employees are set forth herein and in sections [4-127](#), [4-148](#) and [4-163](#) of this Code.
- (d) Any employee permit identified in this article will be issued or the issuance of a permit will be denied within thirty (30) days after submission of a properly completed application. A permit shall be valid for twelve (12) months from the date of issuance. If a permit is not issued or denied within the time frame specified herein, the permit shall be automatically approved.
- (e) Employees employed in an adult entertainment establishment where alcohol is consumed, whether for compensation or otherwise, shall be required to have a permit in addition to the alcohol permit provided for in [section 4-51\(c\)](#). A permit fee shall be paid prior to the issuance of the permit in the amount to be established by action of the City Council. The amount of that fee may vary for different categories of employee. The categories of adult entertainment employee permit, shall include, but are not limited to, dancers/performer, bartender/waiter, bouncer and others. Permits issued to dancers/entertainers and bartenders/waiters shall authorize the holder to work in such capacity in any adult entertainment establishment in the city. Accordingly, the fee for such category of employee will be fixed at a higher rate. For the purpose of this article, independent contractors, such as entertainers, employed or hired by an adult entertainment establishment, shall be licensed as employees regardless of the business relationship with the owner or licensee of any adult entertainment establishment. Each independent contractor shall be required to have and maintain his or her separate business license. Notwithstanding, this provision shall not apply to an independent contractor who performs accounting, legal, administrative, repair, or maintenance services for licensee.
- (f) Employees of adult entertainment establishments shall not be less than eighteen (18) years of age. No person requiring a permit may be employed by or work in an establishment as defined in Article I until such person has filed an application, paid the fee for and obtained a work permit from the police department.
 - (1) No person shall be employed in any capacity whatsoever, including but not limited to performers, entertainers, waiters, bouncers, bartenders, discjockeys, and musicians who has

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been convicted in this or any other city, county, state or in any federal court within five (5) years immediately prior to the application for employment for soliciting for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses or any charge relating to the manufacture or sale of intoxicating liquors or any felony or misdemeanor of moral turpitude, or for whom any outstanding warrant exists on which service has not been perfected. "Be employed" shall include all work done or services performed while in the scope of employment on the premises and elsewhere than on the premises, for compensation or otherwise. Notwithstanding, this provision shall not apply to an independent contractor who performs accounting, legal, administrative, repair or maintenance services for the licensee.

- (2) No person requiring a permit may be employed or work in any adult entertainment establishment until such person has filed an application, paid the fee for and obtained a work permit from the police department.
- (3) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, address, business name and address, date of birth with written proof thereof, and prior arrest record of the applicant. The police department shall make a complete search relative to any police record of the applicant. If there is no record of a violation of this section of the Code, or of any other section of the Code, the police department shall issue a permit to the applicant.
- (4) Any permit for employment issued hereunder shall expire twelve (12) months from the date of issuance unless earlier revoked or suspended. The police department may prescribe reasonable fees for certifying the eligibility for employment.
- (5) Employees holding permits issued pursuant to this chapter shall at all times during their working hours have said permits available for inspection at the premises.
- (6) Employees shall provide their employer with a legible copy of the same which copy shall be maintained by the employer as part of its business records.

Sec. 4-52. - Expiration; renewal.

- (a) All licenses granted under this division shall expire on December 31 of each year. A licensee who desires to renew the license shall file application, with the requisite fee heretofore provided, with the finance department on the form provided for renewal of the license for the ensuing year. All applications for renewal will be reviewed by the finance department. Licensees do not have a right to automatic renewal and must be in compliance with all rules and regulations for the granting of licenses. Applications for renewal must be filed before November 30 of each year; otherwise penalties and interest will be assessed. No renewal license shall be granted after December 31, but such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (b) All licenses granted under this division shall be for the full calendar year or for the number of months remaining in the calendar year. License fees shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. License fees are not refundable.
- (c) Any person renewing any license issued under this division who pays the required fee or any portion thereof after the date set by law for such payment shall pay, in addition to the annual fee, a late-payment penalty in addition to an assessment of interest at the rate specified by [section 2-112](#)
- (d) Failure to fully complete the renewal application, as required by the finance department will delay the renewal. The failure to furnish complete information within thirty (30) days after being requested shall result in automatic denial of the renewal.

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Sec. 4-53. - Transferability.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided in this section.
- (b) In case of the death of the licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of thirty (30) days from the date of death, or until expiration of the license, or until approval of a new license, whichever occurs first, provided however that the finance department must be notified of the licensee's death within ten (10) days of the death or the license shall automatically terminate on the eleventh day following the death of the licensee.
- (c) If a license is surrendered, or a licensee severs the association with the licensed establishment, the establishment may continue to sell alcoholic beverages for a period of thirty (30) days from the date of surrender, or from the date determined to be the date of severance, provided however that the finance department must be notified of the change within ten (10) days of the severance or the license shall automatically terminate on the eleventh day following the date of the severance. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section shall prohibit one (1) or more of the partners in the partnership holding a license to withdraw from the partnership in favor of one (1) or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license; nor shall it prohibit transfers of stock which do not result in any person increasing stock holdings to a total of ten (10) or more percent of any class of corporate stock, or any other entity having a financial interest in the entity.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided above, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued under this division automatically, without the necessity of a hearing.
- (g) Violation of this section shall result in revocation of the license being used and a fine of one thousand dollars (\$1,000.00) each on the new ownership and the old ownership. No license will be issued to the old or the new owner in the city for one (1) year from the date of the violation.

Sec. 4-54. - Display.

The city alcoholic beverage license shall at all times be kept plainly exposed to view at the place of business of the licensee. The finance director or designee shall ensure that all licenses for on-premises consumption of alcoholic beverages show:

- (1) Any special land use permit conditions imposed by the City Council for the establishment,
- (2) The allowed hours of operation for the location and
- (3) Written notice to the licensee that the license with the hours of operation must be posted in a public and conspicuous place within the licensee's establishment.

Sec. 4-55. - Suspension or revocation.

- (a) A license issued pursuant to the provisions of this division shall be suspended or revoked by the finance department if the licensee furnishes fraudulent or untruthful information in the original, renewal or transfer application for a license or omits information required in the original, renewal or

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transfer application for a license and for failure to pay all fees, taxes or other charges imposed under the provisions of this chapter.

- (b) Whenever the state revokes any permit or license to sell alcoholic beverages, the city license shall thereupon be automatically revoked. The police department, upon notice of such revocation from the finance department, shall take the necessary steps to see that signs are removed and that all alcoholic beverage sales cease.
- (c) Any licensed establishment that is found to be in violation of [section 4-104](#) shall be subject to immediate license revocation in addition to all other penalties.
- (d) The finance department shall revoke the Sunday sales license of any licensee where the establishment has been found in violation of the Sunday sales ordinance.
- (e) The finance department shall revoke the license of any licensee where the licensee has sold alcoholic beverages at a time other than the time permitted by the license.
- (f) The finance department shall revoke the license of any licensee whose license has been suspended three (3) or more times in any consecutive twenty-four-month period.
- (g) The finance department shall revoke the license for any premises where alcoholic beverages have been sold or distributed during a period of suspension.
- (h) The finance department may suspend or revoke the license of any establishment which does not meet the licensing qualifications set forth in this division at any time such knowledge becomes known to it.
- (i) An act or omission of a licensee, majority stockholder, general or managing partner, or employee of the licensee or licensed establishment which constitutes a violation of federal or state law or of any provision of this chapter will subject the licensee to suspension or revocation of the license in accordance with the provisions of this division when evidence is submitted to the finance department that the act or omission did occur, regardless of whether any criminal prosecution or conviction ensues. In the case of a violation by an employee, the licensee may submit evidence to the finance department that the acts of the employee were not known to or under reasonable circumstances should not have been known to the licensee, were not condoned by the licensee, and that the licensee has established practices or procedures to prevent the violation from occurring, and that the licensee has not failed to properly train or supervise employees to prevent the violation from occurring.
- (j) Subject to the provisions of this chapter, a violation of sections [4-106](#) or [4-108](#) by a licensee, majority stockholder, general or managing partner or employee of the licensee or licensed establishment shall result in the following action by the finance department:
 - (1) The first violation shall result in license suspension for a period of not less than two (2) days, which shall be scheduled to include a Friday and Saturday.
 - (2) The second violation within a consecutive twenty-four (24) month period shall result in license suspension for a period of not less than ten (10) days which shall be scheduled to begin on a Friday.
 - (3) The third violation within a consecutive twenty-four (24) month period shall result in license revocation.
- (k) The finance department shall revoke the license of any licensee where the establishment has been declared a public nuisance or has created a danger to public safety as determined by the police department.

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Sec. 4-56. - Alcoholic Beverage Appeals Hearing Officer.

- (a) The alcoholic beverage appeals shall be heard by a hearing officer who shall have the following duties:
 - (1) To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city;
 - (2) To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;
 - (3) To hear appeals from the decisions of the police department denying the issuance of permits pertaining to employment in a licensed establishment;
 - (4) To hear appeals from the decisions of the police department revoking or suspending an employee permit to an employee of a licensed establishment.
- (b) The alcoholic beverages appeals hearing officer shall be appointed by the Mayor and approved by the City Council.

Sec. 4-57. - Hearings.

- (a) No license or permit under Articles II and III shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter set forth, provided however that upon conviction or plea of nolo contendere by a court of competent jurisdiction that results in the suspension or revocation of a license or permit, the license or permit shall be deemed immediately revoked or suspended by the alcoholic beverage review board appealable pursuant to subsection (f).
- (b) The issuing department shall provide written notice to the applicant or licensee of the decision to deny, suspend or revoke the license or permit. Such written notification shall notify the applicant or licensee of the right of appeal. Any applicant or licensee who is aggrieved or adversely affected by a final action of the issuing department may have a review thereof by appeal to the alcoholic beverage hearing officer. Such appeal shall be by written petition filed with the city clerk within fifteen (15) days after the final decision or action by the city.
- (c) A hearing shall be conducted on each appeal within thirty days of the date of filing with the issuing department, unless a continuance of such date is agreed to by the appellant and the issuing department. The appellant at such hearing shall have the right to be represented by an attorney at the expense of the appellant, and to present evidence and cross-examine witnesses.
- (d) The findings of the alcoholic beverage hearing officer shall be forwarded to the relevant issuing department at the conclusion of the hearing. The issuing department shall have the duty to notify the appellant of the action of the action of the alcoholic beverage hearing officer.
- (e) The findings of the alcoholic beverage hearing officer shall not be set aside unless found to be any of the following:
 - (1) Contrary to law or ordinances;
 - (2) Unsupported by substantial evidence on the record as a whole;
 - (3) Unreasonable.
- (f) The findings of the alcoholic beverage hearing officer shall be final unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

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Sec. 4-58. - Service of notices.

For the purpose of this section, notice shall be deemed delivered when personally served or, when served by mail, within three (3) days after the date of deposit in the United States mail.

Sec. 4-59. - Consumption sales only.

Persons holding a license to sell distilled spirits for consumption on the premises shall not be permitted to sell liquor by the package or bottle, except as provided in [section 4-191](#).

Sec. 4-60. - Fee deposit and investigative and administrative costs.

- (a) Each application for a license to sell distilled spirits for consumption on the premises shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount established by the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven, to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the sum paid for investigation and administrative costs shall be retained.
- (b) Each application for a license to sell beer and wine for on-premises consumption shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount established by action of the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant withdraws the application prior to its being issued, the license fee shall be refunded but the sum paid for investigation and administrative costs shall be retained.
- (c) Each application for a license as a private club shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount established by the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven, to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the sum paid for investigation and administrative cost shall be retained.
- (d) Each application for a license to sell distilled spirits by the package shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount established by action of the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven, to defray investigative and administrative costs. If the application is denied and the license refused or if the applicant is denied a state license, the deposit representing the license fee shall be refunded, but the sum paid for investigation and administrative costs shall be retained.
- (e) Each application for a license to sell beer and wine by the package shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount established by the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven, to defray investigative and administrative costs. If the application is denied and the license refused, or if the applicant withdraws the application prior to issuance of the license, the license fee shall be refunded but the sum paid for investigation and administrative costs shall be retained.

Secs. 4-61—4-70. - Reserved.

DIVISION 3. - TAX ON SALES BY THE DRINK ^[16]

Sec. 4-71. - Definitions.

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

Agent means that person designated by a licensee in the application for a permit to sell alcoholic beverages by the drink in the city.

Alcoholic beverage means any beverage containing alcohol obtained by distillation including rum, whiskey, gin and other spirituous liquors by whatever name called; but not including malt beverages, fermented wines or fortified wines.

Drink means any alcoholic beverage served for consumption on the premises which may or may not be diluted by any other liquid.

Licensee means any person who holds a license or permit from the city to sell alcoholic beverages by the drink.

Monthly period means the calendar month of the year.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

Purchase price means the consideration received for the sale of alcoholic beverages by the drink valued in money, whether received in cash or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.

Purchaser means any person who orders and gives present or future consideration for any alcoholic beverage by the drink.

Tax means the tax imposed by this division.

Sec. 4-72. - Imposed; rate.

There is imposed and levied upon every sale of an alcoholic beverage purchased by the drink in the city a tax in the amount of three (3) percent of the purchase price of such beverage.

Sec. 4-73. - Purchaser's receipt; credit or deferred payment.

Every licensee for the sale of alcoholic beverages by the drink operating a place of business in the city shall maintain detailed sales records indicating each transaction by beverage and food served, its price and total. Where the charges for food and drink are satisfied by credit or deferred payment, the

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payment of the tax to the licensee may be deferred in a like manner; however, the licensee shall be liable therefor at the time and to the extent that such credits are incurred.

Sec. 4-74. - Liability for tax; authority to collect.

Every licensee or the licensee's agent shall collect the tax herein imposed from purchasers of alcoholic beverages by the drink sold within the licensee's licensed premises. Such licensee or agent shall furnish such information as may be requested by the finance department to facilitate the collection of the tax.

Sec. 4-75. - Determinations, returns and payments.

- (a) *Due date of taxes.* All taxes collected by any licensee or agent under this division shall be due and payable to the finance department monthly on or before the twentieth day of every month next succeeding each respective monthly period.
- (b) *Return; limit of filing; persons required to file; execution.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the finance department in such form as the finance department may prescribe by every licensee or agent liable for the payment of tax.
- (c) *Contents of return.* All returns shall show the gross receipts from the sale of alcoholic beverages by the drink, amount of tax collected or authorized due for the related period, and such other information as may be required by the finance department.
- (d) *Delivery of return and readmittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the finance department.
- (e) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. tit. 48, chap. 8, art. 1 [§ 48-8-1 et seq.].

Sec. 4-76. - Deficiency determinations.

- (a) *Recomputation of tax.* If the finance department is not satisfied with the return or returns of the tax or the amount of the tax to be paid to the finance department by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One (1) or more than one (1) deficiency determination may be made of the amount due for one (1) or more than one (1) monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by [section 2-112](#). Interest shall be assessed for each month or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the finance department may offset overpayments, for another period, against penalties, and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in [section 4-77](#), subsection (c).
- (d) *Penalty for negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, the penalty amount specified in [section 2-112](#) shall be added to the amount of the deficiency.

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- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provision of this division or other authorized rules and regulations, a penalty of twenty-five (25) percent of the deficiency shall be added thereto.
- (f) *Notice of determination.* The finance department shall give to the licensee written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be pursuant to O.C.G.A. § 9-11-4 and shall be addressed to the licensee at the licensee's address as it appears in the records of the city or county. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States Post Office.
- (g) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of every month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period expires last.

Sec. 4-77. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any licensee fails to make a return, the finance department shall make an estimate of the amount of the gross receipts of the licensee or, as the case may be, of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is in or may come into the possession of the finance department. Upon the basis of this estimate, the finance department shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to ten (10) percent thereof. One (1) or more determinations may be made for one (1) or for more than one (1) period.
- (b) *Manner of computation; offsets; interest.* In making a determination, the finance department may offset overpayments for a period or penalties against penalties and/or interest on underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified in [section 2-112](#). Interest shall be assessed for each month, or fraction thereof from the close of the monthly period in which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure to file a return is due to fraud or an intent to evade this division or rules and regulations, penalties shall be assessed in accordance with [section 2-112](#)
- (e) *Notice; manner of service.* Promptly after making a determination, the finance department shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 4-78. - Penalties and interest for failure to pay tax.

Any licensee who fails to pay the tax to the city, or fails to pay any amount of such tax required to be collected and paid to the city, within the time required, shall pay a penalty of ten (10) percent of the tax, or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in [section 4-77](#), subsection (c).

Sec. 4-79. - Collection of tax; security deposit; refunds.

- (a) The finance department, whenever deemed necessary to ensure compliance with this division, may require any person subject hereto to deposit such security as the department may determine. The

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amount of the security shall be fixed by the department, shall be the greater of twice the person's estimated average liability for the period for which the return was filed, determined in such a manner as the department deems proper, or ten thousand dollars (\$10,000.00). The amount of the security may be increased by the department subject to the limitations herein provided. The department may sell the security at public auction, with the approval of the City Council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against the person which remains unpaid, the finance department may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the finance department consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall within five (5) days after receipt of the notice advise the finance department of all these credits, other personal property, or debts in their possession, under their control or owing by them.
- (c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the finance department may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this division sells out the business or quits the business, the successors or assigns shall withhold sufficient of the purchase price to cover the tax liability until the former owner produces a receipt from the finance department showing that same has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the finance department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the finance department of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (f) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be offset as provided in [section 4-76](#), subsection (c), or it may be refunded, provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the finance department within three (3) years from the date of payment. The claim may be audited and shall be made on forms provided by the finance department. If the claim is approved by the finance department and the City Council, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid, and the balance may be refunded to this person, or such person's administrators or executors.

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Sec. 4-80. - Administration.

- (a) The finance department shall administer and enforce the provisions of this division.
- (b) The finance department may make and publish reasonable rules and regulations not inconsistent with this division or other laws of the city, county and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of taxes hereunder.
- (c) Every licensee for the sale of alcoholic beverages by the drink in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the finance department may require.
- (d) The finance department may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.
- (e) In administration of the provisions of this division, the finance department may require the filing of reports by any person or class of persons having possession or custody of information relating to sales of alcoholic beverages which are subject to the tax. The reports shall be filed with the finance department when required by the department and shall set forth the price charged for each sale, the date of each sale and such other information as the department may require.
- (f) The finance department shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in the case of judicial proceedings or other proceedings necessary to collect the tax hereby levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 4-81. - Revocation or suspension of license.

The failure to timely pay the tax imposed by this division for three (3) consecutive months or four (4) times in a twelve-month period shall render the dealer or person liable therefor subject to suspension of the alcoholic beverage license for ten (10) consecutive days beginning on a Friday. The failure to timely pay the tax imposed by this section six (6) times within a twelve-month period shall render the dealer or person liable therefor subject to revocation of the alcoholic beverage license.

Secs. 4-82—4-100. - Reserved.

ARTICLE III. - OPERATIONAL RULES FOR RETAILERS ^[17]

DIVISION 1. - GENERALLY

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Sec. 4-101. - Posting of regulations.

- (a) All licensees under this chapter shall post in a prominent location on licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage or intoxicated persons.
- (b) Each such sign shall be of a size and configuration approved by the police department, and shall include either the language of the applicable sections, or summaries approved by the police department.
- (c) The police department may design and have printed approved signs, which shall be made available to licensees at a price to be established by the police department.

Sec. 4-101.1. - Location restrictions.

- (a) No person knowingly and intentionally may sell or offer to sell at retail, except as allowed under subsection (b):
 - (1) Any wine or malt beverages within one hundred (100) yards of any school building, school grounds, educational facility, college campus or adult entertainment establishment.
 - (2) Any distilled spirits in or within two hundred (200) yards of any residence or church or within two hundred (200) yards of any school building, school grounds, educational building, educational facility, college campus or adult entertainment establishment.
 - (3) Any distilled spirits, wine or malt beverages within two hundred (200) yards of an alcoholic treatment center owned and operated by this city, this state or any county or municipal government therein.
- (b) No person knowingly and intentionally may sell or offer to sell for consumption on the premises, except as allowed under subsection (h):
 - (1) Any wine or malt beverages within one hundred (100) yards of any school, school grounds, educational facility or college campus;
 - (2) Any distilled spirits in or within two hundred (200) yards of any church or within two hundred (200) yards of any school building, school grounds, educational facility or college campus;
 - (3) Any distilled spirits, wine or malt beverages within two hundred (200) yards of an alcoholic treatment center owned and operated by this city, this state or any county or municipal government therein.
- (c) The school building, school grounds, college campus, educational facility or educational building referred to in this section applies only to state, county, city, church school, day care, kindergarten or buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state.
- (d) For the purpose of this section, distance shall be measured by the most direct route of travel on the ground. Every license application shall include a scale drawing of the location of the proposed premises, showing the distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.
- (e) No license in effect as of April 30, 1998, shall be revoked before its date of expiration or renewal or transfer denied by reason of the method of measurement set out in this section, if the license was granted in reliance on another method of measurement. No application for a license shall be denied by reason of the method of measurement set out in this section if a prior license for the same location was in effect on April 30, 1998. No application for a license or renewal shall be denied by

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reason of the method of measurement set out in this section, if such application is pending on April 30, 1998.

- (f) Where an existing licensed location is interfered with by government action under the power of eminent domain, and not by a voluntary act of the licensee, the licensed use may relocate elsewhere on the property, and the new building site will be treated as an existing non-conforming use eligible for license renewal for purposes of the distance requirements of this section.
- (g) RESERVED
- (h) The distance restrictions contained in subsection (b) do not apply to a restaurant as that term is defined in [chapter 27](#) of this Code, if the following conditions are satisfied:
 - (1) The restaurant must be located on property bearing the zoning district classification pedestrian community 1 ("PC-1"), pedestrian community 2 ("PC-2"), pedestrian community 3 ("PC-3"), or office-commercial-residential ("OCR"), as those terms are defined in [chapter 27](#) of this Code; or
 - (2) The restaurant must be located on property within an overlay district regulated in [chapter 27](#) of this Code, except restaurants, if any, located in residential infill overlay districts as defined in [chapter 27](#) of this Code; and
 - (3) Restaurants located in zoning districts identified in subsections (h)(1) and (2) that desire to offer alcoholic beverages for consumption on premises shall be situated at least fifty (50) feet from any pre-existing single-family detached dwelling as that term is defined in [chapter 27](#) of this Code. This fifty-foot buffer shall be measured from the property line of the single-family detached dwelling to the side wall of the restaurant closest to that property line; and
 - (4) The distance restrictions contained in subsection (b) shall continue to apply to nightclubs and late-night establishments as those terms are defined in [chapter 27](#) of this Code. The distance restrictions contained in subsection (b) shall continue to apply to restaurants, if any, located in residential infill overlay districts as defined in [chapter 27](#) of this Code.

Sec. 4-102. - Age restriction for employees in licensed establishments.

- (a) No person under the age of eighteen (18) years shall be employed in or about the premises of any establishment licensed to sell alcoholic beverages at retail, nor shall any person under the age of eighteen (18) years sell, take orders for, or deliver alcoholic beverages.
- (b) Subsection (a) of this section shall not be construed to apply to establishments licensed for retail sale of beer and/or wine by the package, where such sales constitute less than fifty (50) percent of the gross revenue of the establishment; provided, however, it shall be unlawful for any person under the age of eighteen (18) years who is employed by such an establishment to sell or take orders for alcoholic beverages. Nothing in this subsection shall be construed to discriminate against or impede the employment of any person under eighteen (18) years of age.
- (c) It is unlawful for any person under the age of eighteen (18) years to work as an entertainer in any establishment licensed hereunder. An entertainer shall include, but is not limited to, live performances by topless and/or bottomless dancers or strippers whose performances are characterized by an emphasis on specified sexual activities or specified anatomical areas as defined in [Chapter 15](#), Adult Entertainment Establishments.

Sec. 4-103. - Advertising.

- (a) Each licensee for the retail sale of liquors hereunder, except consumption-on-the-premises establishments, shall have printed on a front window or entrance of the licensed premises the name of the licensed establishment together with the inscription "City of Brookhaven Retail License No. _____" in uniform letters not less than four (4) nor more than eight (8) inches in height.

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- (b) Each retail licensee, except consumption-on-the-premises establishments, shall have conspicuously displayed within the interior of the licensed premises not less than four (4) copies of a printed price list of the liquors offered for sale or the licensee may have the price placed on the bottles or on the front of the shelf where liquors are exhibited for sale.

Sec. 4-104. - Prohibited types of entertainment, attire and conduct.

The following types of entertainment, attire and conduct are prohibited upon any premises licensed to sell, serve or dispense alcoholic beverages:

- (1) The employment or use of any person, in any capacity, in the sale or service of alcoholic beverage while such person is unclothed or in such attire, costume or clothing as to expose to view less than completely and opaquely covered human genitals or pubic region, buttocks, or female breasts below a point immediately above the top of the areola, human male genitalia in a discernibly turgid state, even if completely or opaquely covered.
- (2) Live entertainment where any person appears in the manner described in paragraph (1) of this section or where such person(s) perform(s) any of the following act(s) or simulates any of the following:
 - a. Sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism, zooerasty; or
 - b. Clearly depicts human genitals in a state of sexual stimulation, arousal or tumescence; or
 - c. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
 - d. Fondling or touching or nude human genitals, pubic regions, buttocks, or female breasts; or
 - e. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; or
 - f. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
 - g. Human excretion, urination, menstruation, vaginal or anal irrigation.
- (3) The holding, promotion, sponsoring, or allowance of any contest, promotion, special night, event, or any other activity where patrons of the licensed establishment in paragraphs (1) and (2) above; provided however, that nothing contained in this section shall apply to a traditional or mainstream performance establishment which derives less than twenty (20) percent of its gross annual income from the sale of alcoholic beverages.

Gross annual income from the sale of alcoholic beverages for the purposes of this section shall be based on the gross income from the sale of alcoholic beverages for the twelve-month period immediately preceding the licensed year for which an alcohol license is to be issued. In the event the establishment has not been licensed to sell alcoholic beverages for a twelve-month period immediately preceding the year for which an alcohol license is sought, gross annual income shall be based on the average monthly gross income for the preceding months during which the establishment had an alcoholic beverage license. In the event that an applicant is a new establishment, it shall complete a form and an affidavit furnished by the finance department showing projected anticipated gross income and anticipated gross income from the sale of alcoholic beverages. A temporary license for no more than three (3) months shall be issued by the finance department for such establishments if such establishments otherwise qualify for a license under the provisions of this chapter. At the expiration of the temporary license period,

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said establishment must demonstrate gross income of less than twenty (20) percent in the preceding three (3) months from the sale of alcoholic beverages. In the event that such business establishes the gross income from the sale of alcoholic beverages as required under this section, and otherwise meets all qualifications for a license a new temporary license will be issued for the remainder of the calendar year.

The finance department may, at any time, require that a licensed mainstream performance establishment obtain an audit prepared by a certified public accountant at the licensee's expense, to ensure compliance. If an audit reveals incorrect, incomplete, or misleading information was submitted, then the permit issued pursuant to this section shall be automatically revoked by the finance department.

Sec. 4-105. - Sales on days of national or state elections.

Licensees may open their establishments for the sale of alcoholic beverages on any election day, except within two hundred (200) yards of any polling place.

Sec. 4-106. - Failure to require and properly check identification.

- (a) It is unlawful not to require and properly check identification to ensure an underage person is not sold, served or possesses alcoholic beverages while in a licensed establishment. In this section "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, and giving such person's date of birth and includes, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.
- (b) Licensee must have written policies and procedures and train, instruct and supervise employees to insure compliance with this section.

Sec. 4-107. - Retailer to purchase from licensed wholesaler only.

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

Sec. 4-108. - Happy hour promotions.

- (a) No licensee under this chapter or employee or agent of a licensee shall engage in any of the following practices in connection with the sale or other disposition of alcoholic beverages for consumption on the premises:
 - (1) The giving away of any alcoholic beverage in conjunction with the sale of any other alcoholic beverage.
 - (2) The sale of two (2) or more alcoholic beverages for a single price, including the sale of all such beverages a customer can or desires to drink at a single price.
 - (3) Selling, offering to sell, or delivering to any person or persons any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided nothing contained herein shall be construed to prohibit reducing the price of a drink or drinks by up to one-half the price customarily charged.

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- (4) Requiring or allowing 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, by any one (1) person.
 - (5) Increasing the volume of alcoholic beverage contained in a drink without proportionately increasing the price customarily charged for such beverage.
 - (6) Selling, offering to sell, or delivering to any person or persons, any alcoholic beverage made with more than three (3) ounces of distilled spirits.
 - (7) Selling offering to sell, or delivering to any person, any beer or wine in a container of more than twelve (12) ounces or its metric equivalent.
- (b) It is the intent of this section to prohibit activities typically associated with promotions referred to as "happy hour."
- (c) In this section "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

Sec. 4-109. - Locations where sales by the drink permitted; entrance to establishment.

No distilled spirits may be sold by the drink for consumption on the premises where sold except in eating establishments regularly serving prepared food, with a full-service kitchen prepared to serve food every hour they are open. When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly used interior portion of the primary use structure.

Sec. 4-110. - Certain organizations exempt from food establishment requirements.

Veterans' organizations, fraternal organizations and other nonprofit organizations currently having tax-exempt status under either the United States Internal Revenue Code or the O.C.G.A. tit. 47, ch. 7 [§ 48-71-1 et seq.] shall not be required to operate a food establishment serving prepared food. However, any such organization selling or dispensing alcoholic beverages shall be subject to all ordinance regulations dealing with general licensing and consumption-on-the-premises establishments.

Secs. 4-111—4-125. - Reserved.

DIVISION 2. - ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF DISTILLED SPIRITS ⁽¹⁸⁾

Sec. 4-126. - Hours of sale and operation.

Distilled spirits shall be sold and delivered to the customer for consumption on the premises during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by [section 4-128](#)

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Sales and deliveries during all other hours are prohibited. There shall be no consumption on the premises after prohibited hours have been in effect for one-half ($\frac{1}{2}$) hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one (1) hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4-127. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer, wine distilled spirits on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license under this chapter until such person has been fingerprinted or cleared by the police department and a permit issued indicating that such person is eligible for employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include the applicant's name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, address, telephone number, the applicant's social security number, the date of birth with written proof thereof, and prior arrest record of applicant, though the fact of an arrest record shall be used for investigative purposes only and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The police department shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the police department shall issue a permit to the employee, stating that the person fingerprinted or cleared is eligible for employment. If it is found that the person fingerprinted is not eligible for employment, the police department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the police department or the finance department.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee under this chapter shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permitholder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the police department.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the police department.

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- (10) It shall be the responsibility of each licensee to provide all new employees at the time of their employment, and all employees annually, with an orientation and training on this Alcoholic Beverage Ordinance. Failure of the employee to participate shall not be a defense for an employer whose worker or agent violates any provisions of this ordinance; and provided that a licensee shall keep a record of such orientation and training, which shall be subject to inspection.

Sec. 4-128. - Sunday sales.

- (a) Licensed establishments deriving a minimum of fifty (50) percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least fifty (50) percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday. Failure to adhere to these standards shall result in the automatic revocation or denial of a Sunday sales permit by the finance department.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the finance department. The finance department may, at anytime, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the finance department. No later than March 31st of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the finance department not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4-129. - Open area and patio sales.

No consumption and/or sale of distilled spirits shall be allowed in open areas and patios unless first permitted and approved by the finance department. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including but not limited to regulations pertaining to maximum capacity, ingress and egress.

Secs. 4-130—4-145. - Reserved.

DIVISION 3. - ESTABLISHMENTS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER AND WINE ^[19]

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Sec. 4-146. - Types of retail establishments.

- (a) No beer or wine shall be sold for consumption on the premises where sold except in eating establishments having a full-service kitchen prepared to serve food every hour they are open. These establishments must be located in zoning districts which permit restaurants and drive-in restaurants as conforming uses or where these eating establishments are incidental to a hotel or motel.
- (b) A golf course within a planned development, as authorized by the DeKalb County 1970 zoning ordinance, as amended, a stadium facility during the playing of professional athletic competitions, and a licensed or leased athletic complex within a park owned by the City of Brookhaven, may be issued a beer and wine consumption-on-the-premises license without meeting the full-service kitchen requirement. No license may be issued for use at a park or stadium at which the consumption of alcohol is not permitted under sections [19-30\(c\)](#) or [4-101.1](#) of this Code.

Sec. 4-147. - Hours of sale and operation.

Beer and/or wine shall be sold and delivered to the customer for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by [section 4-149](#)

Sales and deliveries during all other hours are prohibited. There shall be no consumption on the premises after prohibited hours have been in effect for one-half (½) hour. All licensed establishments must close their premises to the public and clear their premises of patrons within one (1) hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to the public until 9:00 a.m. or thereafter.

Sec. 4-148. - Employees.

The following provisions apply to all establishments holding a license for consumption of beer and/or wine on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the police department and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.
 - b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.

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- (4) The police department shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the finance department or the police department.
- (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) If any permitholder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the police department.
- (9) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the police department.

Sec. 4-149. - Sunday sales.

- (a) Licensed establishments deriving a minimum of sixty (60) percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least sixty (60) percent of their total annual gross income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday. Failure to adhere to these standards shall result in the automatic revocation or denial of a Sunday sales permit by the finance department.
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the finance department. The finance department may, at anytime, require that the licensee obtain an audit prepared by a certified public accountant, at the licensee's expense, to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the finance department. No later than March 31st of the license year, licensee shall submit a report on monthly sales by category for the prior calendar year.
- (c) All annual permit renewals shall be filed with the finance department not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.
- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4-150. - Open area and patio sales.

No consumption and/or sale of beer and wine shall be allowed in open areas and patios unless first permitted and approved by the finance department. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

Secs. 4-151—4-160. - Reserved.

DIVISION 4. - PRIVATE CLUBS ^[20]

Sec. 4-161. - Generally.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.

Sec. 4-162. - Hours of sale and operation.

Alcoholic beverages shall be sold and delivered to patrons for consumption on the premises only during the following hours:

- (a) Monday through Friday hours are from 9:00 a.m. until 3:55 a.m. of the following day.
- (b) Saturday hours are from 9:00 a.m. until 2:55 a.m. on Sunday.
- (c) Sunday hours are from 12:30 p.m. until 2:55 a.m. on Monday as permitted by [section 4-164](#)

Sales and deliveries during all other hours are prohibited. There shall be no consumption on the premises after prohibited hours have been in effect for one-half (½) hour. All licensed establishments must close their premises and clear their premises of patrons within one (1) hour after the time set by this chapter for discontinuance of the sale of alcoholic beverages on the premises and shall not reopen their premises to patrons until 9:00 a.m. or thereafter.

Sec. 4-163. - Employees.

The following provisions apply to all private clubs holding a license for consumption of alcoholic beverages on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the police department and a permit issued indicating that such person is eligible for employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells, serves or dispenses alcoholic beverages.

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- b. Nonalcoholic beverage permit, which shall be issued to a person whose employment includes but is not limited to host, hostess, doorperson and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
 - (4) The police department shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the police department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the police department shall not issue a permit to the employee.
 - (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the police department.
 - (6) This section does not apply to employees whose duties are limited solely to those of a busperson, cook or dishwasher.
 - (7) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
 - (8) If any permitholder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the police department.
 - (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the police department.

Sec. 4-164. - Sunday sales.

- (a) Licensed establishments deriving a minimum of sixty (60) percent of their total annual gross food and beverage sales from the sale of prepared meals or food, or licensed establishments deriving at least sixty (60) percent of their total annual income from the rental of rooms for overnight lodging, are authorized to apply for a Sunday sales permit to sell and serve alcoholic beverages, malt beverages and wine by the drink from 12:30 p.m. on Sunday until 2:55 a.m. of the following Monday. (See [section 4-128](#)) Failure to adhere to these standards shall result in the automatic revocation or denial of a Sunday sales permit by the finance department. No later than March 31st of the license year, licensee shall submit a [report on monthly sales by category for the prior calendar year.]
- (b) Applicants for a Sunday sales permit shall complete a form and affidavit furnished by the finance department. An audit may be required at any time to ensure compliance. If an audit reveals that incorrect, incomplete or misleading information was submitted on and/or with the Sunday sales form and/or affidavit, then, the permit shall be automatically revoked by the finance department.
- (c) All annual permit renewals shall be filed with the finance department not later than November 30 of the year preceding the license year for which the permit is to be issued. All renewals are subject to audit prior to being renewed to ensure compliance with this chapter.
- (d) Sunday sales permits may be granted for the full calendar year or for the number of months remaining in the calendar year. The permit fee shall be prorated based on the number of months remaining in the calendar year; partial months shall be counted as a full month. Fees are not refundable and permits shall not be transferable.

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- (e) Establishments which qualify for a Sunday sales license are authorized to apply for a temporary Sunday sales permit if they desire to open for special events or holidays. The temporary permit shall be valid for one (1) calendar month and partial months shall be counted as a full month. Licensees must apply thirty (30) days in advance of the issuance date.

Sec. 4-165. - Open area and patio sales.

No consumption and/or sale of distilled spirits or beer or wine shall be allowed in open areas and patios of private clubs unless first permitted and approved by the finance department. The department shall prepare such appropriate regulations as to ensure the safe and orderly operation of these establishments, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

Secs. 4-166—4-175. - Reserved.

DIVISION 5. - PACKAGE STORES

Part A. - General Provisions

Secs. 4-176—4-190. - Reserved.

Part B. - Distilled Spirits [\[21\]](#)

Sec. 4-191. - Types of establishments where retail sale permitted.

- (a) No distilled spirits by the package shall be sold at retail except in the following:
- (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package.
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sales of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in paragraph (3) of this subsection.
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway, or other interior portion of the primary use structure.
 - (4) In hotels and motels with a restaurant holding a consumption-on-the-premises license, as part of room service for guests of the hotel or motel.

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- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

Sec. 4-192. - Coin-operated or amusement machines.

No retail dealer in liquors shall permit on the premises any slot machine of any kind or character or any coin-operated machine or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

Sec. 4-193. - Hours of sale.

Retailers shall not engage in the sale of spirituous liquors except between the hours of 8:00 a.m. and 12:00 p.m. on Monday through Saturday. The hours within which this business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retailers shall not engage in the sale of spirituous liquors except between the hours of 12:30 p.m. and 11:30 p.m. on Sunday.

Sec. 4-194. - Employees.

The following provisions apply to all establishments holding a license for package liquor:

- (1) An employee shall meet the same character requirements as set forth in the general ordinances for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until this person has been fingerprinted or cleared by the police department and has been issued a permit by the police department indicating that the person is eligible for employment. The permit issued to a person under this section shall be an alcoholic beverage permit, which shall be issued only to a person who must be eighteen (18) years of age or older and who sells alcoholic beverages.
- (3) No permit shall be issued until such time as a signed application has been filed with the police department and a search of the criminal record of the applicant completed. The application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The police department shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. If there is no record of a violation of this division, the police department shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the police department shall not issue a permit to the employee.
- (5) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the police department or the finance department.
- (6) No licensee shall allow any employee required to hold a permit to work or train on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (7) If any permitholder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the police department.
- (8) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of the police department.

Sec. 4-195. - Location of retail liquor package stores.

No new retail establishment selling distilled spirits by the package shall be located within one thousand (1,000) yards of an existing retail establishment selling distilled spirits by the package. This prohibition shall not apply to a hotel or a motel with a restaurant holding a consumption on the premises license which sells package liquor to its guests as part of room service.

Secs. 4-196—4-210. - Reserved.

Part C. - Beer and Wine

Sec. 4-211. - Types of retail establishments.

- (a) No beer and/or wine shall be sold at retail except in establishments maintaining eighty (80) percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where an existing establishment exists as a nonconforming use or in a facility duly licensed by the city to sell liquor by the package.
- (b) In cases where, under [section 4-191](#), paragraph (a)(4), a hotel or motel is allowed to sell liquor by the package for purposes of room service, beer and wine sales by the package shall also be permitted for purposes of room service to guests of the hotel or motel.

Sec. 4-212. - Hours of sale; Sunday sales.

Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 8:00 a.m. and 12:00 midnight, Monday through Saturday. The hours within which business may be carried on shall be determined by the standard time in force at the time of the sale thereof. Retail package licensees shall not engage in the sale of beer and/or wine except between the hours of 12:30 p.m. and 11:30 p.m. on Sunday.

Sec. 4-213. - Use of tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, the prices of all beer and wine exposed or offered for sale.

Sec. 4-214. - Wine tastings.

Upon filing an application and payment of a filing fee and a permit fee and after investigation by the police department and review by the finance department, the finance department may issue a permit to a licensed retail package wine dealer or licensed wine wholesaler to hold a wine tasting. The permit shall allow the applicant to provide samples of wine to the public for consumption at a location which meets legal requirements for on-premises consumption, under the following conditions:

- (1) The applicant for a wine tasting must hold a valid current wine license in the state.

Secs. 4-215—4-230. - Reserved.

ARTICLE IV. - WHOLESALERS ^[22]

Sec. 4-231. - Generally.

- (a) Any person desiring to sell, at wholesale, any alcoholic beverage in the city shall make application to the finance department and obtain a license to do so, which application shall be in writing on the prescribed forms, and pay a fee in the amount established by action of the City Council, a copy of which is on file in the office of the clerk of the City Council.
- (b) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (c) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (d) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

Sec. 4-232. - Excise tax imposed; bond required.

- (a) There is imposed an excise tax upon all alcoholic beverages purchased in the city by persons holding a retail package license and/or a consumption-on-the-premises license at a rate established by action of the City Council, a copy of which is on file in the office of the clerk of the City of Brookhaven.
- (b) The excise tax shall be collected by all wholesale dealers selling alcoholic beverages to persons holding retail licenses and shall be paid by the wholesale dealers to the finance department of the City by the tenth of each month, based upon the units of alcohol sold during the previous month. The wholesale dealer shall keep true and correct records of all sales and shipments. The monthly remittance shall be accompanied by a sworn statement showing, but not limited to, the type and volume sold to each retail licensee on a form or in a format as approved by the finance department.
- (c) Each wholesale dealer, prior to commencement of business operation in the city, shall post a performance bond with the finance department equal to one and one-half (1½) times the estimated highest monthly payment made in a calendar year of the excise tax based on sales collected by the wholesale dealer from the retailers to secure the payments for the tax imposed herein. These bonds shall be secured by cash which shall bear no interest, or a surety bond executed by a surety company licensed to do business in this state and approved by the finance department.
- (d) A wholesaler may be excused from posting the performance bond after demonstrating full and satisfactory compliance with the provisions required hereunder for a period of twelve (12) months subsequent to the commencement of business operations within the city. Continued exemption from the requirement of posting the performance bond shall be conditioned upon continued compliance with the terms of this article and the payment of all sums as required by the provisions of this section.
- (e) Any person who fails to pay any tax to the city or any amount of tax required to be collected and paid to the city under this article within the time required shall pay a late payment penalty, in addition to

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the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as specified by [section 2-112](#)

Sec. 4-233. - Audit.

The city shall have the right to audit each wholesale dealer licensed to do business in the city.

Sec. 4-234. - Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 6:00 a.m. and 11:00 p.m., Monday through Saturday.

Secs. 4-235—4-250. - Reserved.

ARTICLE V. - BOTTLE CLUBS

Sec. 4-251. - Types of establishments.

"Bring your own bottle" establishments or "brown bag" establishments are establishments regularly serving prepared foods, with a full service kitchen, prepared to serve food every hour they are open and which can seat two hundred (200) or more persons. Such clubs cannot hold a license to sell and may not sell or serve any alcoholic beverages. Such clubs must be in a zoning district that allows a restaurant as a conforming use.

Sec. 4-252. - Permits.

It shall be unlawful to operate an establishment governed under the provisions of this article without first obtaining a license from the finance department and paying such fees and taxes as may be required by the ordinances, rules and regulations of the city. A bottle club shall be subject to all general licensing and regulations as well as the licensing and regulations for consumption on the premises establishments.

Sec.s 4-253 – 4-399 : RESERVED

ARTICLE VI – TRANSITION PERIOD

Sec. 4-400 – Transition Period

During the period of transition and start up of the City of Brookhaven, any duties required by this Chapter to be fulfilled by an employee or officer of the City who has not been appointed or such position or agency not yet established shall be fulfilled by the City Manager or the City Manager's designee.