

Subject Matter: Enactment of Chapter 10 of Code:
Alcoholic Beverages, including authorization of
licensing the sale of distilled spirits by the drink.

Date of Posting: June 1, 2009

Date First Presented by Council at
Public Meeting: June 8, 2009

Date of Public Hearing Before

Town Council: June 8, 2009

Date of Adoption: July 6, 2009

**TOWN OF SHARPSBURG
COUNTY OF COWETA
STATE OF GEORGIA**

**ORDINANCE NUMBER 09-02 (as enacted)
TOWN OF SHARPSBURG, GEORGIA**

PREAMBLE AND FINDINGS

AN ORDINANCE TO ENACT, ORDAIN, AND ADOPT CHAPTER 10 OF THE TOWN OF SHARPSBURG CODE OF ORDINANCES ENTITLED "*ALCOHOLIC BEVERAGES*"; TO PROVIDE FOR ITS CODIFICATION; TO IMPOSE AN EXISE TAX UPON DISTILLED SPIRITS; TO AUTHORIZE THE ISSUANCE OF LICENSE FOR SALE OF DISTILLED SPIRITS BY THE DRINK; BY THE DRINK TO PROVIDE FOR SANCTIONS AGAINST LICENSEES FOR SALES TO MINORS AND OTHER OFFENSES; TO CREATE REQUIREMENTS FOR A "REASONABLE LICENSEE" AND TRAINING FOR SERVERS AND MANAGERS; TO PROVIDE PROCEDURES FOR SUSPENSION/REVOCAION OF LICENSE AND SERVER PERMITS; TO PROVIDE FOR SERVER PERMITS AND REQUIREMENTS THEREFORE; TO PROVIDE FOR CERTAIN REQUIREMENTS FOR AND RESTRICTIONS UPON DRINKING IN PUBLIC; TO PROVIDE FOR TYPES OF ALCOHOLIC BEVERAGE LICENSES; TO PROVIDE FOR APPLICATIONS, CONTENTS, AND INVESTIGATION OF APPLICATIONS FOR LICENSEES; TO PROVIDE FOR DISTANCE RESTRICTIONS BETWEEN ALCOHOL DEALERS AND CHURCHES AND SCHOOLS; TO PROVIDE FOR LICENSEES QUALIFICATIONS; TO PROVIDE FOR PROCEDURES AND PROCESSES FOR GRANTING OF LICENSES; TO PROVIDE FOR REGULATIONS FOR EMPLOYEES OF LICENSEES; TO PROVIDE FOR RESTRICTIONS UPON SERVERS OF ALCOHOLIC BEVERAGES; TO PROVIDE FOR SERVING HOURS OF ALCOHOLIC BEVERAGES; TO ESTABLISH LICENSE FEES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTED EFFECTIVE DATE; TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the Town of Sharpsburg did execute a resolution to call a special election referendum to submit to the qualified voters of the Town of Sharpsburg the question: *“Shall the governing authority of Sharpsburg be authorized to issue license to serve distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises?”*; and

WHEREAS, a special election was held on July 20, 2004, and the *question* passed by a majority of the qualified voters of the Town voting thereon; and

WHEREAS, it is the legal requirement of O.C.G.A. §3-4-92 that the Town Council enact an ordinance authorizing and regulating the sale of distilled spirits for beverages purposes by the drink or on-premise consumption; and

WHEREFORE, BE IT AND IT IS HEREY ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF SHARPSBURG, GEORGIA, AND BY THE AUTHORITY THEREOF:

SECTION 1

The foregoing constituting the amended Chapter 10 of the Code of Ordinances of the Town of Sharpsburg , which statement authorizes the licensing and regulation of the selling and serving of distilled spirits by the drink for on premises consumption, and the same is hereby **ORDAINED AND ADOPTED** as Chapter 10 of the Code of Ordinances of the Town of Sharpsburg to be entitled “Alcoholic Beverages,” and the following shall be codified at and as Chapter 10 of the Code of Ordinances of the Town of Sharpsburg , Georgia, to wit:

**ARTICLE I.
IN GENERAL**

Sec. 10-1. Purpose and authority to regulate alcoholic beverages in Town.

- (a) This chapter has been enacted in furtherance of the police powers of the Town and in accordance with a plan designed for the purposes, among others, of promoting the health and general welfare of the community, to establish reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, to protect and preserve schools and churches, to give effect to existing land use and to preserve certain residential areas, with reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, the congestion in the roads and streets, and with a general view of promoting desirable living conditions and sustaining stability of neighborhood and property values, and to protect against the evils of concentration of ownership or control of the retail outlets for alcoholic beverages or to prevent undesirable persons from controlling the retail alcoholic beverage industry.
- (b) The provisions of this chapter are ordained under and by virtue of the authority granted by the laws of the State of Georgia, O.C.G.A. Chapter 3; Regulation of Alcoholic Beverages Generally. To adopt all reasonable rules and regulations as may fall within the police powers of the Town to regulate any such business; O.C.G.A. section 3-4-90, authorizing each municipality to issue licenses, through ordinance, to sell distilled spirits for beverage purposes by the drink, the sales to be for consumption only on the premises; O.C.G.A. section 3-4-110, granting the Town the full power to adopt all reasonable rules and regulations governing the conduct of any such licensee including, but not limited to, the regulations of hours of business, types of employees, and other matters which may fall within the police powers of the Town; O.C.G.A. section 3-5-40 and 3-5-42, authorizing Town licenses for the business of manufacturing, distributing and selling malt beverages at wholesale and retail; and O.C.G.A. section 3-6-40, authorizing municipal license for the manufacturing, distributing and selling wine at wholesale and retail.
- (c) The provisions of this chapter regulating the sale of alcoholic beverages and nudity on the premises are ordained by virtue of the authority granted by the constitution and laws of the United States and State of Georgia.

Sec. 10-2. Definitions.

As used in this chapter the following terms shall have the meaning ascribed to them:

Alcoholic: Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverages: All alcohol, distilled spirits, beer, spirituous liquors, malt beverages, wine, or fortified wine as defined in this section.

Brown bagging: The act of patrons entering any restaurant, private club, or other establishment providing food or entertainment in the normal course of business and bringing in and consuming the patrons' own alcoholic beverage.

Brown bag establishment: Any restaurant, private club 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.

Church: Any permanent building where persons regularly assemble for religious worship.

Close corporation: A domestic corporation which does not:

- (1) Have more than five stockholders;
- (2) Have a corporation as a shareholder; or
- (3) Have more than one class of stock.

Distilled spirits or spirituous liquors: Any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume including, but not limited to, all fortified wines, whiskey, rum, gin, brandy, vodka, tequila and all other alcoholic beverages of a similar nature and with similar alcoholic content.

Family: Any person related to the holder of a license within the first degree of consanguinity or affinity as computed according to civil law.

Fortified wine: Any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. "Fortified wine" includes, but is not limited to, brandy.

Golf club: means a corporate of association organized and existing under the laws of the state, actively in operation within the Town prior to submitting an application for a license hereunder, having an 18 hole golf course or regulation size, a restaurant used exclusively for the purpose of preparing and serving meals with a seating capacity of at least 60 patrons, a golf club membership and has at least 100 paid-up members who have paid a membership fee for family or individual membership, and a full-time management staff for the social activities of the club, including the management of the premises where food and drink are sold. Food shall be served at least seven days a week, with the exception of weeks including holidays, vacation and periods of renovation. As used in this section, "seating" shall mean that no more than 25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals.

Hotel: Every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient,

permanent or residential. To meet the definition of “hotel” under this chapter the facility must have 50 or more rooms used for sleeping accommodations of such guests and one or more public dining rooms, with an adequate and sanitary kitchen and a seating capacity of at least 25 persons, where meals are regularly served to such guests. As used in this section, “seating” shall mean that no more than 25 percent of the seating shall be at a common table or counter areas or shall be other than individual tables of booths designed for seating of at least two individuals. All sleeping accommodations and dining rooms must be conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant in their premises, and the holder of such franchise shall be eligible for a license under the “hotel” classification. At least 55 percent of the receipts of the dining room or rooms shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring in the dining room, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called in the dining room from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required in this Ordinance. Receipts for room rentals shall not be included in the calculations.

Individual: A natural person not a corporation or a partnership.

Interest in license: An individual is deemed to have an interest in a license if:

- (1) He is the owner of the license;
- (2) He is the co-owner of the license;
- (3) He is a partner in any partnership that owns an interest in a license;
- (4) He is a stockholder holding more than five percent of the stock in any corporation and/or is a stockholder in any corporation which has fewer than 25 stockholders which owns an interest in a license.
- (5) He shares in any income or corpus of any trust fund having any interest in a license to sell at retail.

Licensee: The licensee for all businesses shall be:

- (1) The licensee shall be at least 21 years of age.
- (2) If the business is to be operated by an individual, the licensee shall be that individual.
- (3) If the business is to be operated by a partnership, the licensee shall be an individual who is a partner; or, if all partners are non-individuals, then the licensee shall be an individual who is an officer of any corporation which is a partner, or, an individual who is an officer, manager or agent of any unincorporated entity which is partner.
- (4) If the business is to be operated by a corporation, the licensee shall be an officer

of the corporation.

- (5) If the licensee is a resident of the Town and a manager of the business who is on the premises on a regular basis, the licensee may also be the license representative of the business. If not, a license representative shall be named in accordance with this chapter.

License representative: The license representative shall be:

- (1) If the business is to be operated by an individual, the license representative shall be that individual.
- (2) A U.S. Citizen.
- (3) If the business is to be operated by a partnership, close corporation, corporation, or other business entity, the license representative shall be a managing full time employee who assumes an active role in the day-to-day operation of the business.
- (4) A resident of the Town of Sharpsburg, Georgia, and shall be responsible for receiving all notices concerning said license pursuant to this chapter.

Lounge/bar: A separate room connected with, a part of, and adjacent to, a restaurant or a room located in hotels as defined herein, and which serves no food. Lounges/bars shall not be permitted to sell or serve alcoholic beverages.

Malt beverage: 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 fourteen percent (14%) alcohol by volume, and including, but not limited to, ale, porter, brown, stout, lager beer, malt liquor, small beer and strong beer, not to include sake.

Meal, regular meal: A meal which is prepared on the premises according to the order of the patron or customer given to a waiter or waitress at the table, booth or counter area where the customer is seated and served by the waiter or waitress at said table, booth or counter area. The term meal or regular meal does not include food served in a specialty shop; nor food served over the counter; nor "short order meals" such as sandwiches, hot dogs or hamburgers; nor pre-packaged, individual meals.

Minor: Any person under the age of 21 years.

Package: A bottle, can, keg, barrel, or other original consumer container.

Person: Any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit.

Premises/outlet: A definite enclosed area or other outside area with controlled ingress and egress wherein spirituous liquors, alcoholic beverages, malt beverages, or wine be sold and consumed, or sold therein by the package to be consumed elsewhere.

Private club: A corporation or association organized and existing under the laws of the state, actively in operation within the Town prior to the application for a license hereunder, having at least 50 members regularly paying dues, for at least six years prior to application for license, organized and operated exclusively for pleasure, recreation and other non-profitable purpose, not part of the net earnings of which inures to the benefit of any shareholder or member, and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable sanitary kitchen and dining room seating of at least 25 persons and equipment and maintaining and using a sufficient number of servants and employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of distilled spirits, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body, out of the general revenue of the club. As used in this section, "seating" shall mean that no more than 25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals. For the purpose of this subsection, tips which are added to the bills under club regulations shall not be considered as profits hereunder. In addition, at least 55 percent of the receipts from the operation of the kitchen and dining room and serving of meals shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 10-95. A private club organized or operated primarily for the selling or serving of alcoholic beverages by the drink shall not be licensed under this chapter, nor permitted to sell or serve such beverages at all. All distance requirements as set forth in this chapter shall apply.

Private residence: A house, dwelling or structure wherein not less than one, nor more than two families reside and shall not include a mobile home court, an apartment house having facilities for housing more than two families, nor a boarding or rooming house where there are five or more boarders or roomers. Any building occupied as a residence located within an area zoned for business shall not be construed as a private residence.

Restaurant: Any public place kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served, but not including short order or quick or fast food shops, such place being provided with adequate and sanitary kitchen and dining room seating of at least 10 persons, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. Meals shall be served at least six days a week, with the exception of weeks including holidays, vacations and periods of renovation, and the serving of such meals shall be the principal business conducted, with the serving of distilled spirits, malt beverages and wines to be consumed on the premises as only incidental thereto. As used in this section, "seating" shall mean that no more than 25 percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two individuals. As used in this section, "principal

business” shall mean that at least 55 percent of the receipts of such business shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations or receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 10-95.

Retail consumption dealer: Any person who sells alcoholic beverages for consumption on the premises at retail.

Retail package dealer: Any person who sells malt beverages or wines in unbroken packages for consumption off the premises at retail. Such sales must be in connection with sales of other products.

Sales by the drink: Any person who sells alcoholic beverages for consumption on the premises at retail only to consumers and not for resale.

Town: The Town of Sharpsburg, Georgia.

Wholesaler or wholesale dealer: Any person who sells alcoholic beverages to other wholesale dealers, to retail package dealers, or to retail consumption dealers.

Wine: Any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, grapes, or other natural products by natural fermentation. “Wine” includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, sake, natural wines, rectified wines, and like products. The term “wine” does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage.

Sec. 10-3. Sale of packaged distilled spirits prohibited.

The wholesale and retail package sale of distilled spirits, except as provided herein, is hereby prohibited and made unlawful within the incorporated limits of this Town.

Sec. 10-4. Sale, possession, etc., of alcohol beverages on which state tax or license fee not paid prohibited.

It shall be unlawful for any person to sell at retail or otherwise within the Town, possess, conceal, store or convey any wine, malt beverage, distilled spirits or other alcoholic beverages on which any tax or license fee imposed by the laws of the state or this chapter have not been paid, and any such beverages as above described that are found without a state tax stamp shall be seized as contraband and immediately delivered to the state revenue commissioner as provided by law. Any violation of this section shall be punished as provided for in section 10-181 and 10-182.

Sec. 10-5. Purchase, possession, etc., by underage persons.

- (a) Except as otherwise authorized by law:
 - (1) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age.
 - (2) No person under 21 years of age shall purchase or knowingly possess any alcoholic beverages.
 - (3) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage.
 - (4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age.
 - (5) No person under 21 years of age shall misrepresent his identity to use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (b) The prohibitions contained in subsection (a)(1),(2) and (4) of this section shall not apply with respect to the sale, purchase or possession of alcoholic beverages for consumption:
 - (1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state;
 - (2) At a religious ceremony; or
 - (3) In the home with parental consent provided that such person is over 18 years of age.
- (c) The prohibition contained in subsection (a)(1) of this section shall not apply with respect to sale of alcohol beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. sections 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate.
- (d) If such conduct is not otherwise prohibited pursuant to O.C.G.A. section 3-3-24, nothing contained in this section shall be construed to prohibit any person under 21 years of age from:

- (1) Dispensing, serving, selling, or handling alcoholic beverages as a part of employment in any licensed establishment;
 - (2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or
- (e) Notwithstanding, no person shall allow or require a person under 21 years of age nor shall a person under 21 years of age take an order for alcoholic beverages for on-premises consumption or accept alcoholic beverages for check-out for off-premises consumption.

Sec. 10-6. Consumption prohibited; open containers.

- (a) As used in this section, “open container” means any container, containing alcoholic beverages, which is immediately capable of being consumed from or the seal of which has been broken,
- (b) No person shall possess an open container or any alcoholic beverage while operating a motor vehicle in this Town or while occupying a motor vehicle as a passenger. An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger. This provision shall not apply if the alcoholic beverage is located in a locked glove compartment, locked trunk, or other locked non-passenger area of the vehicle. This provision is intended to prohibit the consumption of alcoholic beverages by the operator and passengers in motor vehicles. This shall not apply to possession of an open container by a passenger of a vehicle, bus, limo or self-contained motor home in which the driver is operating the vehicle pursuant to a contract to provide transportation and such driver holds a valid chauffeur’s license pursuant to state law.
- (c) No person shall possess an open container of alcoholic beverage while walking, standing or otherwise occupying any public street, road, or highway, sidewalk adjacent thereto, public park, or public parking lot. Consumption of alcoholic beverages in or on other publicly-owned properties of the Town is prohibited.
- (d) No person shall possess an open container of an alcoholic beverage on the premises of any retail package licensee, including parking lots located adjacent thereto.
- (e) No person shall enter or leave the premises of an establishment licensed to sell or dispense alcoholic beverages for consumption on the premises with an open container of any alcoholic beverage.

Sec. 10-7. Public drunkenness.

It shall be unlawful for any person in this Town to be and appear in an intoxicated condition in any public place or within the cartilage of any private residence not his own other than by invitation of the owner or lawful occupant, when such condition of intoxication is made manifest

by boisterousness, or by indecent condition or act, or by vulgar, profane, loud or unbecoming language.

Sec. 10-8. Quantity possessed restricted.

It shall be unlawful for any person to be found in possession or control of more than one standard case of 1.75 liter, liter or 750 milliliter size containers of distilled spirits but not more than eight individual containers of distilled spirits of a size of 200 milliliter or four individual containers of distilled spirits of a size of 500 milliliters. Any distilled spirits found in the possession of any person shall have been purchased by the person for use and consumption from a lawful and authorized retailer and properly stamped. This prohibition shall not apply to possession of distilled spirits in a properly licensed premise for consumption of distilled spirits on the premises only by the licensee, its representative or employees or by a properly licensed wholesaler or its employees making deliveries to a properly licensed premises.

Sec. 10-9. Sale of distilled spirits, malt beverages or wine by the drink for consumption only on the premises; combining retail package and retail consumption licenses prohibited.

- (a) No person shall be allowed to sell, distribute, or give away distilled spirits, malt beverages, or wine by the drink for consumption only on the premises except as set forth in this chapter.
- (b) No business licensed for the retail package sale of alcoholic beverages shall hold a license for, or allow the retail consumption of alcoholic beverages on the premises.
- (c) No retail package license shall be issued for, or in connection with, any restaurant, café or eating place.

Sec. 10-10. Establishment to be kept in orderly manner.

It shall be the duty of all persons or employees of persons granted a license under this article to keep the premises clear at all times of all persons who are intoxicated, or who are becoming intoxicated, who fail to keep the peace, or who do anything tending to breach peace and cause a public disturbance.

Sec. 10-11. Times for sales.

- (a) No beer, malt beverages, wine or distilled spirits shall be sold, or dispensed, or delivered, or given away to any person from 2:00 a.m. until 7:00 a.m. on weekdays and from 12:00 midnight on Saturday until 7:00 a.m. on the following Monday.

Notwithstanding the prohibition set forth herein, business establishments serving food, licensed to sell malt beverages, wine or distilled spirits by the drink for consumption only on the premises may permit alcoholic beverages purchased prior to 2:00 a.m. on weekdays and 12:00 midnight on Saturday an additional 30 minutes to be consumed on the premises.

Notwithstanding the prohibition set forth herein, business establishments serving food, licensed to sell malt beverages, wine or distilled spirits by the drink for consumption on the premises only pursuant to this article, may sell malt beverages, wine, or distilled spirits until 2:00 a.m. on Sunday January 1, in any year that January 1 falls on a Sunday.

- (b) The sale of alcoholic beverages on election days is permitted within the Town, as long as the establishment is not within 250 feet of an open polling place.
- (c) The sale of alcoholic beverages on Christmas Day is not permitted within the Town.

Sec. 10-12. Signs to be posted.

- (a) Each outlet for the retail sale of packaged malt beverages and/or wine shall post in a conspicuous place within the outlet a sign with letters at least two inches high reading: “Sale of malt beverages or wine to persons under 21 years of age is prohibited.”
- (b) Each outlet for the retail sale of alcoholic beverages by the drink for consumption only on the premises shall post in a conspicuous place within the outlet, a sign with letters at least two inches high reading: “Sale of malt beverages, wine or distilled spirits to persons under 21 years of age is prohibited.”

Sec. 10-13. Display of warning signs for driving under the influence required.

All retail consumption dealers, as defined by this chapter, shall have conspicuously displayed at every exit from the retail location a sign measuring not less than ten inches square, printed in not less than three-quarter inch in height, in a color clearly contrasting to the background of such sign, containing the following language: “State law provides for conviction of driving under the influence if you are impaired by alcohol to any degree, regardless of your blood alcohol content.”

Sec. 10-14. Possession to give away in order to induce trade.

It shall be unlawful for any person to keep on hand for the purpose of giving the same away to induce trade, any fermented beverages made in whole or in part from malt, or any similar fermented beverages, wine or distilled spirits that contain more than one-half of one percent of alcohol by volume.

Sec. 10-15. Deliveries prohibited off premises.

- (a) It shall be unlawful for any wholesaler or distributor to make deliveries of alcoholic beverages except to a location licensed for the retail sale of such beverages.
- (b) It shall be unlawful for any retail package dealer or person licensed to sell alcoholic beverages by the drink for consumption on the premises only to make deliveries of any malt beverages and/or wine or distilled spirits to any location off the licensed premises.

- (c) The prohibition set forth in subsection (b) shall not apply to hotel in-room service which shall be regulated as set forth in section 10-96.

Sec. 10-16. Sales on licensed premises.

Only those individuals who are agents, clerks, or employees of the licensee shall handle, sell or serve alcoholic beverages on a licensed premises.

Sec. 10-17. Sale to intoxicated person forbidden.

Alcoholic beverage licensees and their agents, clerks and employees are prohibited from selling, bartering, exchanging, giving providing, or furnishing any alcoholic beverage to any person who is in a noticeable state of intoxication.

Sec. 10-18. Alcoholic beverage sales for cash only.

All sales of alcoholic beverages shall be for cash upon sale. Sales on credit are specifically prohibited except that the use of a credit card for the purchase of distilled spirits, malt beverages or wine shall not be prohibited provided such retail credit card represents an unqualified obligation to pay without recourse on the part of the person, institution or agency issuing such card. The running of a "tab" at a licensed consumption premises shall not be prohibited provided the consumer pays all charges prior to departing the premises.

Sec. 10-19. License restrictions.

- (a) No person shall hold a license to operate as a retail consumption dealer or retail dealer who also has an interest in a license to operate as a wholesale dealer.
- (b) No elected or appointed official, employee or agent of the Town, directly or indirectly, shall be a licensee.

Sec. 10-20. Person prohibited from interest in license.

No elected or appointed official or employee of the Town may hold an interest in a license issued under this chapter.

Sec. 10-21. Sale of alcoholic beverage without Town license.

It shall be unlawful for any person to manufacture for sale, or possess, for the purpose of sale, any alcoholic beverage where such person does not have a license from the Town to sell or possess for sale such alcoholic beverage.

Sec. 10-22 – 10-35. Reserved.

**ARTICLE II.
LICENSING**

Sec. 10-36. License required to sell alcoholic beverages.

Any person desiring to sell alcoholic beverages shall apply for and obtain a license from the Town prior to commencing operations. Operating without a license shall be a violation of this chapter and shall be punishable as provided in section 10-181 and 10-182 of this code.

- (a) Licenses for the sale of alcoholic beverages shall be issued by the Town Clerk or designee at an annual license fee as established herein:
 - (1) Retail consumption dealer (distilled spirits, malt beverage and wine) ...\$5000.00
 - (2) Retail consumption dealer (malt beverage only)\$300.00
 - (3) Retail package dealer (malt beverage only)\$300.00
 - (4) Retail consumption dealer (wine only)\$300.00
 - (5) Retail package dealer (wine only)\$300.00
 - (6) Wholesale dealer (distilled spirits)\$100.00
- (b) All licenses issued herein shall constitute a mere grant of a privilege to carry on such business during the term of the license subject to all the terms and conditions imposed by this chapter, the charter, related ordinances, of the Code of the Town of Sharpsburg, and the Constitution, laws and regulations of the state and the United States of America applicable to such business.
- (c) All licenses issued under this article shall have printed on the face the following words:

“THIS LICENSE IS A PRIVILEGE AND IS SUBJECT TO BEING REVOKED AND ANNULLED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF SHARPSBURG AND IS SUBJECT TO LAWS, ORDINANCES AND REGULATIONS HEREAFTER ADOPTED.”
- (d) Both the licensee or license representative shall be the authorized and duly constituted agent for service of all notices and processes required to be served on or given hereunder for any action or proceeding or uses of any nature whatsoever permitted under the provisions of this chapter or under any other provisions of this Code.

Sec. 10-37. License eligibility.

No retail consumption license shall be issued to any applicant who operates a restaurant or a lounge in conjunction with a restaurant unless the restaurant or combined lounge/restaurant

operation has its principal business the serving of meals, which, excludes the sale of alcoholic beverages, account for at least 55 percent of the gross revenue of the business. Returns indicating average restaurant or combined lounge/restaurant revenue for three consecutive months preceding any audit date shall be considered for purpose of determining compliance.

Sec. 10-38. Contents of application for license.

- (a) All persons desiring to obtain a license under this chapter for the sale of alcoholic beverages shall apply to the Town Clerk or designee upon forms to be prepared and provided by the Town Clerk or designee, and shall be considered by the Mayor and Town Council. Such application shall state:
 - (1) The location of the proposed business;
 - (2) The nature and character of the proposed business;
 - (3) If the business is to be operated by an individual, the name and address of that individual;
 - (4) If the business is to be operated by a partnership, the names and addresses of all general partners, the licensee and the license representative;
 - (5) If the business is to be operated by a close corporation, the names and addresses of all officers, directors, stockholders, licensee and license representative;
 - (6) If the business is to be operated by a corporation other than a close corporation, the name of the corporation, the address of the corporate office, the name and address of the registered agent for service of process for the corporation, and the name and address of the licensee and license representative;
 - (7) If the business is to be operated by a limited liability corporation (LLC), the name of the managing partner or partners, the address of the principal place of business of the LLC, the name and address of the registered agent for service of process for the LLC, and the name and address of the licensee or license representative; and
 - (8) Such other appropriate information as may be required by the governing body.
- (b) The truth of the contents of an application for a license shall be sworn to by the licensee and the license representative.
- (c) The licensee shall also file with the Town Clerk or designee a completed State of Georgia Department of Revenue Alcohol Tax and Control Unit form ATT-17, which has been filed with the state.
- (d) The application, when filed with the Town Clerk or designee, shall be accompanied

by a processing fee of \$100.00, plus \$50.00 per individual that is subject to a background check under this chapter. This processing fee is separate from and shall not be credited to the license fee. Said processing fee will not be refunded if the requested license is not granted.

- (e) When the license is approved, the license fee must be paid by certified check or cash within 30 days and prior to the issuance of the license.
- (f) A copy of the license shall be issued upon approval, the original shall not be issued until the applicant provides evidence to the Town Clerk or designee that the state license has been issued.
- (g) If the person applying fails to receive a license from the State of Georgia, any license fees, other than the nonrefundable processing fee, paid to the Town shall be refunded.
- (h) The truth of contents of an application for a license shall be sworn to by the licensee and license representative.

Sec. 10-39. Misleading, omitted or obsolete information.

- (a) Any untrue or misleading information contained in or material omission left out of an original or renewal application for an alcoholic beverage license shall be cause sufficient for the denial thereof.
- (b) Any information which changes or otherwise becomes obsolete shall be reported immediately.
- (c) When any license is issued on the basis of an application containing misleading or untrue information or omitted or unreported changed material information, such circumstances shall be cause for revocation of same.

Sec. 10-40. Supporting documents to be filed with application.

Those applying for a license shall submit in support of the application for license the following documents:

- (1) A certificate from a Georgia registered land surveyor showing a scale drawing of the location of the proposed premises and the distance, as calculated in this Ordinance from the licensed premises to the any residence, church building, alcoholic treatment center building, school building educational building, school, college building or college campus located within a radius of 300 yards of the premises.
- (2) Fingerprint card and approval to conduct a background check of each person whose name appears on an application for a license, pursuant to section 10-38 of this chapter, ensuring that each person has not, within five years prior to the date

of the application, been convicted of or entered a plea of guilty or nolo contendere to any felony, misdemeanor, or other charge relating to the sale, manufacture, distribution, taxability, possession or use of alcoholic beverages or illegal drugs including the offense of driving a motor vehicle under the influence of alcohol or drugs; has not entered a plea of guilty or nolo contendere or been convicted of a felony or a misdemeanor of a crime opposed to decency and morality. Provided, however, that a person designated as a registered agent of a close corporation or a limited liability corporation on an application shall not be required to submit the affidavit required by this subsection unless such person is also designated as the licensee or license representative on such application.

- (3) A copy of a deed showing the applicant to be the owner of the premises for which the license is sought or a copy of a lease showing any interest the owner of the premises has in the business for which the license is sought.
- (4) Inspections of the premises by the following:
 - (a) Fire Marshall;
 - (b) Building Department;
 - (c) Health Department; or
 - (d) Planning Department.
- (5) Notification from the Coweta County Sheriff's Department certifying that each person named in an application pursuant to section 10-38 of this chapter has been investigated and found not to have been convicted of nor have entered a plea of guilty or nolo contendere to any felony, misdemeanor, or other charge relating to the sale, manufacture, distribution, taxability, possession or use of alcoholic beverages or illegal drugs within five years prior to the date of the application for the license; has not entered a plea of guilty or nolo contendere or been convicted of a felony or a misdemeanor of a crime opposed to decency and morality. For those applicants who, within the last five year period, have resided or do reside in a state other than Georgia, the applicant must furnish a certified copy of a driver history and criminal background history from the state or states in which he or she has resided or resides to the Coweta County Sheriff's Department. A person designated as a registered agent of a close corporation or a limited liability corporation on an application, however, shall not be required to submit a certificate from the Coweta County Sheriff's Department unless such person is also designated as the licensee or license representative on such application.
- (6) If the same person is serving as the licensee and the license representative, he/she shall submit an affidavit certifying that he/she is at least 21 years of age, a resident of the Town and a manager of the business.
- (7) If the licensee is not the license representative, an affidavit from the license representative certifying that he/she is at least 21 years of age, a resident of the Town and a manager of the business.

Sec. 10-41 Required citizenship.

No license under this article shall be granted to any applicant who is not a citizen of the United States or a permanent resident alien, as defined by the Immigration and Nationality Laws of the United States, for at least 12 months prior to submitting the application for the license. If the applicant is a partnership, the requirements of this section shall apply to all partners. Once submitted, the applicant must maintain his residency status required in this section or the license shall be automatically revoked.

Sec. 10-42. Reserved.

Sec. 10-43. Compliance with zoning regulations.

- (a) No license under this chapter shall be issued unless the location meets currently applicable provisions of the zoning ordinances of the Town as amended; further, except as provided in subsection (b), no license shall be issued unless the location is within the commercial districts.
- (b) A license under this chapter may be issued to golf clubs located within the district provided the planned development:
 - (1) Has not less than 500 acres of contiguous land area;
 - (2) Has at least 200 residential sites, platted and recorded in the office of the clerk of the superior court of Coweta County;
 - (3) Has a social club with:
 - a. An 18 hole golf course of regulation size;
 - b. A restaurant or eatery used exclusively for the purpose of preparing and serving meals, with a seating capacity of at least 60 patrons;
 - c. A golf or social club membership that has at least 100 paid-up members who have paid a membership fee for family or individual membership;
 - d. A membership policy whereby membership is not denied or limited by an applicant's race, color, creed, sex, religion, or national origin; and
 - e. A full-time management staff for the social activities of the club, including the management of the premises where food and drink are sold.
- (c) The provisions of this section shall not apply to those business establishments holding a valid retail package license for the sale of malt beverages and/or wine on the date of adoption of this chapter provided that such license remains current and does not become and remain inactive for a period exceeding 12 months from the date last issued.

Sec. 10-44. Business entrance.

The front entrance of all licensed premises shall be clearly visible from a public street; however, this restriction shall not apply where the premises are located in a hotel, motel, private club, shopping center or multiple-story business building.

Sec. 10-45. Payment of taxes and other debts to Town.

The Town Clerk or designee shall cause an inquiry to be made into the tax records to determine if any applicant or other parties interested in an application have any outstanding taxes, special assessments, unpaid utilities or any other monies owed to the Town. No license shall be issued, renewed or considered for issuance to an applicant which has any outstanding payments to the Town.

Sec. 10-46. No licenses issued within prohibited distances.

- (a) No license shall be issued pursuant to this chapter for the sale of any alcoholic beverages located:
- (1) *Distilled spirits, malt beverages, or wine by the package.* No license shall be issued to any person to sell any alcoholic beverages or sale by the package, where the place of business of the licensee is located within 100 yards from any church building or within 200 yards of any school or education building, school ground, publicly owned recreational ground or college campus.
 - (2) *Private residences.* No license shall be issued to any person to sell any alcoholic beverages hereunder where the place of business of the licensee is located within 150 feet of any private residence.
 - (3) *Alcoholic treatment center.* No license shall be issued for the sale of alcoholic beverages within 100 yards of any alcoholic treatment center owned and operated by the state, the Town or Coweta County.
 - (4) *Schools applicable.* The schools or college referred to herein shall include only such state, county, Town, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state, and shall not include private schools or colleges wherein only specialized subjects, such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.
 - (5) *Church applicable.* Church referred to herein shall include only such churches which maintain a permanent place of public religious worship, and include only those church owned properties upon which such activities take place.
 - (6) *Method of measuring.* The distances set out in subsections (1), (2), (3), (4), and (5) shall be measured from the point of public access of the licensed

premises 90 degrees to the public right of way; then along the public right of way until 90 degrees to the nearest point of public access of the building housing the protected use; then to the point of public access to the building housing the protected use.

- (b) The provisions of this section shall not apply to those business establishments holding a valid retail package license for the sale of malt beverages and/or wine on the date of adoption of this chapter provided that such license remains current and does not become and remain inactive for a period exceeding 12 months from the date last issued.
- (c) The provisions of this section shall not apply to those business establishments holding a valid pouring or on-premises consumption license for the sale of malt beverages and/or wine on the date of adoption of this chapter provided that such license remains current and does not become and remain inactive for a period exceeding 12 months from the date last issued. The provisions of this section shall apply to such business establishments seeking a license to sell distilled spirits by the drink of consumption on the premises, only.
- (d) The provisions of this section shall not apply to those golf clubs holding a valid pouring or on-premise consumption license, provided that sales of alcoholic beverages will not occur within 100 yards of any private residence, church, school, college campus, public library, or alcoholic treatment center, said distance to be measured from an area designated as a golf cart path to the property line of said private residence, church, school, college campus, public library, or alcoholic treatment center.

Sec. 10-47. Notice of new application advertisement.

- (a) The _____ shall give notice of a new application by placing a notice in the county legal organ for 10 days prior to the date when the application shall be heard by the Mayor and Town Council. An affidavit from the publisher of said legal organ shall be filed with the _____ prior to the hearing.

Said notice shall contain the location of the proposed business, names of all persons as they appear on the application as required by section ____-38 of this chapter, and the date and time the Mayor and Town Council will hear the application. The advertisement shall be the type used for legal ads in the legal organ of the county, and the notice referred to shall be in the following form:

“NOTICE OF APPLICATION FOR RETAIL LICENSE
TO SELL ALCOHOLIC BEVERAGES”

An application has been submitted to the Town of Sharpsburg Mayor and Town Council for a retail _____ license to sell alcoholic beverages at the following location: _____. The business name is _____. _____ has requested to be the License Representative. The

application will be granted or denied by Mayor and Town Council at _____ o'clock ____. m. on the _____ day of _____, _____.

Signed: _____

Note: Names of the individual, general partners, corporation, licensee and license representative must be shown.

- (b) The _____ shall place signs upon the location of the proposed business. Said signs shall read as follows:

“Alcoholic beverage license applied for by _____ for the establishment located at _____. Hearing before the Mayor and Town Council of the Town of Sharpsburg , Georgia at _____ am/pm on _____ day of _____, _____.

The signs described above shall be posted on the location of the proposed business for two weeks prior to the day of the hearing by the Mayor and Town Council. Each sign shall be not less than 24 inches long and 36 inches wide, and shall face toward all public roads adjoining the proposed location. Such signs shall be placed where they can be easily seen from all public roads adjoining the proposed location.

The subsection shall not apply when application is made for a license transfer pursuant to section 10-53 of this chapter at the same location.

Sec. 10-48. Issuance of license by Town.

Upon approval of the application for license by the Mayor and Town Council, the timely payment of the license fee, the Town Clerk or designee shall issue the appropriate license for the year in which said approval was granted.

If issued to a corporation, said license shall be issued in the name of said corporation, the licensee and the license representative.

If issued to a partnership, said license shall be issued in the name of the partnership, the licensee and the license representative.

If issued to an individual, said license shall be issued to that individual as licensee and the license representative.

Sec. 10-49. Payment of license fee, license period.

Any license issued under this chapter shall be valid from January 1st of the year issued until December 31st. Regardless of the date the license is issued, during any given year, the full license fee shall be paid.

Sec. 10-50. Renewal of licenses.

All licenses shall be issued on a calendar year basis and shall be renewable as herein asset forth:

- (1) The Town Clerk or designee shall send a letter to all license holders by November, 30 of each year to remind said license holders of the renewal deadline for the subsequent year.
- (2) The licensee shall file a renewal application form with the Town Clerk or designee on or before December 15th of each year.
- (3) All renewals require a new background check for the license representative. A fee of \$50.00 per individual that is subject to a background check shall be paid at time of application. Background checks shall also be required on any new shareholders, partners or owners that have been added to the business holding the license and would have been required to submit to a background check had the renewal been a new application.
- (4) If any law enforcement department of the Town or of Coweta County reports any activity which constitutes due cause for not renewing a license, the renewal shall not be made by the Town Clerk or designee. “*Due cause*” shall consist of the violation of any laws or ordinances of the State of Georgia or the Town regulating the sale or use of alcoholic beverages, or violation of any regulations made pursuant to authority granted for the purpose of regulating such activities, or violation of any state or federal law, or violation of any Town or county ordinance.
- (5) Written notice of the reason or reasons for such non-renewal shall be mailed or delivered to the license at the licensed premises or mailed to the address shown on the renewal application. Licensee shall have 10 days from the date of the written notice to request a public hearing before the Mayor and Town Council, as provided for in section 10-131 and 10-132 of this chapter.
- (6) Provided that “due cause” does not exist for not renewing the license, the Town Clerk or designee shall issue the renewal license upon payment of the annual license fee by the licensee on or before the last business day in December preceding the year for which the license is sought.
- (7) Any change in the name of the licensee or license representative shall require the filing of the application and payment of the fee set forth in section 10-53(b) herein.

Sec. 10-51. Completion of proposed licensed premises; additions to licensed premises.

- (a) Prior to the construction, renovation or completion of a licensed premises, the Mayor and Town Council may allow a license to be issued only if plans for the proposed premises comply with applicable provisions of this chapter; however, no sales of alcoholic beverages shall be allowed upon said premises until they are completed according to the plans submitted and unless all other provisions of this chapter are complied with.
- (b) Prior to the beginning of construction of any addition to a licensed premises, the licensee shall submit to the Town Clerk or designee, a new survey and plans showing the location and dimensions of the addition to the licensed premises. Following completion of the addition, the licensee shall furnish a certificate of occupancy from the Building Department stating that the completed addition to the licensed premises is as shown on the plat previously submitted. If any addition to the licensed premises violates any provisions of this chapter, the license granted hereunder shall be automatically canceled and all fees forfeited.

Sec. 10-52. Time limit for commencement of business in licensed establishment; forfeiture for nonuse.

- (a) All holders of licenses hereunder must within six months after the issuance of said license open the establishment referred to in said license. If said license holder fails to open the licensed establishment or receive a time extension from the Mayor and Town Council within said six month period the license shall be canceled and all fees forfeited.
- (b) Any holder of a license who, after beginning operation, ceases to operate the business for a three month period automatically forfeits his or her license, and said license shall be automatically canceled and all fees forfeited.

Sec. 10-53. License transfers, change licensee, or license representative or relocation of business.

- (a) Retail alcoholic beverage licenses may be transferred from one owner to another with the approval of the Mayor and Town Council provided:
 - (1) The business has existed at the same location and licenses have not been transferred for more than one year.
 - (2) All existing alcoholic beverage licenses issued to the existing owner for that location shall be transferred.
 - (3) All provisions of section 10-40 of this chapter shall be completed by the new owner except for subparagraph (1) provided such information was

previously supplied by the previous owner or previous owners and has not changed.

- (4) A transfer fee in the amount of \$100.00 is paid to the Town Clerk or designee upon filing of the request for the first request for transfer of the year (Jan.-Dec.). Subsequent requests in that same year will require the payment of the full initial application fee.
- (b)
 - (1) All requests for a change in licensee or license representative must be approved by the Mayor and Town Council and shall provide all appropriate information and supporting documents required under sections 10-38 and 10-40 of this chapter as outlined in an approved form to be supplied by the Town Clerk or designee for that purpose.
 - (2) A fee in the amount of \$100.00 is paid to the Town Clerk or designee upon the filing of the first request in a year (Jan.-Dec.). Subsequent requests in that same year will require payment in full of the initial application fee.
- (c) So long as there is no change in ownership, a temporary license representative may be appointed by the licensee for a period not to exceed 45 days, subject to the following conditions:
 - (1) That temporary license representative makes application by providing all appropriate information or supporting documents required under sections 10-38 and 10-40 of this chapter as outlined in an approved form to be supplied by the Town Clerk or designee for this purpose;
 - (2) That application is approved by the Town Clerk or designee prior to the issuance of an amended license;
 - (3) There shall be no residence requirement for a temporary license representative;
 - (4) There shall be no extension of the 45 day period of operation for any temporary license representative, without approval of Town Clerk or designee; and
 - (5) A processing fee shall be required at the time of filing the application for a temporary license representative provided that within 10 calendar days a request for a change in the license representative is filed in accordance with section 10-53(b) herein.
- (d) All business relocations must be approved by the Mayor and Town Council and the licensee and license representative shall provide all appropriate information and supporting documents are required under sections 10-38 and 10-40 of this

chapter. Requirements of section 10-47 relating to advertising and posting must be met. A processing fee established by the Mayor and Town Council shall be required.

- (e) Any violation of this section shall constitute due cause for probation, suspension or revocation of the license or licenses granted by the Town Clerk or designee.

Sec. 10-54. Standards to be applied by Mayor and Town Council in granting licenses; failure of applicant to attend public hearing.

- (a) The standards to be applied by the Mayor and Town Council, acting in its judicial capacity to grant or deny a license, shall include whether, in the best judgment of the Town Clerk or designee, the applicant, based on all information obtained in the application process, possesses the qualities of sound judgment and discretion necessary for one who dispenses alcoholic beverages to the public generally.
- (b) In addition to the foregoing standards, should any license representative of the applicant fail to attend a meeting at which it is considered before the Mayor and Town Council regarding a new license, a request to transfer a license, a request to change a licensee or a license representative, or a request to relocate the business of a licensee, the Mayor and Town Council may consider such application or request to have been withdrawn by the applicant.
- (c) In determining whether or not any application shall be granted and a license issued, the Mayor and Town Council shall consider the following information in the public interest and welfare:
 - (1) If the license representative or any individual listed on the application or partner has ever violated any federal, state, Town or county law or regulation regarding alcoholic beverages and illegal drugs, their sale, consumption, distribution or manufacture;
 - (2) The manner in which the license representative or any individual listed on the application or partner has conducted any business within the Town as to the necessity for unusual law enforcement observation and inspection in order to prevent the violation of any law, regulation or ordinance or as to the necessity for Town action to compel the applicant's and/or licensee's adherence to any Town law, regulation or ordinance;
 - (3) The location for which the license is sought as to traffic congestion, public safety, the general character of the neighborhood and the effect of such an operation on surrounding property values; and
 - (4) Whether the license representative or any individual listed on the application or partner has ever had an alcoholic beverage or business

license suspended or revoked by the state or any political subdivision thereof.

Sec. 10-55. Applicants meeting standards will be granted license; reason for denial to be given in writing.

All applicants for a license meeting the ascertainable standards of this chapter will be granted the license or licenses requested, and the Town Clerk or designee in applying the facts to the licensing criteria will act in a judicial capacity. Whenever an application for license is denied by the Town Clerk or designee the reasons for such denial shall be stated in writing and entered upon the minutes. Upon denial, the applicant may not re-apply for a license for 24 months after the date of the denial.

Sec. 10-56. Automatic revocation.

Whenever the state shall revoke any permit or license to sell alcoholic beverages, the Town license to deal in such products, issued pursuant to this chapter, shall thereupon be automatically revoked without any action by the Mayor and Town Council or any other Town officer being necessary.

Sec. 10-57 - 10-70. Reserved.

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**ARTICLE III.
REGULATION OF PACKAGE SALES**

Sec. 10-71. Sale of package malt beverages, wine conducted in conjunction with other business.

No person shall be allowed to sell at retail package malt beverages, or foreign and domestic wines unless the same be sold in conjunction with some other kind of business.

Sec. 10-72. Physical requirements of applicant's premises.

- (a) No license shall be granted to a retailer under the provision of this chapter, unless the front entrance to the premises is clearly visible from a public street; provided, however, that this restriction shall not apply where the licensee has a location in a shopping center or multiple-story building.
- (b) Where a building in which a retailer intends to operate under the provisions of this chapter is at the time of the application for such license not in existence or not yet completed, license may be issued for such location provided the plans for the proposed building show clearly a compliance with the other provisions of this chapter.
- (c) No sales shall be made from such establishment until it has been completed in accordance with said plans and is in conformity with all of the other provisions of this chapter.

Sec. 10-73. Sanitary regulations, immoral conduct, etc., inspection and report by fire department.

- (a) All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with the provisions and regulations governing the condition of premises used for storage and sale of food for human consumption as established by the Board of Health. It shall be unlawful to permit any disturbance of the peace, obscenity, or public indecency on the premises.
- (b) All premises licensed hereunder shall conform at all times with all fire regulations of the Town. The fire department shall, upon request of the Town Clerk or designee, inspect such premises and report its findings to the Town Clerk or designee.

Sec. 10-74. Interior visibility required.

No screen, blind, curtain, partition, article or thing which shall prevent a clear view into the interior shall be permitted in the window or opening of any door of any retail package alcoholic beverage store, and no booth, screen, partition or other obstruction shall be permitted within the interior of any such store. Each such retail store shall be so lighted that the interior of the store is visible day and night.

Sec. 10-75. Slot machines, etc., prohibited on premises.

- (a) Except as otherwise permitted in this section, no retail licensee shall permit on such licensee's premises any slot machines, video games, mechanical music boxes, pinball machines or coin-operated amusement machines of any kind or character.
- (b) Convenience stores, the primary purpose of which is the sale of food items, may utilize coin-operated amusement devices as provided by the section of this Code regarding the regulation and licensing of coin-operated amusement machines, provided all such machines shall be located in a separate room from the room in which package alcoholic beverages are stored or offered for sale.

Sec. 10-76. Sale in poolrooms and billiard parlors prohibited.

It shall be unlawful to sell package beer, malt beverages, and wine in poolrooms or billiard parlors.

Secs. 10-77 – 10-90. Reserved.

**ARTICLE IV.
REGULATION OF SALES BY THE DRINK**

Sec. 10-91. Licenses.

Any type consumption on the premises license may be granted only to: A restaurant, a private club, or a hotel/motel as defined under section 10-2.

Sec. 10-92. Sale of food.

In order for an establishment to qualify for a pouring license for alcoholic beverages for consumption on the premises, only, as a restaurant, private club, golf club, or restaurant in a hotel such establishment must have at least 55 percent of its total sales comprised of the sale of food prepared on the premises and nonalcoholic beverages consumed on the premises; and for this purpose, if a restaurant makes a minimum charge, cover charge, or admission charge, or any other non-food or non-alcoholic beverage charge, the amount so charged shall not be counted in computing total sales and shall not be counted as a food or beverage sale.

Sec. 10-93. Standards to determine sleeping or seating capacity; inspections; compliance with fire requirements.

Where a minimum sleeping or seating capacity is prescribed in this chapter, the same shall be judged by existing ordinances of the Town or state regulations or by reasonable standards. The fire department, shall, upon request of the Town Clerk or designee, inspect such premises and report its findings to the Town Clerk or designee. All premises licensed hereunder shall conform at all times to all fire regulations of the Town, county and state.

Sec. 10-94. Sales outside of licensed premises.

- (a) Except as provide herein, it shall be unlawful for any sale of alcoholic beverages to be made outside of the premises licensed for such sale.
- (b) For golf club facilities, "licensed premises" includes not only the room wherein alcoholic beverages are sold or served, and shall also include the entire building where the room is located and the entire boundary of the golf course except parking lots, alleyways, streets (private and public), and lakes. Golf clubs are authorized to sell and serve malt beverages only in the manufacturer's original containerized receptacle outside the room and building on the licensed premises as defined above.

Sec. 10-95. Pricing.

- (a) Each licensee shall maintain a schedule of the prices charged for all alcoholic beverages to be served and consumed on each licensed establishment or in any room or part thereof. The licensee shall not vary the schedule of prices from day to day or from hour to hour within a single day. The schedule of prices shall be posted in a conspicuous manner as to

be in view of the paying public, and the schedule shall be effective for not less than one day.

- (b) No licensee or employee or agent of a licensee shall:
 - (1) Offer or deliver any free alcoholic beverage to any person or group of persons.
 - (2) Sell, offer to sell, or deliver to any person or group of persons any alcoholic beverage at a price less than the price regularly charged for such alcoholic beverage during that business day, except at private functions not open to the public.
 - (3) Sell, offer to sell, or deliver to any person or group of persons an unlimited number of alcoholic beverages during any set period of time for a fixed price, except at private functions not open to the public.
 - (4) Sell, offer to sell, or deliver alcoholic beverages to any person or group of persons at any one day at prices less than those charged the general public on that day, except at private functions not open to the public.
 - (5) Sell, offer to sell, or deliver alcoholic beverages, including malt beverages, by the pitcher, except to two or more persons at any one time.
 - (6) Increase the volume of alcohol contained in a drink without increasing proportionately the price regularly charged for such alcoholic beverage during that business day.
 - (7) Encourage or permit on the licensed establishment any game or contest which involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.
 - (8) Issue to any customer any coupon, receipt, ticket or other item purporting to authorize the receipt of any free or reduced-price alcoholic beverage.
 - (9) Sell, offer to sell, or deliver to any patron any alcoholic beverage if said patron has in such patron's possession or control any unconsumed alcoholic beverage.
- (c) No licensee shall advertise or promote in any way, whether within or without the licensed establishment, any of the practices prohibited under subsection (b).
- (d) No provision of this section shall be construed to prohibit licensees from offering free food or entertainment at any time provided all patrons or customers are allowed equal access to such free food or entertainment. No provision of this section shall be construed to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person, or to prohibit any hotel or motel from offering room services to registered guests. No provision of this section shall prohibit a licensee from offering

packages in which alcoholic beverages and food or lodging are offered as a unit; provided the value of the alcoholic beverage is established at a uniform level for each package so offered, and the alcoholic beverage delivered as part of the package does not exceed the package allowance, and the tax due on the package allowance is remitted in full to the Town for each package sold.

No hotel or motel maintaining more than one licensed establishment upon its premises shall allow the promotion of one of its licensed establishments over another on the basis of prices for alcoholic beverages.

For the purposes of this section, “business day” shall mean that period running from 7:00 a.m. until 2:00 a.m. on the following day or 12:00 midnight on Saturday.

Sec. 10-96. Hotel in-room service.

Licenses obtained by hotels shall include the right to serve alcoholic beverages by the drink to registered guests in their hotel rooms as well as to deliver alcoholic beverages in unbroken packages to registered guests’ rooms when such beverages have been ordered by such guests and/or provide a cabinet or other facility in a hotel guest’s room which contains alcoholic beverages, cans, bottles, and mini-bottles, for which licensed, and which is provided upon written request of the guest, and which is accessible by lock and key only to the guest, and for which the sale of the alcoholic beverages contained therein is final at the time requested, except for a credit which may be given to the guest for any unused and unopened portion. All alcoholic beverages sold or distributed under this section shall be obtained by the hotel directly from a licensed wholesaler or distributor and shall be stored on the premises of the hotel until sold or served.

Sec. 10-97. Maintenance of premises; improper conduct; nudity prohibited.

All licensed premises shall be kept clean and in proper sanitary condition and in full compliance with provisions and regulations of the Town, county and state governing the conditions of premises used for the storage and sale of food for human consumption.

(1) For purposes of this section:

- a. *Alcoholic beverage establishment* shall mean any restaurant holding a license under this chapter for the sale of alcoholic beverages for consumption on the premises.
- b. *Substantially nude* shall mean dressed or undressed in a manner so as to plainly expose to view any portion of a male’s or female’s pubic hair, anus, cleft of the buttocks, vulva, or genitals, or any portion of the female breast below the top of the areola.
- c. *Simulate* shall mean counterfeit, feign, imitate, or pretend in such a manner that a reasonable observer could be led to believe that the actual act is or may be occurring.

- (2) a. No person shall appear substantially nude in any alcoholic beverage establishment, and no owner or manager of an alcoholic beverage establishment shall permit any person to appear substantially nude on the licensed premises.
- b. No owner or manager of an alcoholic beverage establishment shall permit any person to perform acts of, or acts which constitute or simulate:
 1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or any sexual acts which are prohibited by law.
 2. The touching, caressing or fondling of the breast, buttocks, anus or genitals; provided that random acts of patrons or employees, whose actions do not constitute actions taken pursuant to encouragement or acquiescence of the management of the establishment and are not for the purposes of entertainment, promotion, publicity, or notoriety shall not constitute violations of this section.
- (3) The restrictions of subsection (2) shall apply to persons physically present on the licensed premises, and shall apply regardless of whether such persons are categorized as owners, agents, employees, patrons, and independent contractors or otherwise.
- (4) In addition to prosecution of any person for violation of this section, the alcoholic beverage license of any premises upon which a violation of this section occurs shall be subject to suspension or revocation. Any such revocation or suspension action shall follow the procedures outlined in section Article V. of this chapter. Any conviction or plea of guilty or nolo contendere in the magistrate court to a charge of violation of this section shall be admissible in a license suspension or revocation proceeding.
- (5) Should any phrase, clause, or sentence of this section be found to be unconstitutional or otherwise illegal and unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this section, which provisions shall remain in full force and effect.

Sec. 10-98. Reports of sales to be made quarterly, suspension, revocation.

- (a) Licensees shall, within 30 days following the end of each six (6) month period, file with the Town Clerk or designee a report sworn to be true by the licensee, setting forth gross sales of licensee for the quarter, sales of food and non-alcoholic beverages, and sales of alcoholic beverages.
- (b) Should the total sales from food and non-alcoholic beverages reported by any licensee for consumption on the premises not exceed those from the sale of all alcoholic beverages as required by this chapter for any two consecutive reporting periods, the license may be

suspended or revoked by the Mayor and Town Council after a hearing as provided for in section 10-131.

Sec. 10-99. Additional certification.

In addition to the reporting requirements detailed in section 10-98, the licensee shall, before any license under this Chapter may be renewed, furnish to the Town Clerk or designee a statement from a certified public accountant that reports the percentage of the licensee's total sales derived from the sale of food and non-alcoholic beverages sold on the premises compared to the sale of all alcoholic beverages sold on the premises in the licensee's most recent reporting period.

Sec. 10-100. Areas of sales.

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

- (1) Private parties which have been scheduled in advance;
- (2) Room service to hotel guests in their hotel rooms, provided a properly licensed restaurant or supper club is located on the premises;
- (3) Private clubs; and
- (4) Golf clubs.

Sec. 10-101. Employment.

- (a) It shall be unlawful in any premises to employ any person in any capacity whatsoever, including performers, entertainers and musicians who has been convicted within the past five years, by this or any other state or by the United States or any other country, of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses, or of any offense relating to the manufacture of sale of alcoholic beverages.
- (b) Minors may be employed but shall not be allowed to dispense, sell, deliver, take orders for or in any manner handle alcoholic beverages.
- (c) No licensee shall knowingly employ on any licensed premises, in any capacity whatsoever, including performers, dancers, entertainers, and musicians, any person who has been convicted with the preceding ten years of any crime involving moral turpitude.

Sec. 10-102. Employee identification card.

An employee identification card shall be required for any employee of consumption on the premises licensee who pours, handles, dispenses, or serves alcoholic beverages on the licensed premises.

No licensee shall employ any person required to have an employee identification card until such person has procured such card.

Any person required to obtain an employee identification card shall apply to the Town Clerk or designee for such a card, which card, when issued, shall be valid for a period of two years and shall be renewed on or before its expiration. A fee of \$25.00 shall be paid with each card application. Persons applying for cards shall make themselves available for photographing, background checks, and such other investigation as may be required by the Town Clerk or designee.

Upon receipt of a favorable investigation and report, the Town Clerk or designee shall grant an employee identification card to a person applying for a card.

The Town Clerk or designee may revoke an employee identification card and demand its return where the employee violates the provisions of this ordinance or becomes one who adversely affects the public health, safety, or welfare.

It shall be unlawful for an employee whose employee identification card has been revoked and upon whom demand for return of the card has been made to refuse to return the card or to alter, conceal, deface, or destroy the card.

When a person applies for an employee identification card, the Town Clerk or designee will order a background check through GCIC of such person. The conviction of a felony or crime of moral turpitude, conviction of an alcohol statute or ordinance violation including but not limited to DUI, selling to minors, etc., conviction of a misdemeanor of a high and aggravated nature, within the past five years, or a record of other conduct prohibited by this ordinance, or evidence that the person's employment would adversely affect the public health, safety, or welfare shall preclude issuance of an identification card. A guilty plea or plea of nolo contendere or the forfeiture of a bond shall be considered a conviction for purposes of this subsection.

Sec. 10-103. Copy of regulations.

It shall be the duty of the management of the premises licensed under this chapter to maintain a copy of this chapter on such premises and to instruct each and every employee to the terms thereof.

Sec. 10-104. Drinks served by employees.

Drinks shall only be served by employees of the licensee.

Sec. 10-105. Employee prohibitions.

- (a) It shall be unlawful for any employee of a licensed establishment to engage in the following:
- (1) Dance or sit with customers on the premises while on duty status, including “breaks;”
 - (2) Allow any customer to purchase food or drink, alcoholic or non-alcoholic, for an employee while on duty status, including “break periods;”
 - (3) For an employee to consume or simulate the consumption of any alcoholic beverage while on duty status at the premises of his or her employer, including “breaks;”
 - (4) Require, permit, suffer, encourage, or induce any employee or person to solicit at the licensed premises for himself or for any person other than the patron and guest of the patron, the purchase by the patron of any drink, whether alcoholic or non-alcoholic; or money with which to purchase same; nor shall any licensee pay a commission or any other compensation to any person frequenting his establishment or to his agent or manage to solicit for himself, or for any other, the purchase by the patron of any drink, whether alcoholic or non-alcoholic.
- (b) For purposes of this section the term employees shall also apply to performers, dancers, entertainers, musicians engaged in temporary work, as well as regular employees.
- (c) For purposes of this section breaks or break periods is defined as that period of time that the employee is off duty but remains upon the premises of the licensed establishment waiting to go back on duty.

Sec. 10-106. Size of containers.

Licensees under this chapter shall purchase distilled spirits in sizes of one liter or larger unless a particular brand is not packaged in these size containers in which case the licensee may purchase such brand in the nearest size to such containers. Licensees may purchase mini-bottles to be sold only in in-room hotel cabinets as described in Sec. 10-96.

Sec. 10-107. Dancing on the premises.

Patron dancing shall be permitted at facilities licensed for consumption on the premises sales only where:

- (1) Adequate space exists;
- (2) All fire and safety regulations are met.

Sec. 10-108. Consumption on the premises, only.

- (a) All alcoholic beverages sold by the drink for consumption on the licensee’s premises shall be consumed only on the licensed premises. It shall be unlawful for any person to remove from the licensed premises any alcoholic beverages sold for consumption on the premises. Each licensee shall be responsible for ensuring that no person so removes any alcoholic beverages from the premises in any type of container.
- (b) Each consumption on the premises licensee shall post in a prominent place at each exit from the licensed premises a sign in substantially the following form: “It is a violation of Town ordinance to take any type of alcoholic beverage from this outlet.” Such sign shall be uniform letters not less than one inch in height.

Sec. 10-109. Prohibited advertising.

No advertising of alcoholic beverages shall be published or disseminated in the Town which:

- (1) Contains any statement, design, or pictorial representation which falsely implies that the product has been endorsed, made, or used by, or produced for, or under the supervision of or in association with the specification of any religious organization, the Town, or other local governmental entity.
- (2) Contains any reference, directly or indirectly, which falsely implies an endorsement by, or relationship with, any school, college or university.
- (3) Is directed to, or promotes in any way the sale of alcoholic beverages to, persons under the legal age to purchase alcoholic beverages in the state.

Sec. 10-110. Sale in poolrooms and billiard parlors; minors prohibited if sold.

It shall be lawful to sell beer, malt beverages, wine or distilled spirits by the drink for consumption on the premises, only, in poolrooms or billiard parlors provided such poolrooms or billiard parlors also meet the requirements of the restaurant as defined in this chapter; however, in any poolroom or billiard parlor where beer, wine or malt beverages are sold it shall be unlawful for the proprietor or operator to allow anyone under the age of 18 to patronize such business establishment unless accompanied by a parent or guardian.

Sec. 10-111. Brown bagging, brown bag establishments.

“Brown bagging” and “brown bag establishments” as defined in this chapter shall be prohibited within the Town.

Sec. 10-112. Lounges, bars prohibited.

“Lounges” or “bars” as defined in this ordinance shall be prohibited within the Town.

Secs. 10-113 – 10-130. Reserved.

**ARTICLE V.
SUSPENSION, REVOCATION AND PROBATION OF LICENSES;
DUE PROCESS; HEARING**

Sec. 10-131. Grounds for suspension or revocation; notice; hearing; bond for reinstatement.

- (a) Any license which has been issued or which may hereafter be issued by the Town may be suspended or revoked for the cause as hereinafter defined. "Due cause," for purposes of this section shall include, but not be limited to:
- (1) Arrest or conviction (to include a plea of nolo contendere) by local, state or federal authorities of the licensee, license representative or any employees of the licensee for any felony, or any misdemeanor, or any law, regulation or ordinance involving beverage alcohol, drugs, gambling, or tax law violations;
 - (2) Citations issued by local, state or federal authorities to the licensee, license representative or any employees of the licensee for violations of any part of this chapter or any regulation pertaining to state of federal licensing of the possession, sale or distribution of beverage alcohol;
 - (3) Suspension or revocation of any state license required as condition for the possession, sale or distribution of beverage alcohol;
 - (4) Material falsification of any fact given in application for a license issued under this article or bearing upon the licensee's qualification therefore; any act which may be construed as a subterfuge in an effort to circumvent any of the qualifications for a license under this article shall be deemed a violation of the requirement attempted to be circumvented;
 - (5) The licensed business fails to properly account for, file, report and maintain any records or remit of pay any renewal license fee imposed, sales taxes, or excise taxes required under the Town ordinances.
 - (6) Any other factors known to the licensing authority whereby it is objectively shown the licensee, by reason of business experience, financial standing, trade association, personal association, record of arrests, or reputation in any community in which he has resided, is not likely to maintain the operation for which he is licensed in conformity with federal, state or local laws.

With respect to this section, it shall be rebuttably presumed that the violation act was done with the knowledge or consent of the licensee; provided, however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aide in such occurrence, or in the exercise of full diligence could not have discovered or prevented such activity.

- (b) Action to suspend or revoke a license shall be commenced by the Town Clerk or designee by giving written notice to the licensee, either by certified mail, return receipt requested, or by personal service upon licensee or his agent at the licensed location, stating the grounds therefore, and the date, time and place such matter will be heard by the Town Clerk or designee. Notice shall be served at least 48 hours prior to the date of the hearing. Included in the notice shall be an advisement of the licensee's right to be heard before the Clerk or designee. Any licensee requiring subpoenas to compel the attendance of witnesses or documents at the hearing shall file a written request with the Town Clerk or designee prior to the hearing. Hearings may be continued for good cause only.
- (c) All final decisions to suspend or revoke a license shall be made by the Town Clerk or designee, in writing with the reasons therefore stated. Notice of a final decision shall be given the licensee within three business days.
- (d) Hearings shall only be as formal as necessary to preserve order and shall be compatible with the principles of justice. The Town attorney or his designee may present the Town's case and bear the burden of proving by a preponderance of the evidence that due cause exists to suspend or revoke the license. The licensee may be represented by legal counsel, may confront and cross-examine witnesses, and shall have the right to call witnesses and present evidence in his behalf. A hearing record shall be maintained by the Town Clerk or designee. Hearings shall be presided over by the Town Clerk or designee who shall preserve order and rule upon all matter of evidence. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.
- (e) After hearing any evidence presented to the Town Clerk or designee, the Town Clerk or designee shall either take no action, probate, suspend, and/or probate, or revoke the license. Except that no license shall be placed on probation, suspended or revoked unless there is due cause as hereinafter defined.
- (f) The Town Clerk or designee shall not be required to strictly adhere to the progressive penalties in the penalty schedule and is authorized to invoke a more or less severe penalty based on the circumstances of the violation to include the forwarding of the violation directly to the Mayor and Town Council for an administrative hearing.

Penalty Schedule – State Violations

- (1) *First Violation30 days suspension*
- (2) *Second Violation60 days suspension*
- (3) *Third Violation Revoke License*

*Penalty Schedule – Town Ordinance Violation
That are Not Also Violations of State Law*

- (1) *First Violation* *Six months probation*
- (2) *Second Violation* *Seven-day suspension of
license and one year probation*
- (3) *Third Violation* *Revoke License*

(g) Upon the second suspension or revocation of a license within any five-year period, as a prerequisite or reinstatement or reissuance of the license, the licensee, in addition to the requisite fees assessed under this article, shall post a surety bond, payable to the Town, in the amount of \$5,000.00, conditioned upon the licensee maintaining the operation for which he is licensed in conformity with all federal, state and local laws, ordinances, rules and regulations. Upon any subsequent act giving due cause for suspension or revocation of the license, the bond shall be forfeited and license revoked.

Sec. 10-132. Appeal.

A licensee may appeal within ten days the action by the Town Clerk or designee to the Mayor and Town Council and request a public hearing on the violation. Such hearing shall be held within 30 days following receipt of a written request from the licensee. Upon receipt of an appeal requesting a public hearing, the Town Clerk or designee shall delay the penalty pending the outcome of the public hearing.

Sec. 10-133. Hearing to be conducted by Mayor and Town Council.

(a) The Mayor and Town Council is authorized to conduct all hearing relating to violations of Town, county or state laws regulating the sale or use of alcoholic beverages and any regulations issued pursuant thereto. The licensee should be prepared to prove or show evidence of all business practices and procedures instituted to ensure compliance with this chapter and state law. The inquiry may include but shall not be limited to:

- (1) Employment standards of the licensee.
- (2) Employee direction/supervision.
- (3) Enforcement check reports.
- (4) Previous violations.

(b) The Mayor and Town Council are authorized to affirm, reduce, increase or reverse the penalty applied or recommended by the Town Clerk or designee.

Secs. 10-134 – 10-150. Reserved.

**ARTICLE VI.
TAXATION OF PACKAGE SALES.**

Sec. 10-151. Excise tax report; penalty for failure to file; payment.

- (a) In addition to the annual retail license fee required for the sale of alcoholic beverage, there is hereby levied and imposed upon all wholesale dealers selling malt beverages within the Town a specific excise tax in the amount of \$0.004166 per ounce on malt beverages sold by each wholesale dealer except when malt beverages are sold in individual containers with a capacity of 15 ½ gallons or more, the excise tax shall be \$6.00 per 15 ½ gallon container, or if the container is larger than 15 ½ gallons, the tax shall be proportioned at the rate of \$0.387 per each additional gallon or portion of a gallon capacity of the container.
- (b) An excise tax is hereby imposed on wine sold within the limits of the Town at the rate of \$0.22 per liter.
- (c) Each wholesale dealer selling malt beverages within the Town limits shall file a report by the tenth day of each month showing for the preceding calendar month the exact quantities of malt beverages by size and type of container, constituting a beginning and ending inventory for the month, sold within the incorporated Town limits. Each wholesale dealer shall remit to the Town on the tenth day for the month succeeding the calendar month in which such sales were made, the amount of excise tax due in accordance with the section.
- (d) The excise tax provide for in this section shall be in addition to any license fee, occupation tax or other charge which may now or in the future be imposed upon the business of selling malt beverages or wines at retail or wholesale, within the Town.
- (e) The failure to make a timely report and remittance shall render a wholesale dealer liable for a penalty of ten percent of the total amount due during the first 30-day period following the date such report and remittance were due and a further penalty of ten percent of the amount of such remittance for each successive 30-day period or any portion thereof, during which such report and remittance are not filed. The filing of a false or fraudulent report shall render the wholesale dealer making such report liable for a penalty equal to 50 percent of the amount of the remittance which would be required under an accurate and truthful report.

Secs. 10-152 – 10-160. Reserved.

**ARTICLE VII.
TAXATION OF BEVERAGES BY THE DRINK.**

Sec. 10-161. Definitions.

As used in this article the following terms shall have the meanings ascribed to them:

Agent. The license representative.

County. Coweta County, Georgia.

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

Monthly period. The calendar months of any years.

Purchase price. 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. Any person who orders and gives present or future consideration of any alcoholic beverages by the drink.

Tax. The tax imposed by this article.

Sec. 10-162. Tax levied.

There is hereby imposed and there shall be paid a tax of three percent of the purchase price of every sale of an alcoholic beverage (but not including malt beverages, fermented wines or fortified wines) purchased by the drink in the Town.

Sec. 10-163. Collection of tax; information to Town.

Every licensee or his agent is hereby authorized and directed to collect the tax herein imposed from purchasers of alcoholic beverages (but not including malt beverages, fermented wines or fortified wines) by the drink sold within his licensed premises. Such licensee or his agent shall furnish such information as may be requested by the Town to facilitate the collection of this tax.

Sec. 10-164. Payment of tax by licensee; collection fee.

- (a) *Due date of taxes.* All taxes collected by the licensee or agent hereunder shall be due and payable to the Town on or before the twentieth day of every month next succeeding each respective monthly period as set forth herein.

- (b) *Return; time 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 Town, in such form as the Town may prescribe, by every licensee or agent liable for the payment of tax hereunder.
- (c) *Delivery of return and remittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the Town of Sharpsburg Town Clerk or designee.
- (d) *Collection fee allowed licensees or agents.* Licensees or agents 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 said amount is not delinquent at the time of payment. The rate of deduction shall be the same under the Georgia Retailers' and Consumers' Sales and Use Tax Act, approved February 20, 1951, (Ga, Laws, p. 360), as now or hereafter amended.

Sec. 10-65. Deficiency determinations.

- (a) *Recomputation of tax; authority to make; basis of recomputation.* If the Finance Director is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the Town by any person, the Finance Director may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One or more than one deficiency determination may be made of the amount due for one or more than one monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof, from the twentieth day after the close of the monthly period for which the amount of any portion thereof should have been returned, until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the Finance Director may offset overpayments; for a period or periods, against underpayments; for another period or periods, against penalties; and against the interest on underpayments. The interest on overpayments shall be computed in the manner set forth in subsection (b) hereof.
- (d) *Penalty; negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to gross negligence or disregard of rules and regulations, a penalty of 15 percent of the amount of such deficiency shall be added thereto.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency determination has been made is due to fraud or an intent to evade any provision of this article or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto, in addition to the 15 percent penalty provided in subsection (d) hereof.

- (f) *Notice of Finance Director's determination; service of.* The Finance Director, or his designated representative, shall give to the licensee written notice of his determination. The notice may be served personally or by mail; if by mail such service shall be addressed to the licensee at his address as it appears in the records of the Finance Director. In the case of service by mail of any notice required by this article, 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 article or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the twentieth day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

Sec. 10-166. Determination if no return made.

- (a) *Estimate of gross receipts.* If any licensee fails to make a return, the Finance Director 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 Town which is subject to the tax. The estimate shall be made for the period or periods in respect to which the licensee failed to make the return and shall be based upon any information which is or may come into the possession of the Finance Director. Upon the basis of this estimate, the Finance Director shall compute and determine the amount required to be paid to the Town, adding to the sum thus determined a penalty equal to 15 percent thereof. One or more determinations may be made for one or for more than one period.
- (b) *Manner of computation; offsets; interests.* In making a determination, the Finance Director may offset overpayments for a period or periods against the interest, penalties or underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) hereof.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof, from the twentieth day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payments.
- (d) *Penalty for fraud or intent to evade.* If the failure of any person to file a return is due to fraud or an intent to evade this article or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 15 percent penalty provided in section (a) hereof.
- (e) *Giving of notice; manner of service.* Promptly after making his determination, the Finance Director 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. 10-167. Penalties and interest for failure to pay tax.

Any person who fails to pay the tax herein imposed to the Town or fails to pay any amount of such tax required to be collected and paid to the Town within the time required, shall pay a penalty in the amount of 15 percent of the tax plus interest on the unpaid tax or any portion thereof as set forth in subsection 10-165 hereof.

Sec. 10-168. Administration; enforcement; rules; records; confidentiality or reports.

- (a) *Authority of the Finance Director.* The Finance Director shall administer and enforce the provisions of this article for the levy and collection of the tax imposed by this chapter.
- (b) *Rule and regulations.* The Finance Director and Mayor shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the Town and the State of Georgia, or the constitution of this state or the United States for the administration and enforcement of the provisions of this article and the collection of the taxes hereunder.
- (c) *Records required from licensee; form.* Every licensee for the sale of alcoholic beverages by the drink in the Town shall keep such records, receipts, invoices and other pertinent papers in such form as the Finance Director may require.
- (d) *Examination of records; audits.* The Finance Director or any person authorized in writing by the Town 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) *Authority to require reports; contents.* In the administration of the provisions of this article, the Finance Director may require the filing of reports by any person or class of persons having in such person's or person's possession or custody information relating to the sales of alcoholic beverages which are subject to the tax. The reports shall be filed with the Finance Director and shall set forth the price charged for each sale, the date or dates of such sales and such information as the Finance Director may require.

Secs. 10-169 – 10-180. Reserved.

**ARTICLE VIII.
VIOLATIONS.**

Sec. 10-181. Violations prohibited.

No person shall violate any of the provisions of this chapter or assist another in evading or avoiding the licensing requirements or in the payment of the taxes and fees imposed by this chapter.

Sec. 10-182. Penalties.

Any person knowingly violating any provision of this chapter shall be guilty of an offense against the Town, punishable upon citation before the magistrate court. Any person convicted of violating any provision of this chapter shall be punished by a fine not to exceed the maximum found in the Town's Charter or as allowed by State law whichever is greater.

Secs. 10-183 – 10-200. Reserved.

**ARTICLE IX.
VESTED RIGHTS.**

Sec. 10-201. Vested right status for existing establishments.

No establishment, by virtue of being in operation prior to July 6, 2009, shall be allowed to sell alcoholic beverages without meeting all requirements of this Chapter.

SECTION 2

This Ordinance shall become immediately effective upon its second reading and adoption by the Town Council.

SECTION 3

The Preamble of this Ordinance shall be construed to be, and is hereby incorporated by reference as if fully set out herein.

SECTION 4

This Ordinance shall be codified within the Code of Ordinances of the Town of Sharpsburg, Georgia at Chapter 10, in a manner consistent with the laws of the State of Georgia and the Town of Sharpsburg.

SECTION 5

The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, sentence, paragraph, or section of this Ordinance shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such an illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION 6

Current and valid Licenses and Permits issued pursuant to Chapter 10 of the Town's Code, which is superceded and repealed hereby, and violations and penalties for violations of Chapter 10 existing prior to the adoption of the Ordinance, shall continue in full force and effect, and shall be applicable to this Ordinance.

SECTION 7

All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

APPROVED BY THE MAYOR AND COUNCIL OF THE TOWN OF SHARPSBURG at a regular meeting of the Mayor and Council on the _____ day of _____, 2009, by the following voting for adoption:

Derrick G. McElwaney, Mayor

L. Gordy Anderson, Council Member

Polly A. Garlington, Council Member

D. Keith Rhodes, Council Member

Connie F. Turner, Council Member

Attest:

Donna M. Camp, Town Clerk