

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF PART II - CODE OF ORDINANCES, CHAPTER 6: ALCOHOLIC BEVERAGES; TO ADD ADDITIONAL PROVISIONS AND SECTIONS TO CHAPTER 6: ALCOHOLIC BEVERAGES; TO REPEAL ALL CONFLICTING ORDINANCES, TO FIX AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Mayor and Council for the City of Calhoun seek to amend the former municipal code of ordinances to establish a more modern set of regulations concerning the sale of alcoholic beverages within the municipal limits; and

WHEREAS, the Mayor and Council for the City of Calhoun seek to amend and adopt provisions that would be more attractive to local and non-local business entities to create additional and diverse dining, lodging and entertainment venues;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF CALHOUN THAT THE CALHOUN CODE OF ORDINANCES, PART II, CHAPTER 6 - ALCOHOLIC BEVERAGES SHALL BE MODIFIED, AMENDED OR CHANGED AS FOLLOWS:

SECTION ONE: ARTICLE I - IN GENERAL: SECTION 6-4, including the discrete sections and subsections, is stricken in its entirety and replaced with **ARTICLE I - IN GENERAL: SECTION 6-4** to read as follows:

“ Sec. 6-4. Compliance; Inspection; Inspection of licensed establishments by the police department.

(a) It shall be unlawful for any person to sell or offer for sale, at wholesale or retail, any alcoholic beverages within the city, without having first complies with the provisions of this chapter.

(b) The city administrator shall appoint one (1) or more persons to conduct periodic inspections of the businesses regulated by this chapter and to report to the city administrator any violation of any laws or ordinances regulating such businesses or other regulations made pursuant to authority granted for the purpose of regulating such businesses, or for the violation of any state or federal law or city ordinance, other than infrequent minor traffic violations.

(c) Sworn officers of the police department shall have the authority to inspect establishments licensed under this chapter during the hours in which the premises are open for business without prior notice to the city administrator. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other city officer to conduct inspections authorized by other provisions of this Code and state law.”

SECTION TWO: ARTICLE I - IN GENERAL: SECTION 6-8, including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE I - IN GENERAL: SECTION 6-8 to read as follows:

“ **Sec. 6-8. Possession in public places.**

(a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to drink, consume, transport, carry any alcoholic beverage (except in the original package and with the seal unbroken), on any public street, sidewalk, or in any city park, city maintained recreation facility, public parking lot or semi-public parking lot located within the city limits. The term “semi-public parking lot” shall include any area wherein motor vehicles are parked in plain view of the public in conjunction with any business, enterprise, commercial establishment, office building, or apartment building.

(b) The possession of beer and/or wine sold by the drink within a special outdoor area as provided for in Sec. 6-108 and Article V of this chapter.”

SECTION THREE: ARTICLE II - LICENSE: SECTION 6-33 including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE II - LICENSE: SECTION 6-33 to read as follows:

“ **Sec. 6-33. Application requirements and procedure.**

(a) *Required information.* All persons desiring to obtain a license under this article shall make written application to the mayor and council for such privilege, upon forms to be prepared and provided by the city administrator. Such application shall state the name and address of the applicant; the class of license desired; the place where the proposed business is to be located; the nature and character of the business to be carried on; if a partnership, the names of all partners, whether general or limited; if a corporation, the names of all officers thereof, and all stockholders therein if its shares are not registered with the appropriate state and federal regulatory agency; and the names of all persons who have or will have a direct or indirect beneficial interest in the license, if issued. There shall be attached to and made a part of the application a financial statement detailing the amount of investment by the applicant; the amount and sources of loans, if any, to be used for construction and/or operation of the business; and the collateral used to secure such loan, if any. This statement and the information therein shall be treated confidentially to the extent permitted under the Georgia Open Records Law (O.C.G.A. § 50-18-70 et seq.) and shall be examined only by the city administrator, the mayor and council, and the city attorney. The application shall contain such other appropriate information as may be required by this article or by the mayor and council, and shall be sworn to by the applicant before filing.

(b) *Failure to furnish information; personnel statement; failure to produce persons for interrogation.* All applicants shall furnish all data, information and records pertinent to the application requested of them by the police department. Failure to furnish such data, information and records within 30 days from the date of such request shall automatically serve to dismiss, with prejudice, the application. All applicants shall submit a completed copy of the personnel statement Form ATT-17, state department of revenue, alcohol tax and control unit. The applicants, by filing an application, agree to produce for oral interrogation any persons requested by the police department and considered as being important in the ascertainment of the facts relative to such application or license issued under the terms of this article. The failure to produce such persons within 30 days after being requested to do so shall result in the automatic dismissal of any application pending under this article.

(c) *Survey.* Each applicant shall submit a survey by a registered land surveyor showing compliance with all distance requirements contained in this chapter.

(d) *Processing time.* The city shall require not less than 25 days and not more than 45 days after the filing of the application for processing any application for

license under the terms of this article.

(e) *Processing fee.* Upon filing of the application with the city administrator, the applicant shall deposit in cash or by certified check a processing fee in the amount specified by the governing body to cover the expense of investigation and processing the application, which fee shall not be refundable and shall not apply against any license under this article. The fee shall be retained for application processing costs and the applicant is responsible for the entire license fee upon approval.

(f) *Payment of license fee.* Upon approval of an application for license in accordance with the terms of this article, the license fee shall be paid by certified check prior to the issuance of a license and within ten days after approval.

(g) *Refund of fee upon denial of license by state.* If the applicant is denied a license by the state, the license fee shall be refunded.

(h) *Annual questionnaire.* The city shall require annual questionnaires to be filled out by current license holders before new yearly licenses are issued by the city clerk.”

SECTION FOUR: ARTICLE II - LICENSE: SECTION 6-34 including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE II - LICENSE: SECTION 6-34 to read as follows:

“ **Sec. 6-34. - Designation of store manager.**

(a) When a license for the sale of any alcoholic beverage is applied for by any domestic or foreign legal entity lawfully registered and doing business under the laws of the state, the applicant shall also name an individual manager, or an individual member of the management team, who shall be responsible for managing and overseeing the proposed business of selling alcoholic beverages.

(1) The manager must meet and maintain all requirements of an individual licensee as prescribed by this chapter; provided, however, any domestic corporation or legal entity lawfully registered and doing business under the laws of the state, or any foreign corporation or legal entity lawfully registered under the laws of another state and authorized by the secretary of state to do business in the state, which seeks to obtain any class of license under this chapter shall

be required to designate a resident of the county as a store manager, or an individual member of the management team, for purposes of the initial application and all annual renewals.

(2) Should the corporation have a change of management, or should the designated manager relocate so as to no longer be a resident of the county after the initial application, but prior to the annual renewal, the corporate licensee shall immediately notify the city through the city clerk, city administrator or police chief of such change in writing no less than five business days from said change. For the duration of the time prior to the annual renewal, the corporation shall be permitted to provide the city the name of its authorized agent, who must be a natural person and resident of the state, authorized to receive notice of any violation of its license privileges or receive service of citation or service of process under the laws of the state. At no time shall the designated agent be a corporation, limited liability company, partnership, or other form business entity. The authorization described herein shall be delivered in writing with all other elements of the required application.

(3) The corporation shall be required to designate an individual manager, or an individual member of the management team, who is a resident of Gordon County prior to the annual renewal of any license issued pursuant to this Chapter.

(b) Failure of a corporation or legal entity holding a retail alcoholic beverage license to immediately notify the city administrator or police chief of such a change in its authorized agent shall be grounds for suspension or revocation of the licensee's license, and shall be effective immediately upon notice having been provided by the City in writing.

(c) If such a named authorized agent should cease to possess or maintain all of the qualifications and requirements as are required of an individual license holder for the sale of similar alcoholic beverages, except the county residency requirement, the license of the legal entity or corporation responsible for the authorized agent may be suspended until the corporation or legal entity names an authorized agent who does meet and possess all such qualifications and requirements.

(d) When a license for the sale of alcoholic beverages is applied for by an individual person or partnership comprised of individual persons, the applicant

shall also name a store manager who will be responsible for managing and overseeing the proposed business of selling alcoholic beverages. The manager must meet and maintain all requirements of an individual licensee as prescribed in this chapter, and must be a resident of the city or county.”

SECTION FIVE: ARTICLE II - LICENSE: SECTION 6-40 including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE II - LICENSE: SECTION 6-40 to read as follows:

“ **Sec. 6-40. - Citizenship and residency requirements.**

No license for the sale of alcoholic beverages shall be granted to an applicant unless such applicant is:

- (a) An individual at least 21 years of age who lawfully resides in the United States and a resident of Gordon County, Georgia; provided, however, that residency in the county shall not be a requirement if the applicant designates a resident of the county as store manager and such designee is over the age of 21 and lawfully resides in the United States, who shall be responsible for all matters relating to the license;
- (b) A corporation organized under the laws of the state or authorized to do business therein, provided that said corporation shall be required to designate a manager in accordance with the provisions of Section 6-34; or
- (c) A partnership, all of whose partners are at least 21 years of age and residents of the state for at least one year preceding the date of application.”

SECTION SIX: ARTICLE II - LICENSE: SECTION 6-53 including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE II - LICENSE: SECTION 6-53 to read as follows:

“ **Sec. 6-53. Transfer generally; “grand fathered” locations.**

- (a) Except as provided in this article, no license for the sale of any alcoholic beverage may be transferred from one person to another. Further, no license for the sale of any alcoholic beverage may be transferred from one location or

premises to another without the prior approval thereof by the mayor and council in the manner described in this article.

(b) Any previously licensed location for the sale of alcoholic beverages in accordance with this ordinance shall remain valid for a new license application by a new licensee, without regard for a change in any of the distances for the structures outlined in Section 6-91 that occurred during the existence of the operation of the business for the prior licensee, so long as said application shall be made within 24 months of the sale, transfer, lease or other vacancy of the property caused by the prior licensee at said location.”

SECTION SEVEN: ARTICLE II - LICENSE: SECTION 6-55 including the discrete sections and subsections, is stricken in its entirety and replaced with **ARTICLE II - LICENSE: SECTION 6-55** to read as follows:

“ **Sec. 6-55. Renewal.**

(a) *Annual Renewal Required.* All licensees under this article shall be required to renew their licenses annually and in a timely manner on or before January 1 of each year. The city shall require simplified annual applications from all previously approved license holders, exclusive of advertisement or waiting periods, but with approval by the mayor and council at a regularly scheduled meeting.

(b) *Late Renewal Application After Deadline.* Any licensee under this article that fails to renew their licenses annually and in a timely manner on or before January of each year shall have until January 30th in which to submit a renewal application in the same manner as outlined in subsection (a) of with the penalty fee of ten (10) percent of the license fee to be assessed for failure to renew such license on or before January 1. There shall not be a suspension of the license during that time.

(c) *Suspension of License and Late Application after January 30th.* Any licensee under this article that fails to make a late renewal application pursuant to subsection (b) shall have their ability to sell immediately suspended upon written notice having been provided by the City. The licensee shall have until March 1 to file a late renewal application with the form mandated in subsection (a) with the penalty fee of fifty (50) percent of the license fee to be assessed. The suspension shall remain in full effect until the party has appeared before the Mayor and Council to offer a sufficient explanation for the delinquent renewal.

(d) *Failure to Renew Application.* Any licensee under this article that fails to renew their licenses annually in accordance with any of the previous subsections shall have their ability to sell any alcoholic beverage terminated upon the 1st day of March without any notice to be provided by the City. Said termination shall take effect immediately upon having been provided written notice of same by the City. Additionally, there shall not be any means to file an application for renewal, and the former licensee shall be required to make a new license application in accordance with the provisions mandated by Section 6-33.”

SECTION EIGHT: CHAPTER 6 - ARTICLE II - LICENSE is hereby amended to employ the previously reserved sections and now shall include the following provisions for alcohol sales and service of same:

“ **Sec. 6-63. Special License for Businesses Conducting Wine or Malt Beverage Tastings.**

Upon filing an application, the additional payment of a license fee of \$250.00 per year, and with the approval of Mayor and City Council at a regularly scheduled meeting following such application having been made, the city administrator may issue a limited pouring license for the sole purpose of a business to hold wine or malt beverage tastings. The permit shall allow the applicant to provide samples of wine to the public for consumption on the premises under the following conditions:

- (1) The applicant shall be an establishment licensed to sell wine, in original packages for off-premises consumption meeting all other requirements for any alcohol license in this ordinance.
- (2) The applicant shall maintain on the premises and offer for sale at all times a variety of wines from not less than 15 manufacturers/brands of wine and/or malt beverages.
- (3) The applicant's establishment shall have minimum interior floor area of 100 square feet devoted to the storage, display and sale of wine and/or malt beverages.
- (4) The applicant for a wine or malt beverage tasting must hold a valid current license in the state for the sale of alcoholic beverages.

- (5) No tasting may be conducted on the premises of a malt beverage and wine store operating in connection with a licensed retail liquor store.
- (6) Wine tastings may only be conducted in connection with a bona fide instructional or educational promotion.
- (7) All wines secured for tasting purposes must be obtained through a retail or wholesale wine outlet.
- (8) Tastings must comply with all laws and regulations otherwise pertaining to the sale and distribution of alcoholic beverages in the state.
- (9) All applicants and permit holders must comply with all state statutes and sections of this article of the chapter, and other city ordinances concerning alcoholic beverages, including, but not limited to, those dealing with hours of operation, zoning and distance requirements.

Sec. 6-64. Corkage services.

(a) A restaurant that possesses a valid license for the retail sale of wine for consumption on premises may permit patrons to bring, possess and consume bottles of wine that are owned by the patron and brought onto the premises under the following conditions:

- (1) No more than 750 milliliters of wine, per patron over the age of 21 per meal, shall be permitted to be uncorked.
 - (2) Only patrons seated at tables or booths shall be permitted to consume wine that has been provided by the patron.
 - (3) Wine may only be consumed by individuals who order and are served a meal by the licensee.
 - (4) Every bottle of wine brought onto the premises by a patron must be opened by restaurant personnel.
 - (5) A patron may remove an uncorked bottle of wine from the premises only if the requirements set forth in O.C.G.A. §3-6-4 are met.
- (b) Restaurants may at their discretion charge corkage fees.

Sec. 6-65. Brown bagging prohibited; exception; sanction.

(a) Except as otherwise provided in Sec. 6-64(a)(5), it shall be unlawful for the owner, manager or employee of a food-serving establishment, private club, dance hall or any other establishment primarily in the business of providing food, drink or entertainment to permit customers, guests or invitees to bring an alcoholic beverage onto the premises of such establishment for consumption purposes unless such business holds a valid alcoholic beverage license for the type of alcoholic beverage permitted to be brought into the establishment.

(b) No food-serving establishment, private club, dance hall or any other establishment primarily in the business of providing food, drink or entertainment shall permit customers, guests or invitees to bring an alcoholic beverage onto the premises if any alcoholic beverage license associated with that establishment is suspended or revoked.

(c) A violation of this section shall result in the suspension of the privilege to permit customers, guests or invitees to bring an alcoholic beverage onto the premises of the establishment for a period of two years. Provided, however, if the violation occurs during the suspension or revocation of the alcoholic beverage license associated with the establishment, the suspension of the privilege shall be for a period of time that is the longer of the period of suspension or revocation of the alcoholic beverage license and two years.

(d) This ordinance shall not apply to a private event on any premises where the general public is not allowed entry. An event at a private club where only club members are allowed entry shall not be deemed a private event for the purposes of this ordinance.

(e) Any owner, manager or employee of a food-serving establishment, private club, dance hall or any other establishment primarily in the business of providing food, drink, or entertainment who violates this ordinance shall, upon conviction thereof, be punished by a civil penalty of not less than \$200.00 and not more than \$1,000.00.

Sec. 6-66 – 6-90. Reserved.”

SECTION NINE: ARTICLE III - OPERATING REGULATIONS FOR LICENSED ESTABLISHMENTS, DIVISION 1: SECTION 6-91 including the discrete sections and subsections, is stricken in its entirety and replaced with ARTICLE III - OPERATING

REGULATIONS FOR LICENSED ESTABLISHMENTS, DIVISION 1: SECTION 6-91 to read
as follows:

“ Sec. 6-91. - Distance from schools, churches, polling places and residences.

- (a) No person knowingly and intentionally may sell or offer to sell:
 - (1) Any distilled spirits in or within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus;
 - (2) Any wine or malt beverages within 100 yards of any school building, school grounds, or college campus; or
 - (3) Any distilled spirits, wine, or malt beverages within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government therein.
- (b) As used in subsection (a), the term "school building" or "educational building" shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of Code Section 20-2-690.
- (c) No person knowingly and intentionally may sell any alcoholic beverages for consumption on the premises within 100 yards of any housing authority property. This subsection shall not apply at any location for which a license has been issued prior to July 1, 2000, nor to the renewal of such license.
- (d) As used in subsection (d), the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."
- (e) No person shall knowingly and intentionally sell or offer to sell any alcoholic beverage within 250 feet of any polling place or of the outer edge of any building within which such polling place is established for any state or local election days, including primary, special, runoff or general elections.
- (f) All distances required by this ordinance shall be measured in accordance

with the regulations promulgated by the state commissioner in current version of Section 560-2-2-.12. *Measurement of Distance* of the Rules and Regulations of The State of Georgia, and unless otherwise modified, shall be the following:

- (1) In a straight line from the front door of the structure from which alcoholic beverages are sold or offered for sale; and
 - (2) To the front door of the building of a church, government-owned treatment center or a retail package store; or
 - (3) To the nearest property line of the real property being used for school or educational purposes.
- (g) All renewal applications shall use the measurements required in the initial application and license.

SECTION TEN: ARTICLE III - OPERATING REGULATIONS FOR LICENSED ESTABLISHMENTS, DIVISION 1: SECTION 6-92 including the discrete sections and subsections, is stricken in its entirety and replaced with **ARTICLE III - OPERATING REGULATIONS FOR LICENSED ESTABLISHMENTS, DIVISION 1: SECTION 6-92** to read as follows:

“ **Sec. 6-92. - Hours and days of operation Hours of consumption on alcoholic beverages sold by the glass.**

- (a) *Hours of operation for sale of alcoholic beverages by package.* No sale of alcoholic beverages by the package shall be allowed by a licensed establishment on weekdays and Saturdays except between the hours of 6:00 a.m. and 11:00 p.m. The sale of alcoholic beverages by the package shall be allowed on Sundays between the hours of 12:30 p.m. and 11:00 p.m.
- (b) *Hours of operation for pouring/sale of alcoholic beverages.* No pouring or sale of alcoholic beverages for consumption on the premise shall be allowed except between the hours of 6:00 a.m. and 12:00 midnight on weekdays and Saturdays. The sale of alcoholic beverages by the drink on Sundays shall be allowed between the hours of 12:30 p.m. and 11:00 p.m. in any licensed establishment which derives at least 60 percent of its total annual gross sales from the sale of prepared meals or food.

(c) *Hours of operation for consumption of alcoholic beverages on the premise.* No alcoholic beverage may be consumed on the premises of any licensed public establishment between the hours of 12:30 a.m. and 6:00 a.m. on weekdays and Saturdays. No alcoholic beverages may be consumed by the drink on Sundays between 11:30 p.m. and 6:00 a.m. in any licensed establishment which derives at least 60 percent of its total annual gross sales from the sale of prepared meals or food.

(d) During the permissible hours of sale, the licensee may permit the sale of alcoholic beverages by decanter, pitcher, or other container. In no event shall drinks be mixed or sold, nor malt beverages sold, during the prohibited hours, based upon the timely sale of tickets, chits, decanters or other devices.

(e) No outlet manager, nor other employee of an outlet, shall permit violations of subsections (a) through (e).”

SECTION ELEVEN: CHAPTER 6 - ALCOHOLIC BEVERAGES, ARTICLE III - OPERATING REGULATIONS FOR LICENSED ESTABLISHMENTS, DIVISION 1 is hereby amended to employ the previously reserved sections and now shall include the following provisions for alcohol sales and service of same:

“ **Sec. 6-103. “Sidewalk Café” defined.**

Sidewalk café means an area of food or beverage service located outside, but connected with, a part of, and adjacent to, an indoor restaurant or café located in the Historic District as defined by ARTICLE II of CHAPTER 60 of this Code of Ordinances.

Sec. 6-104. Conditions for sidewalk cafes.

(a) Sidewalk cafes shall be so located and maintained that the following portion of the contiguous sidewalk shall remain unused and unobstructed.

(1) On all streets within the downtown historic district, where streetscape has been completed, at least an eight-foot wide portion of the sidewalk measured from the face of the curb of the street perpendicularly toward the property line of the adjacent indoor restaurant.

- (2) A minimum of four feet shall be provided at all times between the sidewalk café area and the curb or nearest obstacle on all streets to allow for continuous unobstructed pedestrian traffic on the sidewalk.
- (3) Permanent plantings, city owned waste receptacles, streetlight poles, and other permanent fixtures along the sidewalk must be considered when determining the boundaries set forth in a license/permit.
- (b) Any special construction proposed to encroach upon or occupy any of the public right-of-way shall be permitted only by prior approval of such plans by the city building inspector and a certificate of appropriateness from the Historic Preservation Commission.
- (c) The sidewalk café operator shall at all times ensure that:
 - (1) No encroachment on public rights-of-way, other than as stated in this section, shall be allowed to exist.
 - (2) All general provisions and clean community regulations of the refuse collection and disposal provisions are complied with.

Sec. 6-105. Regulations.

Except as otherwise provided, a sidewalk café shall comply with the following:

- (a) *Limitations on area.* The area in which a sidewalk café is operated shall abut the outside front wall of the restaurant of which it is an extension and shall not extend in either direction beyond the outside front wall of the restaurant.
- (b) *Divider required.* At restaurants where alcohol is served, the area permitted for a sidewalk café shall be separated from the remaining sidewalk area by a system of connected posts and railing that serves to contain crowds and maintain the boundaries of the café. The system shall be designed and constructed such that it resists movement and can be disassembled and removed, if necessary. The design must be included in the application and must be approved prior to issuance of a permit. Such divider shall not be less than three feet (36 inches) nor more than three feet six inches (42 inches) in height. All tables and chairs shall be located totally within the limits of the divider. It shall be the responsibility of the permit holder to maintain the divider in its exact approved location at all times.
- (c) *Sanitation.* It shall be the responsibility and duty of the sidewalk café

operator to maintain the area in a clean, neat, and orderly manner at all times. It shall also be the responsibility of the sidewalk café operator to properly clean the area as specified by the city public works department. All tables and chairs are to be kept clean, sanitary, safe, and in structurally sound condition at all times.

(d) *Removal of furnishings and suspension of operation.* All tables, chairs, and dividers of a sidewalk café shall be removed from the public sidewalk area from time to time and outside operations suspended as required by the city for sidewalk upkeep or for such other purposes as the city may determine, in its sole discretion for such purposes as, but not limited to:

- (1) Any permitted special event;
- (2) Any street, sidewalk or utility construction;
- (3) Any emergency situations; or
- (4) The protection of the health, safety and welfare of the public.

(e) *Furnishings.* Furnishings shall not be secured to lamp posts, streetlights, trees or any other public street fixtures. Furnishings may not be stacked or stored outside on the public right-of-way at any time.

(1) *Fences/barriers.* A physical barrier in compliance with this Article shall serve to maintain the boundaries of the sidewalk café. Flower boxes or planters may be used to define the corner boundaries of the area.

(2) *Menu boards and signs.* Menu boards, both portable and on walls, shall be subject to sign permit approval and shall comply with Historic Preservation Guidelines.

(3) *Umbrellas.* Each table may be equipped with an umbrella that, when open, shall extend to at least the same diameter as the table it serves and shall be anchored with a weighted case. Any umbrella protruding into public space shall be positioned at a minimum height of seven feet. Each umbrella shall be maintained in good, clean, and operable condition.

(4) *Tables and chairs. Materials-*Tables and chairs shall match and be made of safe, sturdy and durable material, such as wood, steel, or wrought iron. All furniture shall be commercial grade and

manufactured for outdoor commercial use. Vinyl tablecloths are not recommended. Small round or square tables shall seat no more than four people. Use of larger tables may be granted provided that all clearance requirements are met. Round tables shall be no larger than three feet diameter. Square tables shall be no larger than three feet wide and rectangular tables no more than three x four feet.

(f) *Landscaping.* Flower boxes or planters may be used to define the corner boundaries of the seating area. The combined height of the planters and live plants shall not exceed four feet from sidewalk grade and no wider than two feet at the base. The planting areas shall be planted with seasonal blooming or ornamental evergreen live plants year round. The permit holder shall maintain flower boxes and planting areas. The flower boxes, planters and trash receptacles shall be portable and made of safe, durable and attractive materials such as wood, steel or colored concrete.

(g) *Hours of operation.* A sidewalk café may be open for breakfast, lunch and/or dinner and any combination thereof, consistent with the business's normal hours of operation.

(h) *Guidelines.* The city shall adopt standards and guidelines for consideration without amendment to this article.

Sec. 6-106. Liability and insurance.

Sidewalk café operators shall indemnify and hold harmless the city and its officials and employees from claims and liability arising out of the use of a sidewalk café. The sidewalk café operator shall obtain insurance covering the use of a sidewalk café and name the city as an additional insured with respect to such insurance. The city shall prepare guidelines with respect to any indemnification and insurance requirements of sidewalk café operators.

Sec. 6-107. Americans with Disabilities Act.

All sidewalk cafes shall fully comply with all requirements of the Americans with Disabilities Act as currently existing or as may be hereafter amended.

Sec. 6-108. Sidewalk cafes, open area and patio sales.

The consumption and/or sale of alcoholic beverages shall be allowed in sidewalk cafes that are in compliance with this Chapter of the Code of Ordinances

without creating a “public place” violation as outlined in Sec. 6-8 under the following provisions:

(a) All consumption and/or sale of alcoholic beverages shall occur in open areas and patios under the control of the licensee provided that such open areas and patios are separated from public areas by a physical barrier, fence, rail or similar structure sufficient to prevent ingress and egress by a person(s) except through a controlled access point;

(b) The licensee must be in compliance with all other appropriate regulations as to the safe and orderly operation of such establishment and its sidewalk café, open area or patio, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress; and

(c) In the event the designated area is separated from the licensee’s premises so that it is necessary to traverse public property to get from one location to the other, then in such event it shall be unlawful for alcoholic beverages to be carried from said premises to the designated area or vice versa by anyone but the licensee or employees of licensee.

Sec. 6-109. Catering license for off-premises pouring/sale of malt beverages and wine.

(a) *Off-premises license issued by City of Calhoun.* Any person that holds a valid license issued by the City of Calhoun to sell alcoholic beverages for consumption on the premises may be issued an off-premises catering license that permits said person to sell and/or distribute alcoholic beverages by the drink off-premises at an authorized catered function. Any person seeking an off-premises catering license shall make application therefore, which shall be processed and decided according to the same guidelines set forth for other licenses under this chapter, including payment of the application fee and annual license fee. Upon issuance of an off-premises catering license, an event permit as set forth in this section shall be required for each authorized catered function.

(b) *Off-premises license issued by other jurisdictions.* If a person is licensed by another municipality or county government to sell alcoholic beverages by the drink for consumption on the premises, then that person may apply to the City of Calhoun for an off-premises catering license, pursuant to the requirements of this article, allowing such person to sell and/or distribute alcoholic beverages by the drink at an authorized catered function, provided that such person obtains an event permit for each function as set forth in this section.

(c) *Catering event permit application.* Any person authorized under paragraphs (a) or (b) of this section to sell and/or distribute alcoholic beverages at

an authorized catered function shall apply for and obtain a catering event permit issued by the City Clerk prior to serving alcohol at such function. Applications shall be submitted not less than thirty (30) calendar days prior to the event and shall include:

- (1) The name of the individual licenses for sale by the drink for consumption on the premises, and the name and phone number of the employed representative for same who will be at the event;
 - (2) A plan of the event, which includes: (i) the date, location and hours of the event; (ii) the number of persons expected to be in attendance; (iii) the location of guest parking; and (iv) whether security, valet parking, or additional restroom facilities will be provided.
 - (3) The name and telephone number of the host or sponsor of the event, including the name and telephone number of the representative of the host or sponsor who will be at the event.
 - (4) Whether food is being provided by the applicant, and if not, the name and telephone number of the person providing food at the event;
 - (5) Any alcoholic beverage caterer not otherwise licensed by the City of Calhoun shall also be required to submit: (1) the name of the local jurisdiction issuing the off-premises catering license to the applicant; (2) a photocopy of the applicant's off-premises catering license; and (3) payment of a non-refundable fifty dollar (\$50.00) event permit fee; and
- (d) *Event permit application review.* Within ten (10) business days after receipt of an application for an event permit, the City Clerk, in consultation with the fire, road, health and police departments, shall either approve or deny the event permit and communicate the same in writing to applicant. An event permit may be denied for any of the following reasons or combination of reasons:
- (1) The applicant, and/or event host or sponsor does not meet the requirements for an event permit or has on prior occasion(s) violated or failed to comply with this article or with any state rules or laws regarding alcoholic beverages;
 - (2) The event location is a site where a violation of this article or the state laws or rules regarding alcohol has previously occurred;

- (3) The plan of the event as proposed is likely to restrict and/or congest traffic on any of the public roads, rights-of-way, or sidewalks in the immediate vicinity of the event, or is likely to present a danger to the health and safety of guests at the event or members of the public;
 - (4) The plan of the event as proposed is likely to cause a disturbance of the peace at the time of the event, or is likely to intrude upon the privacy or property of citizens in the area of the event; and
 - (5) The plan of the event as proposed is inconsistent with the uses of or is prohibited at the event location.
- (e) *Catering event requirements.* All authorized catered functions permitted under this section receiving an event permit hereunder shall be subject to the following requirements and conditions:
- (1) A caterer may sell and/or distribute only malt beverages and/or wine as defined by Sec. 6-1 of this Code;
 - (2) Malt beverages and wine may only be served at the location and on the date(s) specified in the catering event permit. Event permits shall be valid for a period not to exceed three (3) consecutive calendar days;
 - (3) Food, the total cost of which must exceed the total cost of the malt beverages and wine served, must be served at the event;
 - (4) Copies of the event permits shall be posted and/or maintained at the front door or entrance of the event location at all times during the event. Caterers must also carry a copy of the caterer's off-premises catering license, copy of the City of Calhoun catering event permit, and any necessary state documents and permits in the vehicle transporting the alcoholic beverages to the event;
 - (5) Malt beverages and wine may only be served between the hours of 9:00 a.m. and 12:00 a.m. (midnight), except for events held on sites zoned for residential uses where only four (4) events may be held per calendar year and malt beverage and wine may only be served between the hours of 12:00 p.m. (noon) and 10:00 p.m.
 - (6) No catering event permit will be issued for an event on Sunday allowing

for the sale of any alcoholic beverages.

- (7) The service of malt beverages and wine is subject to compliance with state laws and regulations regarding service of alcoholic beverages at such an event, including the receipt of any necessary state permits and filing of reports with the state revenue commissioner; and
 - (8) Caterers licensed by City of Calhoun shall pay excise taxes on the sale of alcoholic beverages, as calculated under this article and provide a report to the City of Calhoun on or before the time when other excise taxes are due for such licensees, while such caterers not licensed by the City of Calhoun shall pay excise taxes on the total quantity of alcoholic beverages brought into the municipality, as calculated under this article, and provide a report to the City within fifteen (15) days of the conclusion of the event. In addition, to the information required to determine the amount of tax due, the report shall state the quantity and type of alcoholic beverages transported from the licensee's primary premises to the location of the event.
- (f) *Violations.*
- (1) It shall be unlawful for any person licensed to sell alcoholic beverages to sell or distribute malt beverages and/or wine off the premises of such person's business without an off-premises catering license and catering event permit as set forth in this section.
 - (2) It shall be unlawful for any person holding an off-premises catering license and/or event permit to sell or distribute malt beverages and/or wine in a manner inconsistent with such license, permit, or the requirements or conditions for authorized catered functions set forth in this section.
 - (3) It shall be unlawful for any person to serve, distribute, or sell malt beverages and/or wine in violation of this section or any other provision of this article regarding alcoholic beverages.
 - (4) Nothing contained in this section is intended to prohibit anyone from hosting a private function on private property where the host or individual actually renting the private property/facility provides alcohol to guests free of charge or permits the otherwise legal consumption of alcoholic beverages.
- (g) *Appeals.* Any applicant who is denied an event permit by the City Clerk

shall have the right to appeal that decision to the Mayor and Council. Such appeal shall be in writing and shall be filed within five (5) business days of the denial of said event permit.

Sec. 6-110. License for the sale and consumption of malt beverage and wine on the premises of small multi-purpose theater.

(a) *Small multi-purpose theater defined.* A Small multi-purpose theater is a facility located within the Historic District as defined by ARTICLE II of CHAPTER 60 of this Code of Ordinances with a seating capacity between 200 and 749 persons which meets all of the following elements:

- (1) Offers live entertainment, plays, musicals, dinner theater or leases space for birthday parties, wedding receptions or similar events;
- (2) Offers malt beverages and/or wine only when such beverages have been purchased by the licensee permanently located at such premises; except that a bona fide non-profit charitable organization may lease such premises and obtain a special event alcoholic beverage permit from the State of Georgia that allows such charity to receive alcohol donated by a licensed wholesaler;
- (3) Provides no adult entertainment pursuant to ARTICLE II of CHAPTER 10 of this Code of Ordinances;
- (4) Maintains a stage permanently constructed within the facility that is not less than 36 inches off of the floor to be occupied by patrons or seating, and is not less than 200 square feet in total surface and operates a dedicated office for admission ticket sales which is manned by a live employee for not less than 15 hours per week;
- (5) Owners, applicant, managers and employees shall be responsible for keeping a clean, orderly place, and no patrons shall be allowed to stand, sit, mingle or assemble outside the building in parking lots or automobiles while drinking alcoholic beverages or causing a disturbance of any kind;
- (6) Any individual leasing or renting the theater and wishing to impose any fees for cover charges, fees for admission/entrance, fees for contests/tournaments or live entertainment shall hold a valid business license and pay all applicable fees and taxes due on all revenues earned; except that a bona fide non-profit charitable

organization shall be exempt from the requirements of this subsection; and

(7) At no time shall the proceeds from the sale of malt beverages and wine by the small multipurpose theater exceed 50 percent of the gross annual proceeds from all sources of revenue.

(b) *Temporary event license for sale and consumption of malt beverages and wine on the premise.* A small multi-purpose theater shall pay a fee and apply to the City Clerk for temporary event license to allow for the sale for consumption on the premises of malt beverages and wine during scheduled events no later than 30 calendar days prior to same. Said temporary event license shall not exceed a duration of 72 consecutive hours. All small multi-purpose theaters shall be limited to no more than 12 temporary event licenses without leave of the Mayor and City Council. Additional requests for a temporary event license exceeding twelve per year shall be permissible with the approval of the Mayor and Council at a regularly scheduled meeting.

(c) *Hours for sale and limits to sales for consumption on the premises.* The application for a temporary event license shall include the date of the scheduled event and the expected duration of the performance. The sale for consumption on the premises shall be limited to one hour prior to the beginning of any performance, and no sales shall occur within thirty minutes of the conclusion of the performance. Additionally, all sales shall be limited to times otherwise permitted to alcohol beverage license holders by Sec. 6-92 of this Chapter. All sales shall be limited to two drinks per individual presenting legally sufficient identification per purchase.

(d) All small multi-purpose theaters shall be subject to the other provisions of this Chapter as well as the requirements of state law.

(e) *Appeals.* Any applicant who is denied a temporary event license by the City Clerk shall have the right to appeal that decision to the Mayor and Council. Such appeal shall be in writing and shall be filed within five (5) business days of the denial of said license.

Sec. 6-111 to 6-120. Reserved.”

SECTION TWELVE: This ordinance shall become effective immediately following enactment by the Mayor and Council of the City of Calhoun, Georgia, the public health, safety,

and welfare requiring it.

SECTION THIRTEEN: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION FOURTEEN: It is hereby declared to be the intention of the Mayor and Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and if any section, paragraph, sentence, clause, or phrase shall be declared unconstitutional, or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases herein.

SO ADOPTED, this the 28th day of July, 2014

ATTEST:

JAMES F. PALMER, MAYOR
CITY OF CALHOUN, GEORGIA

PAUL WORLEY, CITY CLERK

Date of First Reading: June 16, 2014

Date of First Public Hearing: July 14, 2014

Date of Second Public Hearing: July 28, 2014