

AN ORDINANCE TO AMEND THE CURRENT CITY OF CUMMING ALCOHOL ORDINANCE; TO PROVIDE NEW DEFINITIONS; TO DEFINE INDIVIDUALS WHO MAY ENFORCE THE ALCOHOL ORDINANCE; TO DEFINE LOCATIONS WHERE SERVICE OF ALCOHOL IS PERMITTED; TO ADD ADDITIONAL PERMITTING OPTIONS FOR SPECIAL EVENTS PERMITS; TO ADD PERMITTING OF ALCOHOL BEVERAGE CATERERS; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES AS SET FORTH HEREIN.

WHEREAS, the City Council of the City of Cumming, Georgia is authorized and empowered pursuant to O.C.G.A. § 3-3-2, et. seq., to regulate the sale of malt beverages, wine, and distilled spirits within the geographical confines of said municipality; and,

WHEREAS, the City of Cumming, Georgia currently has an Ordinance as part of the Code of the City of Cumming, Georgia which regulates the sale, licensing, control, taxation and regulation of distilled spirits, malt beverages, and wine; and

WHEREAS, the Mayor and Members of City of Cumming, Georgia City Council desire to combat the undesirable secondary effects of businesses where distilled spirits, malt beverages, and wine may be sold for beverage purposes by the drink for consumption only on the premises where sold; and

WHEREAS, the Mayor and Members of City of Cumming, Georgia City Council desire to avoid negative experiences of other counties and municipalities regarding problems with certain businesses where distilled spirits, malt beverages, and wine are sold for beverage purposes by the drink for consumption only on the premises where sold, which include criminal activity, undesirable community conditions, the depression of property value in the areas surrounding certain establishments, increased expenditure for law enforcement, an increased burden on the judicial system because of increased criminal behavior, and acceleration of community blight (collectively referred to hereinafter as the "pernicious secondary effects"); and

WHEREAS, the Mayor and Members of City Council of City of Cumming, Georgia have a substantial government interest in attempting to preserve the quality of life and ensure the public welfare for the citizens of City of Cumming; and

WHEREAS, the Mayor and Members of City Council of City of Cumming, Georgia desire to establish a comprehensive and consolidated ordinance for the licensing, control, taxation, and regulation of the sale of alcoholic beverages by amending the City's previous ordinance; and thus,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cumming, Georgia, and it is now, therefore, hereby ordained by the authority of the City Charter and the above-referenced authority, as follows:

SECTION 1: DEFINITIONS

The following terms are hereby added to Article I, Section 4-2, being the definition section of the City of Cumming Alcohol Ordinance, said terms to be placed in the Alcohol Ordinance according to their proper alphabetical order:

Alcoholic beverage caterer means any retail dealer licensed pursuant to this chapter who provides alcohol at authorized events or functions, special events, or special events facilities.

Cigar Shop shall mean a commercial establishment that sells full-sized (i.e. not petite or cigarillo), hand-rolled cigars, and which derives at least sixty percent of its total annual gross sales from the sale of such full-sized, hand-rolled cigars.

The definition of “eating establishment” is hereby deleted in its entirety, and is replaced with the following which shall be a new definition of “eating establishment” from this day forward:

Eating Establishment means any public place, including a place available for rental by the public, selling prepared food for consumption by the public on the premises with a full-service kitchen, or other food preparation facilities approved by the City. An eating establishment shall be prepared to serve food every hour the establishment is open and shall derive at least 50 percent of the gross receipts annually from the sale of prepared meals or food.

The definition of “employee permit” is hereby deleted in its entirety, and is replaced with the following which shall be a new definition of “employee permit” from this day forward:

Employee permit means an authorization granted by the City to dispense, sell, serve, take orders, or mix alcoholic beverages in establishments licensed as a retail consumption dealer, or in conjunction with an alcoholic beverage caterer.

SECTION 2: CODE-ENFORCEMENT OFFICER

Article II, Section 4-51 of the City of Cumming Alcohol Ordinance is hereby deleted in its entirety, and in its place is inserted the following which shall be a new Article II Section 4-51 of the City of Cumming Alcohol Ordinance:

Sworn officers of the city police department and/or the City’s Code Enforcement Officer shall have the authority to inspect establishments licensed under the alcoholic beverages ordinances of the city during the hours in which the premises are open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this article and state law. This section is not intended to limit the authority of any other city employee to conduct inspections authorized by other provisions of this article, and is furthermore not intended to limit the ability of the city police department and its officers to conduct searches in conformity with other laws.

SECTION 3: LOCATIONS WHERE PERMITTED

Article VI, Section 4-157, paragraph (4) of the City of Cumming Alcohol Ordinance is hereby deleted in its entirety and in their place is inserted the following which shall be a new Article VI, Section 4-157, paragraph (4) of the City of Cumming Alcohol Ordinance, and a new Paragraph (5) of Article VI, Section 4-157 is hereby added with the following text:

(4) Are publicly or privately owned and are the site of an authorized catered event properly permitted in accordance with the ordinance; or

(5) Cigar shops, as specifically defined in this code, may be issued an on-premises consumption license for sales of beer, malt beverages, and wine, but not distilled spirits, without meeting the requirement that fifty percent (50%) of its gross annual sales be derived from the sale of prepared meals or food, provided that at least (60%) of its gross annual sales be derived from the sale of full-sized, hand-rolled cigars, and expressly excluding from the calculation of gross annual sales the sale of cigarettes, bongos, bubblers, glass pipes, water pipes, Turkish pipes, pipe screens, pipe filters, dug-outs, stash boxes, rolling papers, rolling devices, rolling trays, grinders, cutters, lighters, incense, ash trays, pipe cleaners, cases, humidors, humidifying devices, vaporizers, and other smoking paraphernalia. On or before the twentieth day of each calendar month, each Cigar Shop issued an on premises consumption license shall file a report of the previous calendar month's operations with the Planning Department verifying compliance with this sales provision.

SECTION 4: SPECIAL EVENT PERMITS

Article VII, Section 4-186(a), paragraph (3) of the City of Cumming Alcohol Ordinance is hereby deleted in its entirety and in its place is inserted the following which shall be a new Article VII, Section 4-186(a), paragraph (3) of the City of Cumming Alcohol Ordinance:

(3) All employees at the point of sale must have an employee permit or a permit under a licensed alcoholic beverage caterer;

SECTION 5: ALCOHOLIC BEVERAGE CATERERS

A new Article VII, Section 4-191 of the City of Cumming Alcohol Ordinance is hereby enacted with the following text:

Sec. 4-191. - Alcoholic beverage caterers.

(a) *License requirements—Resident caterers.*

(1) Any caterer who possesses a valid city license from the city, to sell or otherwise dispense malt beverages, wine or distilled spirits by the drink for consumption on the premises within the city may apply for an off premises license that permits sales of the same off premises at authorized catered event(s) or function(s).

- (2) Any caterer who possesses a valid license from the city, to sell malt beverages, wine or distilled spirits by the package for consumption off the premises within the city may apply for an off-premises license that permits sales of the same class of alcoholic beverages by the drink off premises at authorized catered event(s) or function(s).
- (3) Each off-premises catering license, authorized herein, shall be valid through December 31 of the year for which they are issued. The fee for each license shall be set by resolution of the city council, and this fee amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council.
- (4) In order to distribute or sell malt beverages, wine or distilled spirits at an authorized catered function, a licensed alcoholic beverage caterer shall file an application for an off-premises event permit to the city at no additional fee. The application shall include the name of the caterer, the date, address and time of the event, the caterer's license number and any other information the city deems necessary to review a request for such permit.
- (5) It shall be unlawful for any person to engage in, carry on, or conduct the sale or distribution of alcoholic beverages off-premises and in connection with a catered event or function without first having obtained a license and event permit(s) as provided herein.

(b) *Permit requirements—Nonresident caterers.*

- (1) A nonresident alcoholic beverage caterer shall submit an application for an off-premises event permit to the city manager or designee. The fee for each such permit shall be \$50.00 as authorized by O.C.G.A. § 3-11-3 (or such fee as may be authorized by any future amendment or revision thereto).
- (2) An application for an off-premises event permit shall include the name of the caterer, the date, address, time, the licensed alcoholic beverage caterer's state and local license number and expiration date, and name of the event and the quantity and type of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event or functions.
- (3) The original off-premises event permit shall be kept in the vehicle transporting the alcoholic beverages to the catered event or function.
- (4) It shall be unlawful for a licensed alcoholic beverage caterer to distribute, sell, or otherwise dispense alcoholic beverages off-premises except as authorized by the off-premises event permit.

- (c) A licensed alcoholic beverage caterer may sell or otherwise dispense only that which is authorized by his alcoholic beverage license. For example, if the alcoholic beverage caterer possesses a valid license to sell malt beverages, he may sell or otherwise dispense only malt beverages at the authorized catered event or function.
- (d) Excise taxes are imposed upon the sale of alcoholic beverages by a resident caterer as provided in Article IV of this chapter.
- (e) Excise taxes are imposed upon the total of individual alcoholic beverage drinks served by a nonresident caterer in the amounts set forth in article IV of this chapter and shall be paid within 30 days after the conclusion of the catered event or function.

SECTION 6. CONSUMPTION/DELIVERY OUTSIDE PREMISES

Section 4-220 – “No consumption/delivery outside premises” is hereby deleted in its entirety, and is replaced with a new Section 4-220 which shall provide as follows:

Sec. 4-220. - Consumption/delivery outside premises.

- (a) Generally:
 - (1) Other than as specifically provided for herein, it is prohibited for customers to leave the premises with open alcoholic beverages, and it is the licensee's responsibility to ensure that no open beverages are sold and carried out.
 - (2) Other than as specifically provided for herein it is prohibited for customers to gather outside an alcoholic beverage establishment and consume alcoholic beverages.
 - (3) Other than as specifically provided for herein, it is prohibited for the manager or any employee to allow persons to gather outside an alcoholic beverage establishment and consume alcoholic beverages.
 - (4) It shall be unlawful for any delivery of an alcoholic beverage to be made to and/or sales be made outside of the outlet. It shall be unlawful to sell or dispense alcoholic beverages from drive-in or service windows.
 - (5) Other than at properly permitted tastings as set forth in section 4-190, it shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of malt beverages or wine by the package, and it shall be unlawful for any licensee by the package to open for or break the package for a purchaser and/or permit the consumption of alcoholic beverages on the premises. The prohibition against the consumption of alcoholic beverages on a premises licensed for the sale of malt beverages or wine by the package shall not prohibit the consumption on the premises of a brew pub which sells barrels of beer to wholesale dealers for subsequent distribution. The prohibition against opening or breaking packages for a purchaser contained in this section shall not prohibit the use of growlers for the sale of malt beverages as provided for and in compliance with this chapter so long as the growler is not unsealed or consumed on the licensee's premises by the purchaser.
- (b) In Planned Unit Development Districts (PUDs) where the service described herein is approved for the PUD, licensees with valid consumption on the premises licenses within such districts may dispense and/or serve an alcoholic beverage for “carry out” purposes

provided all other laws, rules and ordinances are followed, subject to the following restrictions:

- (1) One drink per person on-street limit. Within such districts, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, or other container other than a can, bottle, or glass, for removal from the premises; provided, however, that no person shall remove more than one such alcoholic beverage from the licensed premises at a time.
 - (2) Size limited to a maximum of sixteen (16) ounces. Within such districts, no container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size. No person shall hold in its possession on the streets and sidewalks, in parks and squares, or in other public places within such districts any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.
 - (3) Drinking from can, bottle, or glass prohibited. It shall be unlawful within such district for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and/or parking lot, whether public or private.
 - (4) Consumption limited to certain areas. No alcoholic beverage purchased pursuant to this provision may be consumed outside of such districts, upon any sidewalk adjacent to a church, school or park (unless specifically authorized by the County) or upon any private property without the consent of the property owner or tenant.
- (c) Licensees with valid consumption on the premises licenses within commercial developments where service described herein is specifically approved for the development as a whole may dispense and/or serve an alcoholic beverage for “carry-out” purposes provided that all other laws, rules, and ordinances are followed. For purposes of this subsection, this carry-out provision shall be subject to the following restrictions:
- (1) One drink per person on-street limit. Within such commercial developments, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, or other container other than a can, bottle, or glass, for removal from the premises; provided, however, that no person shall remove more than one such alcoholic beverage from the licensed premises at a time.
 - (2) Size limited to a maximum of 16 ounces. Within such commercial developments, no container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed 16 fluid ounces in size. No person shall hold in its possession on the streets and sidewalks, in parks and squares, or in other public places within such commercial development any open alcoholic beverage container which exceeds 16 fluid ounces in size.
 - (3) Drinking from can, bottle, or glass prohibited. It shall be unlawful within such commercial developments for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and/or parking lot, whether public or private.
 - (4) Consumption limited to certain areas. No alcoholic beverage purchased pursuant to this provision may be consumed outside the limits of the commercial

development, upon any sidewalk adjacent to a church, school or park (unless specifically authorized by the county) or upon any private property without the consent of the property owner or tenant.

SECTION 7. REPEAL OF CONFLICTING ORDINANCES

All ordinances and resolutions and parts thereof in conflict herewith are repealed.

SECTION 8. SEVERABILITY

If any section, provision or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this Ordinance would have been adopted had such invalid portion not been included herein.

SECTION 9. EFFECTIVE DATE

This Ordinance shall take effect upon its passage by the governing authority of the City of Cumming, Georgia.

[Execution on Following Page]

Adopted and Ordained this _____ day of _____, 2019.

CITY OF CUMMING, GEORGIA

Troy Brumbalow, Mayor, City of Cumming

Lewis Ledbetter, Councilman

Linda Ledbetter, Councilwoman

Christopher Light, Councilman

Chad Crane, Councilman

Jason Evans, Councilman

Attest:

Jeff Honea, Clerk, City of Cumming, Georgia