1st Reading: 08-05-09
2nd Reading: 08-19-09

EXHIBIT "A" TO ORDINANCE 424

ARTICLE I. GENERALLY

Sec. No. 1. Purpose.

This Ordinance is enacted for the purposes, among others, of promoting the health and general welfare of the community, to establish reasonable and ascertainable standards for the regulation and control for the licensing and sales of alcoholic beverages and operation of bottle houses; to protect and preserve schools and churches; to give effect to existing land use; and to preserve certain residential areas, with reasonable considerations, 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 the stability of neighborhoods and property values; and to protect against concentration of the retail outlets for liquor in one (1) family and/or in one (1) corporation and to prevent undesirable persons in engaging in or having any interest in alcoholic beverages.
(Ord. No. 287, § 1, 10-22-2002)

Sec. No. 2. Penalties.

(a) Criminal penalties. Any person violating any of the provisions of this ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished as follows: a maximum penalty of 6 months imprisonment or a $1,000 fine or both. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the subsection is committed, continued or permitted by such person and shall be punished accordingly.

(b) Civil penalties. Any person violating any of the provisions of this ordinance shall, in addition to the other penalties and liabilities provided for herein, have his license or permit revoked as provided for herein.

ARTICLE II. EXCISE TAXES

Division 1. Malt Beverages and Wine

Sec. No. 3. Malt beverage and wine taxes; exemptions.

(a) In addition to the malt beverage retail license fee, there is hereby levied and imposed upon each wholesale dealer selling malt beverages and wine within the City of Flowery Branch an excise tax in the following amounts:

(1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of Six Dollars ($6.00) on each container sold containing not more than fifteen and one half (15 1/2) gallons and a proportionate tax at the same rate on all fractional parts of fifteen and one-half (15 1/2) gallons.

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(2) Where malt beverages are sold in bottles, cans or other containers, except barrel or bulk containers, a tax of five cents ($.05) per twelve (12) ounces and a proportionate tax at the same rate on all fractional parts of twelve (12) ounces.

(b) In addition to the wine retail license fee, there is hereby levied and imposed upon each wholesale dealer selling wine within the City of Flowery Branch, Georgia, an excise tax in the amount of twenty-two cents ($.22) per liter and a proportionate tax at the same rate on all fractional parts of a liter.

(c) Pursuant to O.C.G.A. § 3-6-70 and O.C.G.A. § 3-6-71, no tax shall be levied by the board with respect to:

(1) Wine sold to and used by established and recognized churches and synagogues for use in sacramental services only;

(2) Any sale of wine which is exempt from taxation by the state or under the Constitution of the United States;

(3) Wine sold to persons outside this state for resale or consumption outside this state; or

(4) Wines which contain less than one-half of one percent alcohol by volume.

(Ord. No. 54, § 4, 10-22-1987)

Sec. No. 4. Same - reports and remittance.

Malt beverage and wine taxes shall be paid and collected in the following manner: Said excise tax shall be paid by persons selling alcoholic beverages to retail package licensees and/or to consumption on the premises licensees by the 20th day of each month following the month in which deliveries were made. Copies of State Form ATT - 123 and/or the "summary of sales" showing delivery by each supplier to consumption on the premises licensees and retail licensees shall be furnished to the city clerk with each monthly payment. Any misstatement or concealment of fact in reports shall be grounds for revocation of the license issued and shall make the licensee liable to prosecution for perjury under the laws of the State of Georgia.
(Ord. No. 54, § 4, 10-22-1987)

Division 2. Distilled Spirits

Sec. No. 5. Distilled spirits taxes.

In addition to the distilled spirits retail license, there is hereby levied upon each licensee within the City with a license to sell distilled spirits by package at wholesale or retail, an excise tax in the amount of twenty-two cents (22¢) per liter of distilled spirits excluding fortified wine and a proportionate tax at like rates on all fractional parts of a liter.

Sec. No. 6. Same - reports and remittance; records.

(a) Distilled spirit taxes shall be computed and payable monthly. Each wholesale dealer or distributor selling, shopping, or delivering distilled spirits to any retail dealer in the city shall, as a condition to the privilege of conduction that business within the city:

(1) Keep and maintain true and correct records of all sales, shipments or deliveries of distilled spirits to each retail dealer in the city, such records to be preserved for a period of not less than one year and to be made available on request for the inspection of any duly authorized representative of the city.

(2) Collect from each retail dealer in the city at time of delivery of distilled spirits, the amount of tax due under the terms of this section and hold the same in trust for the city until such tax is remitted to the city as herein provided.

(b) On or before the twentieth (20th) day of each calendar month, each wholesaler shall make a verified and comprehensive report to the city, which shall correctly show and reflect all sales and deliveries of distilled spirits to or for retail dealers in the city for the calendar month immediately preceding the date of the report. The report shall show the name and address of each retail dealer, the quantities delivered to each retail dealer, the amount of excise tax collected under the terms of this section, and such other reasonable information as may be requested by the city. The report shall be accompanied by remittance payable to the city for all taxes collected or due, as shown on the report.

(c) The distilled spirit taxes levied in this chapter are hereby levied upon the retailer licensed to do business in the city and it is the intent of this section to so levy this tax but require the payment of the tax at the time of delivery by the retailer to the wholesaler, who shall have the responsibility of remitting the tax to the city on behalf of the retailer on or before the twentieth (20th) day of each calendar month, as hereinbefore required.

In the event the tax due hereunder is not paid on or before the twentieth (20th) day of each calendar month, a ten percent (10%) penalty on the gross tax will be levied by the city against each defaulting retailing licensee for whom the tax is not paid on or before the twentieth (20th) day of the month.

Sec. No. 7. Same - Noncompliance by wholesale dealer; distributor.

If any wholesale dealer or distributor fails or refuses to make the reports required herein, the city shall notify such dealer or distributor in writing and if the reports are not made and the taxes are not remitted within five (5) days from the date of such notice, such wholesale dealer or distributor shall be prohibited from making any further deliveries in the city.

Sec. No. 8. Same - Unlawful retail sales.

It shall be a violation of this chapter for any person to sell at retail within the city distilled spirits on which the taxes herein provided for have not been paid.

Sec. No. 9. Same - Unlawful deliveries.

It shall be unlawful and a violation of this chapter for any wholesale dealer or distributor to deliver any distilled spirits to any retail dealer in the city without at the time of such delivery collecting the excise taxes herein provided for.

Sec. No. 10. Same - Violations and penalties.

(a) Any person violating any of the provisions of this division or who shall assist any retail dealer in distilled spirits in the city to evade or avoid the payment of the taxes herein provided for shall be guilty of a violation of this code and, on conviction thereof in the municipal court, shall be fined or sentenced as provided by chapter 1 of this Code. Any such person so convicted shall also be subject to having his license suspended or revoked, if he shall be a licensed dealer in distilled spirits at retail.

(b) If any licensee fails to make a return for the tax levied under this section, the city clerk shall make an estimate of the amount of the gross receipts of the licensee or as the case may be; of the amount of the total sales in the city which are subject to the tax. The estimate shall be made for the period 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 city clerk. Upon the basis of this estimate, the city clerk shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to 15 percent thereof. One or more determinations maybe made for one or for more than one period.

(c) In making a determination, the City Clerk may offset overpayments for a period or penalties and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (d) of this section.

(d) The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month or any fraction of a month from the 20th day after the close of the monthly period for which the amount or any portion thereof should have been returned, until the date of payment.

(e) If the failure of any person to file a return is due to fraud or an intent to evade this subdivision 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

(f) Promptly after making a determination, the City Clerk 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.

(g) Any licensee who fails to pay the tax imposed under this division to the City or who fails to pay any amount of such tax required to be collected and paid to the City within the time required shall pay a penalty of 15 percent of the tax or amount of the tax, in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof.

(h) At any time within three years after any tax levied under this Subdivision or any amount of tax required to be collected under this Ordinance becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected the City Clerk may bring an action it the courts of this State or any other state or of the United States in the name of the City to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(i) If any licensee liable for any amount under this Ordinance sells or terminates the business, the licensee's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the City Clerk, showing that the amount has been paid or a certificate stating that no amount is due.

(j) If the purchaser of a business fails to withhold purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the City Clerk shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the amount that must be paid as a condition of issuing the certificate.
The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells the business or at the time that the determination against the operator becomes final, whichever event shall last occur.

(k) Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously collected or received by the City under this Ordinance, it may be offset. If the licensee believes it has overpaid or paid more than once, then it will have three years from date of payment to file claim in writing stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved, the excess amount paid to the city may be credited on any amounts due and payable from the licensee by whom it was paid or such person's successors or assigns.
(Ord. No. 170, § 15, 5-18-1999; Ord. No. 287, § 35, 10-22-2002)

Division 3. Per Drink

Sec. No. 11. Per-drink excise tax.

(a) There is hereby imposed and levied upon every purchaser of alcoholic beverages by the drink within this city a tax in an amount equal to three percent of the purchase price charged to the purchaser for such drink.

(b) Every licensee or his agent is hereby authorized and directed to collect the tax imposed herein from purchasers of alcoholic beverages by the drink within the licensed premises. Such licensee or agent shall furnish such information as may be required by the city to facilitate the collection of the tax.

(c) In all cases where the collection of food and drinks is by deferred payment or credit, the licensee is liable at the time of and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The city shall have authority to adopt rules and regulations prescribing methods and schedules for collection and payment of the tax.

Sec. No. 12. Same – reports and remittance.

(a) The tax imposed by this section shall become due and payable from the purchaser at the time of purchase of any mixed drink in this city. All amounts of such taxes collected by the licensees shall be due and payable to the city monthly on or before the 20th day of every month next succeeding each respective monthly period for which the tax is imposed; provided, however, that upon a proper showing that the tax imposed will not be collected until after a regular billing period of the collecting agent then the collection of the tax may be deferred by the city for an additional period not exceeding 30 days.
(b) On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the city in such form as the city may prescribe by every licensee liable for the payment of tax hereunder. All returns shall show the gross receipt of the sale of distilled spirits by the drink and the amount of tax collected on such drinks.

(c) Copies of the "summary of sales" showing delivery by each supplier to consumption on the premises licensees shall be furnished to the city clerk with each monthly payment.

(d) Any misstatement or concealment of fact in reports shall be grounds for revocation of the license issued and shall make the licensee liable to prosecution for perjury under the laws of the state.

(e) Licensees collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under the "Georgia Retailers' and Consumers' Sales and Use Tax Act," approved February 20, 1951, as now or hereafter amended (O.C.G.A. Section 48-8-1, et seq.).

Sec. No. 13. Same – Deficiency determination.

(a) If the city has cause to believe that the return or returns of the tax or the amount of the tax required to be paid to the city by any person is not proper, it may compute and determine the amount required to be paid upon the basis of any information that is within or may come into its possession. One or more deficiency determinations may be made of the amount due for any monthly period. The amount of the determination shall bear interest at the rate of one percent per month, or fraction thereof, from the due date of taxes.

(b) The city or its designated representatives shall give to the licensee written notice of its 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 city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.

(c) Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th 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. No. 14. Same – Determination if no return made.

(a) If any person fails to make a return, the city shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales in this city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is in possession of or may come into the possession of the city. Written notice shall be given in the manner prescribed in subsection (c) of Sec. No. Same – Deficiency determination.

(b) The amount of the determination shall bear interest at the rate of one percent per month, or fraction thereof, from the 20th day of the month following the monthly period for which the amount or any portion thereof would have been returned until the date of payment.

Sec. No. 15. Same – Records; audit.

(a) Every licensee for the sale of alcoholic beverages by the drink in the city shall keep such records, receipts, invoices and other pertinent papers in such form as the city may require.

(b) The city or any person authorized in writing by the city may examine the books, papers, records, financial reports, equipment and other facilities of any licensee for sale of alcoholic beverages by the drink and 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.

(c) In administration of the provisions of this subsection, the city may require the filing of reports by any person having in such person's possession or custody information relating to purchases which are subject to the tax. Reports shall be filed with the city when required by the city and shall set forth the purchase price for each purchase, the date or dates of purchase and such other information as the city may require.

Sec. No. 16. Same – Penalties; violations.

(a) Any person who fails to pay the tax herein imposed or fails to pay any amount of the tax required to be collected and paid to the city within the time required shall pay a penalty of 25 percent of the tax or amount of the tax in addition to the tax or the amount of the tax plus interest on the unpaid tax or any portion thereof as set forth in Section Fourteen (g) (2).

(b) Any licensee or any other person who fails to furnish any return required to be made or fails or refuses to furnish a supplemental return or other data required by the city or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in Chapter 1 of this Code.

Sec. No. 17. Same - Action for tax; tax credit; penalty or interest paid more than once or erroneously or illegally collected.

At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the city may bring an action in the courts of this state, any other state or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorneys' fees and other legal fees incident thereto. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city under this ordinance, it may be offset against any future liability for the tax. If the licensee determines that he has been overpaid or paid more than once, which fact has not been determined by the city, he will have three years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the city, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it is paid or from his administrator or executors.
(Ord. No. 170, § 14, § 15, 5-18-1999)

ARTICLE III. LICENSING AND REGULATION

Division No. 1 Generally

Sec. No. 18. License privilege and state regulations.

(a) License a privilege.

(1) Alcoholic beverages may be sold within the incorporated areas of the City of Flowery Branch under a license granted by the city council as governed by the terms and conditions hereafter provided.

(2) All licenses issued under this ordinance shall be a mere grant or privilege to carry on the business during the term of the license subject to all terms and conditions imposed by the City of Flowery Branch and State of Georgia law.

(3) All licenses hereunder shall have printed on the front these words: "THIS LICENSE IS A MERE PRIVILEGE SUBJECT TO BEING REVOKED AND ANNULLED, AND IS SUBJECT TO ANY FUTURE ORDINANCES WHICH MAY BE ENACTED."

(b) State Regulations. All licenses issued under this ordinance shall be subject to the rules and regulations set forth in O.C.G.A. § 3-1-1 et seq. and those prescribed by the State of Georgia Department of Revenue.
(Ord. No. 54, § 5, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 287, § 2, 10-22-2002)

Sec. No. 19. Number of licenses limited.

The City of Flowery Branch shall issue no more than one (1) package store license pursuant to this ordinance for each 800 registered voters, as determined by the official voter registration list for the City of Flowery Branch.
(Ord. No. 287, § 22, 10-22-2002)

Sec. No. 20. Definitions.

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

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

Building code means and includes all building, plumbing and electrical codes and any other similar technical code of the city.

Church means any permanent, primary building set apart for the regular assembly of religious worship.

College means only such state, county, city, church or other colleges that teach the subjects commonly taught in the common colleges of this state and shall not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Distance means the measurement in linear feet from the front entrance of the proposed structure to the nearest structural wall of the private residence, church, school college classroom or alcohol treatment center along the nearest practical street route.

Eating establishment means any public place selling prepared food for consumption by the public on the premises with a full service kitchen (a "full service kitchen" will consist of a three-compartment pot sink, a stove or grill permanently installed, and refrigerator, all of which must be approved by the health and fire departments), prepared to serve food every hour they are open and deriving at least as much gross receipts annually from the sale of prepared meals or food as it derives from the sale of all alcoholic beverages.

Election Day means that period of time beginning with the opening of polls and ending with the closing of polls.

Hotel or motel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where sleeping accommodations are offered for adequate pay to travelers and guest whether transient permanent or residential. Hotels and motels shall have the privilege of granting franchises for the operation of a lounge or restaurant in their premised and the holder of such franchise shall be included in the definition of hotel thereunder.

License shall mean the authorization by the city council of the City of Flowery Branch, or its designee, to engage in the sale of alcoholic beverages.

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

Lounge means a separate room connected with a part of and adjacent to a restaurant as defined herein with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least twenty (20).

Minor means any person below the age at which alcoholic beverages may be legally purchased in Georgia.

Monthly period means the calendar months of any year.

Package store means a geographic location within the city wherein a license may be issued for the sale of packaged distilled spirits for consumption off-premises.

Pouring permit means an authorization granted by the city to dispense, sell, serve, take orders or mix alcoholic beverages in establishments licensed to sell alcoholic beverages for consumption on the premises.

Premises means the space or area owned, leased and/or controlled by the licensee and used by him for the purposes of operating under the license; except that in the case of hotels and motels, "premises" shall include only the portion of the property where alcoholic beverages are sold; except further, that in the case of private clubs, "premises" shall include any swimming pool which is in the immediate vicinity of the main building of the private club and which is open to members only and their guests and not the general public. Said swimming pool must have a minimum of two thousand five hundred (2,500) square feet of water surface and with required lifeguards.

> Premises is further defined as one physically identifiable place of business consisting of one room, or two (2) or more contiguous rooms operating under the same trade name, ownership, or management; provided nothing herein shall require additional licenses for service bars, or portable bars used exclusively for the purpose of mixing or preparing drinks when such bars are accessible only to employees of the licensed establishment and from which drinks are prepared to be served in the licensed premises.

Private club means any non-profit association organized under the laws of the State of Georgia complying with Internal Revenue Code Section 501; and

> (1) has been in existence at least one year prior to its filing of an application for a license to be issued according to this ordinance;
>
> (2) has a least 75 regular dues paying members;
>
> (3) owns, hires or leases a building or space within a building for the reasonable use of its members, which building is equipped with suitable kitchen and dining room space and equipment and is staffed with a sufficient number of employees for cooking, preparing and serving meals for its members and guest; and
>
> (4) has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond a fixed salary.

Private residence means a house or dwelling wherein not less than one (1) nor more than three (3) families customarily reside and shall not include a mobile home, a boarding house where there are five (5) or more boarders or roomers, or any residence which has been unoccupied for a period of six (6) consecutive months immediately prior to the filing of an application.

Registered Agent shall mean a natural person residing in the City of Flowery Branch or Hall County who is empowered to act for and represent the licensee in all matters with the City of Flower Branch relating to an establishment licensed or making application for a license to sell alcohol upon whom any process, notice or demand required or permitted by law or under this ordinance may be served. The Registered Agency may be the licensee if the qualifications set forth in this ordinance are met.

Residence means the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit or the place where one actually lives as distinguished from his domicile or place of temporary sojourn.

Resident means a person whose primary residence is within the territorial limits of Hall County, Georgia.

Restaurant shall mean any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment, air conditioned, with employees there in a sufficient number and kind to prepare, cook and serve suitable food for its guests. At least one meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of remodeling and the serving of meals shall be the principal business conducted (deriving at least 40% percent of its annual gross food and beverage sales from the sale of prepared meals or food), with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall provide at least 55 seats for customers.

Retail means retail sales packaged to go and not for consumption on the premises.

School means only such state, county, city, church or other schools that teach the subjects commonly taught in the common schools of this state and shall not include private schools providing primarily daycare or where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

The definitions set forth in O.C.G.A. § 3-1-2 ("Alcoholic Beverages- General Provisions- Definitions"), shall be effective as definitions of the words, terms and phrases used in this chapter. All words, terms and phrases used herein, other than those specifically defined elsewhere in this chapter, shall have the respective meanings ascribed to them in O.C.G.A. § 3-1-2, and shall have the same scope and effect that the same words, terms and phrases have where used in O.C.G.A. § 3-1-2.
(Ord. No. 47, § 2, 9-11-1986; Ord. No. 54, § 2, 10-22-1987; Ord. No. 54-A, § 1, 4-6-1998; Ord. No. 170, § 1, 5-18-1999; Ord. No. 287, §§ 3, 6, 10-22-2002)

Sec. No. 21. Unauthorized sale or delivery prohibited.

It is unlawful for any person to sell or possess for the purpose of sale any alcoholic beverages where the person does not have a license from the City to sell or possess for sale alcoholic beverages, or to sell or make deliveries beyond the boundaries of the premises covered by the license.
(Ord. No. 287, § 4, 10-22-2002)

Sec. No. 22. Separate license.

A separate application must be made for each license location sought by the applicant.
(Ord. No. 287, § 21, 10-22-2002)

Sec. No. 23. Application for new license in existing license location.

An application for a new license in an existing license location shall meet and qualify under all requirements of this ordinance for granting of a new license.
(Ord. No. 287, § 28, 10-22-2002)

Division No. 2 Application

Sec. No. 24. Application contents; guidelines.

(a) All persons, firms, corporations or partnerships desiring to sell alcoholic beverages shall make application on a form prescribed by the City Council, or its designee.

(b) In the case of a limited liability company, the license will be issued to all members owning at least 20 percent of the company or if no member owns 20 percent of the company, then the managing member or the member with the greatest ownership will be licensed. In the case of a partnership, the license will be issued to all the partners owning at least 20 percent of the partnership or if no partner owns 20 percent of the partnership, then the general partner, managing partner or the partner with the greatest ownership will be licensed. In the case of a corporation, the manager of the proposed licensed premises must be qualified to obtain a license and must make a sworn statement of these qualifications. A corporate license applicant shall appoint and designate to the city council an agent authorized to receive service of process under the laws of Georgia. If no such designation is made, the city council may serve or notify the applicant or license holder at any address of the applicant or license holder known to the city council.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006)
(c) The application shall include but shall not be limited to:

(1) the name and address of the applicant;

(2) the proposed business to be carried on;

(3) if a corporation, the names of the officers;

(4) the name and address of the agent for service of process;

(5) the name of the manager;

(6) the name of all shareholders holding more than ten percent (10%) of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment for which a license is sought; and

(7) proof that the location of the proposed premises complies with all zoning and planning requirements.

(d) Each applicant for a license hereunder shall, upon request of the City Council, or its designee, submit a survey or field survey affidavit by a registered land surveyor, or a scaled drawing showing compliance with all distance requirements contained herein.

(e) All applicants shall furnish data, information and records as required by the City Council of the City of Flowery Branch, or its designee, to ensure compliance with the provisions of this section. Failure to furnish data as requested shall automatically serve to dismiss the application with prejudice.

(f) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.

(g) The City shall require no more than 30 days for processing any application for a license under the terms of this article, provided that the 30 days may be extended by agreement of the applicant and the City; and further provided that any delay occasioned by the failure to receive GCIC reports in a timely manner shall not be computed in this 30 day period.

(h) The City Council of the City of Flowery Branch, or its designee, shall provide written notice to any applicant whose application is denied under the provisions of this ordinance. Such written notification shall set forth in reasonable detail the reasons for such denial and shall advise the applicant of the right to appeal under the provisions of this ordinance.

(i) All new applications for alcoholic beverage licenses shall be accompanied either by lawful money of the U.S., or by a certified check or cashier's check, payable to the City of Flowery Branch, Georgia, for the proper amount of the license fee. In the event the license is refused, same less 5% shall be returned to applicant.
(j) No application shall be acted upon by the city council except at a regular meeting of said Council.

(k) The financial responsibility of every applicant for a license must be shown to the satisfaction of the City Council. Each applicant shall submit with the application a complete statement of his financial condition.

(l) As to an applicant's resident agent (if not the same as the applicant), the same information shall be required as would be required of the applicant herein.

(m) The making of any untrue or misleading statement in the application for an alcoholic beverage license shall be sufficient cause for the refusal, suspension, revocation, or cancellation of such license, as the City Council shall deem proper.
(Ord. No. 54, § 5, 10-22-1987; Ord. No. 170, § 3, 5-18-1999; Ord. No. 287, §§ 17, 19, 10-22-2002; Ord. No. 54E, § 1, 5-16-2007)

Sec. No. 25. Notice of intention to secure license for sale of alcoholic beverages.

(a) No application for a license for the sale of alcoholic beverages shall be acted upon until after the applicant has published in the newspaper which publishes the legal advertisements for the City of Flowery Branch a notice of his intention to secure a license for sale of alcoholic beverages. Such notice shall be published four (4) different days prior to the filing of the application for a license. Such notice shall state:

(1) the type of license for which application has been filed;

(2) the exact location of the place of business for which a license is sought;

(3) the names and addresses of each owner of the business; and

(4) if the applicant is a corporation, the names and titles of all corporate officers.

(b) Proof of publication of the notice required by this section shall be attached to an application for a license for sale of alcoholic beverages.

(c) An applicant for a renewal license shall not be subject to the notice requirements of this code section.
(Ord. No. 170, § 4, 5-18-1999; Ord. No. 287, § 18, 10-22-2002)

Sec. No. 26. Background check.

(a) Upon receipt by the city clerk of any application for an alcoholic beverage license, he shall forward the same to the chief of police for investigation, who following such investigation, shall attach thereto the entire police record of every person named in said application.

(b) Every applicant, as defined in this ordinance, for an alcoholic beverage license shall be fingerprinted by a participating Georgia Applicant Processing Service (which shall forward said fingerprints to the GBI/GCIC) or any other designated agent for the City of Flowery Branch, Georgia, before a license is issued hereunder.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 287, § 20, 10-22-2002; Ord. of 8-1-1994, §§ 1(8-15)(8-16), 8-1-1994)

Division No. 3 Criteria for Issuance of License

Sec. No. 27. Age requirement; residency requirement.

No license for the sale of alcoholic beverages shall be granted to any person, partnership or limited liability company unless the person or all partners or members shall be at least 21 years of age and has/have been a resident of the State of Georgia for a minimum of one year prior to filing an application for such license. In the event a corporation should be an applicant and said corporation has not been incorporated and/or allowed to do business by the Secretary of State in Georgia for said one year period, then the incorporator of said corporation and the owners of at least 80 percent of the stock of said corporation shall all have been residents of Georgia for one year prior to filing an application for such license.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 28. Ineligibility; city officials; city employees; city councilmembers.

No officials or employees of the City of Flowery Branch, Georgia, or member of its city council shall be eligible to receive a package license or pouring license. However, any Private Club is not automatically disqualified from receiving a retail consumption pouring license because such club is organized or owned by or operated by one or more members of the city council and/or employees thereof.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 287, § 24, 10-22-2002; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 29. Ineligibility; prior criminal record.

(a) No person, firm, company or corporation shall be granted any alcoholic beverage license unless it shall appear to the satisfaction of the city council that such person, partners in the firm, officers and directors of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere, and have been released from parole or probation, to any crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of ten (10) years immediately prior to the filing of such application. At the time an application is submitted for any alcoholic beverage license, the applicant shall, by a duly sworn affidavit, certify that the applicant, nor any of the other owners of the establishment, have been convicted or has pleaded guilty or entered a plea of nolo contendere and have been released from parole or probation to any crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to

law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of ten (10) years immediately prior to the filing of such application. Should any applicant, partner, or officer used in the sale or dispensing of any alcoholic beverage, after a license has been granted, be convicted or plead guilty or nolo contendere to a crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances or the illegal possession or sale of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving while under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, any tax law violation, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime, the license shall be immediately revoked and cancelled.

(b) No license for the sale of alcoholic beverages shall be granted to any person convicted under any federal, state or local law of any felony, within ten years prior to the filing of application for such license.

(c) A licensee denied a license under subsection (b) of this section may reapply for such license upon the expiration of three years from the date of the original application.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 287, § 25, 10-22-2002; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 30. Ineligibility; previous revocation or denial.

(a) Each applicant shall not have had a license to sell alcoholic beverages revoked by any jurisdiction for violation of its laws or its rules within a period of five years immediately preceding the filing of such application.

(b) Any applicant denied a license shall be prohibited from applying for another license for a period of one year from the filing date set forth on the application. Any partnership, company, corporation, trust or other entity in which an individual applicant is a member, shareholder, director or officer, or in which such entity acts as a surrogate for such applicant, shall also be subject to the prohibition contained in this subsection.
(Ord. No. 170, § 2, 5-18-1999)

Sec. No. 31. Adequate participation.

A license may be denied to any applicant where it appears that the applicant would not have adequate financial participation in the proposed business to direct and manage its affairs, or where it appears that the applicant is intended to be a mere surrogate for a person who would not otherwise qualify for a license for any reason whatsoever.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 32. Full disclosure of participation.

(a) No person shall have, own or enjoy any ownership, interest in, share in the profits from, or otherwise participate in the business of any alcoholic beverage licensee in the city unless a full description of such interest shall have been furnished the City Council at the time such interest arose. It shall be the duty of the licensee to report to the Council, within five (5) days, any change in any interest in such licensee's business including but not limited to:

1. Any division of the profits;

2. Any division of net or gross sales for any purpose whatsoever;

3. Any change in the payment of rents or leases;

4. Any change in the ownership of any lease of building or land used in such business;

5. Any change in the ownership of any corporation, limited liability company or partnership that has any interest in such business or the change of management of such corporation, limited liability company or partnership.

(b) After receipt of such notice, the city council or its designee shall notify such person within a reasonable time of any objection to the ownership or interest set forth therein, and it shall then be incumbent upon such person to dispose of such interest within thirty (30) days after the mailing of the notice to do so by the city council to such person at his address as shown on such notice of interest. In the event such interest is not disposed of within thirty (30) days after the mailing of the notice by the city council, then the license as provided for herein may be suspended or revoked by the city council until disposition of the interest has been made or notice given to the city council of the transfer.

(c) The report required by this section shall be in a form required by the city and shall be an amendment to the licensee's permanent license application on file with the city and as such shall be under oath and verified as otherwise required of license applications.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 33. Change in relationships and/or ownership interest.

Any change in any of the relationships and/or ownership interest contained on the application must be filed with the City Clerk within thirty (30) days after such change is made and the failure to do so shall be grounds for immediate suspension or revocation of an alcohol license or for the immediate denial of any application for such a license.
(Ord. No. 287, § 26, 10-22-2002)

Sec. No. 34. Citizenship; registered agent; prohibited interests.

(a) No license for the retail sale of spirituous liquors by the package shall be granted to any applicant who is not a citizen of the United States or an alien lawfully permitted for permanent residence. Where the applicant is a corporation or other business entity other than an individual, any stockholder or principal owning more than a ten percent (10%) financial interest must meet the requirements contained herein and, in the event any license provided for hereunder shall be issued, such license shall be issued in the name of the corporation or business entity and the principal stockholder or principal behind such business entity. If the applicant is a partnership, the requirements contained herein shall be met by all partners, whether general or limited partners.

(b) All applicants and licensed establishments must have and continuously maintain in the City of Flowery Branch or in some other municipality within Hall County in which such establishments are permitted a Registered Agent upon whom any process, notice or demand required or permitted by law or under this ordinance may be served. This person must be a resident of the City of Flowery Branch or Hall County. The applicant or licensee shall file such forms as required by the City Council, or its designee, to provide the name of the Registered Agent and consent of such agent to serve in said capacity. Additionally, the Registered Agent shall tender a release permitting the Flowery Branch Police Department to perform an investigation to verify the residency of the Registered Agent.
(Ord. No. 170, § 6, 5-18-1999; Ord. No. 287, § 24, 10-22-2002)

Sec. No. 35. Payment of taxes and other debts to the city.

The City Council, or its designee, shall cause an inquiry to be made into the tax records of the City to determine if any applicant or other parties interested in an application have any outstanding taxes or special assessments that are delinquent or any other monies owing to the City of Flowery Branch. No license shall be issued, nor shall a license be renewed, until all such debts are paid in full.
(Ord. No. 287, § 29, 10-22-2002)

Sec. No. 36. Distance requirements.

(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 college campus;

(3) Any alcoholic beverages within 100 yards of an alcoholic treatment center owned and operated by the state of Georgia or any county or municipal government therein;

(4) Any alcoholic beverages within 100 yards of any housing authority property.

(b) As used in this section, 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 the state of Georgia and which are public schools or private schools as defined in O.C.G.A. § 20-2-690(b).

(c) As used in this section, the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by the Housing Authorities Law of the state of Georgia.

(d) No person, knowingly and intentionally, may sell or offer to sell any packaged distilled spirits within a distance of two thousand six hundred (2600) feet of any business licensed to sell package distilled spirits unless other such business is a hotel.

(e) For purposes of this section, distance shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:

(1) From the front door of the structure from which alcoholic beverages are sold or offered for sale;

(2) In a straight line to the nearest public sidewalk, walkway, street, road or highway;

(3) Along such public sidewalk, walkway, street, road or highway by the nearest route;

(4) To the front door of the church building, or to the nearest portion of the school grounds, whichever is applicable.

(f) No location which is licensed to sell alcoholic beverages on the effective date of the ordinance codified in this chapter shall be denied continued operation under an existing license, or denied any renewal of such license, nor shall any new owner of said location be denied a new license based upon the measurements set forth in this section.

(g) As to any location licensed in the future, if the distance requirements herein are met at the time of issuance of any license, the subsequent opening and operation of a church or school within the distance prohibited herein shall not prevent the continuance of an existing license or the renewal thereof or the issuance of a new license to any subsequent owner of such property. However, notwithstanding any other provisions of this section and chapter, said use shall not be reestablished after discontinuance of 12 months, unless it shall meet the requirements of subsection (a).

(Ord. No. 170, § 7, 5-18-1999; (Ord. No. 54, § 2, 10-22-1987; Ord. No. 54-A, § 1, 4-6-1998; Ord. No. 170, § 7, 5-18-1999; Ord. No. 287, § 14, 10-22-2002)

Sec. No. 37. Grounds for denial.

The following shall be grounds for the denial of any alcoholic beverage license issued under this ordinance:
(a) No license for the sale of alcoholic beverages shall be granted to any person, firm or corporation for a location at which a previous alcoholic beverage license has been revoked or suspended, and where in the judgment of the City Council, the problems which have arisen from the operation of an alcoholic beverage license to at such location indicate that it is not in the interest of public health, safety, welfare or morals that the sale of alcoholic beverage be permitted at such location.

(b) The City Council may decline to issue a license when any person having any ownership interest in the operation of such place of business does not meet the same character requirements as herein set forth for the licensee.

(c) No license for the sale of alcoholic beverages shall be issued to a location within an area where, in the judgment and discretion of the City Council, the number of alcoholic beverage licenses already granted makes it contrary to the public interest or welfare.

(d) No license for the sale of alcoholic beverages shall be issued to a location at which the operation of the proposed business would be in violation of the zoning ordinances, if any, of the City of Flowery Branch.

(e) No license for the sale of alcoholic beverages shall be issued when the granting of such license would constitute a violation of state law or regulations.

(f) No license for the sale of alcoholic beverages shall be issued to any trustee or director of a private club, if otherwise disqualified under the alcoholic beverage ordinances of the City of Flowery Branch.

(g) No license for the sale of alcoholic beverages shall be issued to any person to operate a restaurant or club except as defined in this ordinance.

(h) The city council may consider any extenuating circumstances that may reflect favorably or unfavorably on the applicant, application or the proposed location of the business. If, in the council's judgment and discretion, circumstances are such that granting of the license would not be in the best interest of the general public, such circumstances may be grounds for denying the application.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 38. Additional grounds for denial of license for retail sale of packaged distilled spirits.

The city council may also deny a city license for the retail sale of packaged distilled spirits on any of the following additional grounds:

(1) failure to meet state requirements for state license;
(2) failure to pay required fees and taxes;

(3) failure to provide required valid information, documents and the like;

(4) false documentation in the application or attached documents;

(5) improper residency of applicant, owner or registered agents;

(6) prior convictions as herein provided; or

(7) failure to meet any other requirements in this chapter for a license of the class applied for.

(Ord. No. 287, § 37, 10-22-2002)

Sec. No. 39. License Fees

There shall be fees for the issuance and renewal of alcoholic beverage licenses within the corporate limits of the City of Flowery Branch in amounts established by resolution of the City Council. The applicant for a Flowery Branch alcoholic beverage license shall pay to the City at the time the application is submitted said license fee.
(Ord. No. 314, § 2, 9-23-2004)

Sec. No. 40. License to be exhibited.

The licenses provided for herein shall at all times be kept plainly exposed to view of the public at all times in the premises for which the same was issued.
(Ord. No. 287, § 34, 10-22-2002)

Sec. No. 41. Posting of signs.

(a) All holders of a license for the sale of alcoholic beverages regulated by this ordinance shall be required to post a sign in a conspicuous location in their place of business which reads as follows:

> "It is against the law for a person under the age of 21 to have in his or her possession or under his or her control any alcoholic beverage. It is also a violation of the law for such a person to misrepresent his or her age in any manner for the purpose of obtaining any alcoholic beverages. Any person who conspires, aids, abets or assists any other person under the age of 21 to obtain an alcoholic beverage shall be guilty of violating these provisions." (O.C.G.A., § 3-3-24.2)

(b) All holders of a license for the sale of alcoholic beverages regulated by this ordinance shall also be required to post a sign in a conspicuous location in their place of business which reads as follows:

> "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

(Ord. No. 287, § 13, 10-22-2002)

Sec. No. 42. Transferability.

(a) No alcoholic beverage license may be transferred from one person to another or from one location to another.

(b) Any licensee desiring to discontinue business at one location and commence business at some other location must make a complete new application for such location.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 5, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 43. License required; time limit for commencement of operation.

(a) It shall be unlawful for any person to sell or offer for sale at wholesale or retail any alcoholic beverages or to offer free of charge as a promotional activity or incentive any alcoholic beverages within the City of Flowery Branch without having first complied with the provisions of this ordinance. No person shall sell or possess for the purpose of sale any alcoholic beverage unless such person has a license from the City to sell or possess for sale alcoholic beverages, or sell or make deliveries beyond the boundaries of the premises covered by the license.

(b) No distilled spirits or any other alcoholic beverage shall be sold or manufactured in the City except under license issued by the City of Flowery Branch.

(c) The requirements of this ordinance shall be in addition to any other requirements for business licenses under this code and if other provisions of this code conflict with this ordinance then this ordinance shall control.

(e) All licensees to whom a license is issued, or renewed, under this ordinance must, within one year after the issuance of a city license, open for business. Failure to open for business shall constitute a forfeiture and cancellation of the issued license and no refund of license fees shall be made. Any applicant unable to comply with the time limit of the section may make written request to the City Council for an extension of time for good cause not to exceed six (6) months, and the City Council at its sole discretion may for good cause grant or deny the request.

(f) A fee as established from time to time by the City Council shall be required for all licenses issued under this ordinance.

(g) Failure to operate the business authorized by a license under this ordinance for a period of nine (9) consecutive months after the licensee has begun operating under a license, shall serve as cause for the revocation of such license and no refund of license fees shall be made to the license holder.
(Ord. No. 287, § 15, 10-22-2002)

Sec. No. 44. Validity of license.

(a) All licenses issued pursuant to this ordinance shall be valid only so long as the licensee is actively engaged in such business with the exception of holidays, vacations and periods of remodeling and, in the event the licensee shall cease to be actively engaged in such business, such license shall be invalid and the licensee of such business shall immediately notify the city and return his license thereto.
(Ord. No. 170, § 5, 5-18-1999)

Sec. No. 45. Term.

(a) All licenses issued by the city pursuant to this chapter shall be valid only for the calendar year indicated thereon. A licensee that desires to continue in business during the next or subsequent calendar year must make a renewal application for such year on or before November 15th of the preceding year. All applications for the renewal of licenses shall be treated as applications for new licenses, except that they need not be advertised. Payment of license fees for renewal of license shall be made at the time of application.

(b) All alcoholic beverage licenses shall expire at midnight on December 31st of the year in which issued.

(c) Any person who is doing business or begins to do business at any time after the first day of January and before the first day of July shall pay the full annual license fee. Any person who begins to do business on or after the first day of July shall pay one-half (1/2) the annual license fee.

(d) No license shall issue for less than a calendar year, or remainder thereof, subject to the provisions of this ordinance, and in case of the revocation or surrender of such license before the expiration of such calendar year, the holder thereof shall not be entitled to receive any refund.
(Ord. No. 54, §§ 3,5, 10-22-1987; Ord. No. 170, § 5, 5-18-1999; Ord. No. 287, § 17, 10-22-2002; Ord. No. 54-D, § 1, 9-20-2006)

(e) No licensee shall have any vested right to renewal of any license issued hereunder.

(f) No license under this ordinance may be renewed if the licensee could be denied a new license under the terms of this ordinance in existence at the time the original license was granted.

(g) There is imposed a penalty of ten percent (10%) of any license fee due hereunder upon each licensee which fails to apply for and obtain an appropriate license and pay the renewal fees as provided in this ordinance.
(Ord. No. 287, § 32, 10-22-2002)

Sec. No. 46. Grounds for suspension or revocation.

(a) The following shall be grounds for the suspension and/or revocation of any alcoholic beverage license issued under this ordinance. Whether or not such grounds exist shall be determined by the City in its sole discretion:

(1) The violation by the license holder or his employee of any state or federal law or regulation, except misdemeanors or any ordinance of the city, other than traffic violations. The determination of whether any such violation has occurred shall be made by the City and an actual conviction in a court for such offense shall not be necessary in order to suspend or revoke the license.

(2) The failure of the licensee or his employee to report promptly to the police department any violation of law or municipal ordinance, breach of peace, disturbance or altercation resulting in violence occurring on the premises.

(3) Any conduct on the part of the licensee or his employee contrary to the public welfare, safety, health or morals.

(4) Operating or conducting the business in a manner contrary to the public welfare, safety, health or morals or in such manner as to constitute a nuisance. Any combination totaling three or more of the following occurrences within any thirty day period shall constitute prima facie evidence that the licensee is operating or conducting an alcoholic beverage business in a manner which is contrary to the public welfare, safety, health or morals or in such a manner as to constitute a nuisance: Violation of any law, violation of any municipal ordinance, breach of peace, disturbance or altercation resulting in violence, all occurring on the premises. The licensee shall, upon suspension for violations of this section, have the burden of proving such occurrences were beyond his control and not related to the operation of his business.

(5) The violation of any state law or regulation or municipal ordinance pertaining to alcoholic beverages.

(b) Any action taken by the City council to suspend or revoke a license issued hereunder shall not preclude and may be in addition to any fines and prosecution by a proper authority as provided by the laws and/or ordinances of the City of Flowery Branch, Georgia, the State of Georgia, and/or the United States and forfeiture of all stock of alcoholic beverages.
(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 11, 5-18-1999)

Sec. No. 47. Special provision on revocation or suspension.

(a) When a license is suspended or revoked, the City shall not be required to refund any portion of any business tax or license fee to the holder of such suspended or revoked license.

(b) Whenever the State shall revoke any permit or license to sell any alcoholic beverages, the City license to sell any such product within the City shall thereupon be automatically revoked without any further action by the City Council or any officer of the City.

(c) In the event the City Council revokes or suspends any license for the sale of alcoholic beverages granted under this ordinance, no new license under this ordinance shall be granted by the City for the sale of malt beverages, vinous liquors and/or distilled spirits for the period of one (1) year after the date of revocation or suspension, to that licensee.
(Ord. No. 287, § 38, 10-22-2002)

Sec. No. 48. Notice; hearing.

Before the city council shall deny any application for a license or for the transfer of any license, or shall revoke or suspend any existing license, the applicant or licensee, as the case may be, shall be given notice in writing from the city clerk to show cause before the city council at a time and place specified therein not less than three (3) days nor more than ten (10) days from the date of service of the notice, why said application for license or for transfer of license should not be denied, or why said license should not be revoked or suspended, as the case may be, stating the grounds therefore; and at the appointed time and place the applicant or licensee shall have an opportunity to show cause, if any exists, why said application should not be denied or said license revoked or suspended, after which the city council shall take such action as it, in its judgment and discretion, shall deem warranted under the facts. The hearing herein provide for need not be at a regular meeting of the city council but may be at such time and place as shall be fixed in said notice. All decisions, denying, approving, suspending or revoking any permit, license or application shall be in writing with the reasons therefore stated and mailed or delivered to the applicant. In addition, at any hearing as provided herein the party afforded the hearing shall have the opportunity to present evidence and cross-examine opposing witnesses.
(Ord. No. 54, § 3, 10-22-1987; Ord. No. 170, § 6, 5-18-1999; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 49. Service of notice generally.

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

Sec. No. 50. Registered agent.

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

(Ord. No. 54, § 3, 10-22-1987; Ord. No. 54-D, § 1, 9-20-2006)

Sec. No. 51. Retailer to purchase from licensed wholesaler.

(a) No retailer shall purchase alcoholic beverages from any person, firm or corporation other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

(b) The city clerk or his/her designee may request, from time to time, information concerning purchases and sales of alcoholic beverages from retailers and wholesalers.

Sec. No. 52. Retail consumption dealers; inventory restrictions.

No retail consumption dealer license hereunder shall keep any beer or wine or other alcoholic beverages at any place except the licensed place of business. No retail consumption dealer shall be permitted to entree into any type of arrangement whereby distilled spirits ordered by a licensee are stored by a licensed wholesaler.

Sec. No. 53. Adding to containers prohibited.

No one shall add to or permit the adding to any alcoholic beverage or refill and alcoholic beverage container in any manner or in any other manner to misrepresent the quantity, quality or brand name of any alcoholic beverage.
(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999)

Sec. No. 54. Self-service in licensed establishments prohibited.

(a) Poured alcoholic beverages will be transported from outlet by employees only.

(b) It is prohibited for any person to bring in his own alcoholic beverage in any establishment either licensed or unlicensed to serve alcoholic beverages.

Sec. No. 55. Copy of ordinance.

(a) The holder of every alcoholic beverage license hereunder shall have available in his place of business at all times a copy of this ordinance and shall be responsible for compliance herewith by persons on the premises.

(b) The licensee shall be held responsible for any acts of the licensee's agents and employees which are in violation of this ordinance, the statutory laws of the State of Georgia, and/or the rules and regulations of the State Revenue Commissioner.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999)

Division No. 4 Minors.

Sec. No. 56. Prohibited practices.

(a) It is unlawful for any person to knowingly, directly or through another person, furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any minor.

(b) It is unlawful for any minor to purchase or knowingly possess any alcoholic beverage.

(c) It is unlawful for any person to knowingly or intentionally act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age.

(d) It is unlawful for any minor to misrepresent his age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage.

(e) The prohibition contained in paragraph (a) of this section shall not apply with respect to the sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverages 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, or driver's license. "Proper identification" shall not include any traffic citation, complaint form, birth certificate, or social security card.

(f) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such alcoholic beverage to request to see and to be furnished with proper identification as provided for in paragraph (e) of this section in order to verify the age of such person; and the failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.

(g) Any attempt to commit any act made unlawful by this section shall be itself unlawful and subject to punishment in the municipal court.

(h) Violation of any provisions of this section shall constitute an offense hereunder and shall be punishable in the municipal court; provided, violation of this section by persons who have not yet reached the age of 17 years shall be handled as provided by the juvenile court system.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 10, 13, 5-18-1999; Ord. No. 287, § 6, 10-22-2002)

Sec. No. 57. Employment of minors in licensed establishments.

(a) Nothing contained in this ordinance shall be construed to prohibit any minor 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 distilled or manufactured.

(3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

(4) Purchasing, drinking or possessing any alcoholic or malt beverage or wine if such person is at the time acting for and on behalf of law enforcement agencies conducting bona fide investigations of license holders and/or their employees.

(b) Except, no person shall allow or require a person in their employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverage.

(c) The provisions of this section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenient stores, breweries or drug stores from selling or handling alcoholic beverages which are sold for consumption off premises.

(d) The sale, purchase or possession of alcoholic beverages for consumption to minors shall be allowed under the following circumstances:

a. For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state.

b. At a religious ceremony.

c. In the home with parental consent.

(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 13, 5-18-1999)

Sec. No. 58. Underage loitering.

No person who holds an alcoholic beverage license for consumption on the premises shall allow any person less than eighteen (18) years of age to be in, frequent, or loiter in any lounge located within the licensed premises unless such person is accompanied by a parent or legal guardian.
(Ord. No. 54, § 7, 10-22-1987)

Sec. No. 59. Coin operated devices, similar machines prohibited on licensed premises; drive through, drive up, walk up sales prohibited.

(a) No retail dealer in spirituous liquors by the package shall permit on the premises any slot machines, mechanical music boxes, pinball machines operated for amusement purposes, or coin operated machines of any kind and character, except only coin operated machines for dispensing non-alcoholic beverages.

(b) No retail dealer shall offer spirituous liquors by the package at any drive through, drive up, or walk up window.
(Ord. No. 287, § 9, 10-22-2002)

Sec. No. 60. Prohibited sales.

(a) No licensee nor any agent or employee of a licensee shall furnish, sell or offer to sell any malt beverage and/or wine to any person who is confined in any jail, penal institution, correctional facility, prison camp, penitentiary or other lawful place of confinement, or to any person who is a patient or inmate of the Central State Hospital, or to any person who is noticeably intoxicated, or is of unsound mind, or is a habitual drunkard whose intemperate habits are known to the licensee or the agent or employee.

(b) No licensee nor any agent or employee of a licensee shall sell any alcoholic beverage through or by means of a drive-in window.

(c) No licensee nor any agent or employee of a licensee shall sell or offer for sale alcoholic beverages by use of vending machines.

(d) No licensee nor any agent or employee of a licensee shall sell, offer for sale possess or permit the consumption on the licensed premises of any kind of alcoholic beverages the sale, possession or consumption of which is not authorized under his license.

(e) It shall be unlawful for any licensee hereunder to make deliveries of any alcoholic beverages by the drink beyond the boundaries of the premises covered by the license. The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms and provided further that this prohibition shall not apply to the consumption hereunder by the registered guests of any hotel or motel in their designated rooms.
(Ord. No. 54, §§ 7, 8, 10-22-1987; Ord. No. 170, §§ 10, 12, 5-18-1999)

Sec. No. 61. Consumption in public.

(a) No person shall drink or mix any intoxicating liquor, beer, wine, or other alcoholic beverage in any quantity from an open can, an open bottle, a cup, or a glass while in indoor or outdoor public places.

(b) It shall be unlawful to consume or permit to be consumed alcoholic beverages in any area open to the public in any business establishment in the city without a valid consumption on the premises license.
(Ord. No. 47, § 3, 9-11-1986; Ord. No. 170, § 12, 5-18-1999)

Division No. 5 Employees.

Sec. No. 62. Employee regulations.

(a) The following regulations shall apply to all establishments holding a license for consumption of alcoholic beverages on the premises and for retail package dealers for consumption off-premises:

(1) No person shall be employed to dispense, sell, serve, take orders, mix alcoholic beverages, or in any managerial position, by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the Flowery Branch Police Department, indicating that the person is eligible for such permit.

(2) No person shall be granted a pouring permit unless it appears to the satisfaction of the Flowery Branch Police Department that such person has not been convicted or plead guilty or entered a plea of nolo contendere to any crime involving moral turpitude, illegal gambling, or illegal possession or sale of controlled substances or the illegal sale or possession of alcoholic beverages, including the sale or transfer of alcoholic beverages to minors in a manner contrary to law, driving under the influence of alcohol and/or drugs within a period of five years immediately prior to such application, keeping a place of prostitution, pandering, pimping, public indecency, prostitution, solicitation of sodomy, or any sexual related crime within a period of five years of the date of conviction and has been released from parole or probation. A person's first time conviction for illegal possession of alcohol as a misdemeanor or violation of a city ordinance shall not, by itself, make a person ineligible for an alcohol pouring permit.

(3) No person shall be granted a pouring permit who has been convicted, plead guilty or entered a plea of nolo contendere to any federal, state, or local law for any felony within five years of the date of conviction and has not been released from parole or probation prior to the filing for application for such permit.

(b) For purposes of this chapter, a conviction or plea of guilt or nolo contendere shall be ignored as to any offense for which defendants were allowed to avail themselves of the Georgia First Offender Act (O.C.G.A. title 42, ch. 8, art. 3, O.C.G.A. § 42-8-60 et seq.). Except; however, that any such offense shall not be ignored where the defendant violated any term of probation imposed by the court granting first offender treatment or committed another crime and the sentence in court entered an adjudication of guilt as to the crime for which the defendant had previously been sentenced as a first offender.

(c) No permit shall be issued until such time as a signed application has been filed with the city clerk and upon paying a fee which shall be established by resolution of the city council and a search of the criminal record of the applicant completed. Said application shall include, but shall not be limited to, the name, date of birth, and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall not be produced for public inspection without a court order.

(d) The city clerk shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. In the event there is no record of a violation of this chapter, the city clerk shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the city clerk shall notify the employer that this person is not eligible for employment, the cause of such denial and their right to appeal.

(e) It shall be the duty of all persons holding any license to sell alcoholic beverages to file with the city clerk the name of the establishment, the license number and a list of all employees, with their home addresses and home telephone numbers twice annually on or before June 1, and again on or before December 1.

(f) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the city clerk.

(g) This section shall not be construed to include employees whose duties are limited solely to those of busboy, cook or dishwasher.

(h) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.

(i) In the event that any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the city clerk.

(j) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the city clerk.

(k) Separate permits shall be required by the city clerk for each employee working in more that one establishment serving alcoholic beverages.

(l) No person shall be issued a permit if it is determined that the person knowingly and willfully falsified, concealed or covered up any material fact by any device, trick, or scheme while making application to the cit y clerk for an alcoholic beverage pouring permit under this section.

(m) This applies only to eating establishments as outlined in this chapter:

(1) Each licensed eating establishment is required to have a minimum of 75 percent, at all times, of servers to be certified as "alcohol awareness servers." Each server's certificate will be posted in plain view to the public along with the license to operate the establishment.

(2) Each eating establishment will be granted a maximum of 60 days from receipt of license to allow time for servers to complete the training course and receive certification. The cost of this course will be the responsibility of the eating establishment.

(3) Each establishment will provide the city clerk of the city a list of all servers that are employed and the certificate number of each "alcohol awareness server." This list is to be received no later than 60 days from receipt of license to operate and the first day of each calendar quarter thereafter.

(4) Accepted course of this certification is "Training for Intervention Procedures for Servers of Alcohol" (TIPS). Any other program must be comparable, following the same guidelines, and approved by the city clerk.

(n) An alcohol pouring permit shall be issued for a period of one calendar year from the date of the original application. The alcohol pouring permit must be in the possession of the employee while the employee is working at the licensed establishment. This permit must be in the possession of the employee while the pouring permit holder is working and available for inspection by the city clerk or her designee.

Sec. No. 63. Employee regulations; hearings on adverse actions.

(a) No application for employment shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

(b) The city clerk provide written notice to the applicant/employee of her order to deny, suspend or revoke the employment. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant/employee of the right to appeal under the provisions of this chapter. Any applicant/employee who is aggrieved or adversely affected by a final action of the city clerk may have a review thereof by appeal to the city council. Such appeal shall be by written petition, filed in the office of the city clerk within 15 days after the final order or action of the city clerk.

(c) A hearing shall be conducted on each appeal at the next regularly scheduled meeting of the city council after the date of filing with the city clerk, unless a continuance of such date is agreed to by the appellant and the city clerk. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses.

(d) The findings of the city council shall be forwarded to the city clerk within 15 days after the conclusion of the hearing and it shall be the duty of the city clerk to notify the appellant of the action of the city council.

(e) The findings of the city council shall not be set aside unless found to be:

(1) Contrary to law or ordinances, or

(2) There is no evidence in the record to support the findings of the city council.

(f) The findings of the city council shall be final unless appealed within 30 days of the date of said findings by certiorari to the Superior Court of Hall County.

Division No. 6 Premises.

Sec. No. 64. Diagram of building.

(a) No alcoholic beverage license shall be issued to any person unless the building to any person unless the building in which the business will be located is completed, detailed plans of said building and outside premises are attached to the application, and an occupancy permit for this premise to be licensed has been issued by the City of Flowery Branch. The completed building shall comply with the Code of the City of Flowery Branch, and the regulations of the State of Georgia. Each building in which the business is to be located shall contain sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all time from the front on the street on which the building is located so as to reveal the inside retail area of the building and so as to reveal all of the outside of the premises of said building. Each applicant for an alcoholic beverage license shall attach to his application evidence of ownership of the building, a copy of the lease if the applicant is leasing the building, a copy of a purchase contract if the applicant is in the process of purchasing the building, or a copy of a contract demonstrating the applicant has exclusive control over the premises from which the alcoholic beverages will be served. If for any reason any of the above-referenced contracts expire, become void or are terminated, said alcoholic beverage license(s) becomes null and void immediately.
(Ord. No. 54, § 5, 10-22-1987; Ord. No. 170, § 2, 5-18-1999; Ord. No. 170-C, § 3, 5-2-2007; Ord. No. 54E, § 1, 5-16-2007)

Sec. No. 65. Completion of proposed licensed premises.

If the building in which an applicant for a license proposes to operate under the provisions of this ordinance is not, at the time of application for the license, in existence, or not yet completed, a license may be issued for the location provided the plans and specifications for the proposed building are filed with the City Council, or its designee, and show clearly a compliance with the provisions of this ordinance and other applicable provisions of this code. No sales of alcoholic beverages shall be allowed in the establishment until the building has been completed in accordance with the plans and specifications and in conformity with all other provisions of this code, as well as appropriate building codes, and a certificate of occupancy has been issued for the building.
(Ord. No. 287, § 30, 10-22-2002)

Sec. No. 66. Restrictions on entertainment and attire.

The following types of entertainment, attire and conduct are not permitted upon any premises licensed to sell, serve or dispense alcoholic beverages or upon any premises licensed under the business ordinances of the city in which alcoholic beverages are consumed, allowed or dispensed on

the premises:

(1) The employment or use of any person, in any capacity, in the sale or service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva or genitals; or

(2) Live entertainment where any person appears in the manner described in this section, or where any person performs acts of or acts which simulate:

a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; or

b. The touching, caressing or fondling of the breast, buttock, anus or genitals; or

c. the displaying of the pubic hair, anus, vulva or genitals; or

(3) The showing of any film, still pictures, electronic reproduction or other visual reproductions depicting any of other acts described in this section; or

(4) The holding, promotion or allowance of any conduct, promotion, special night or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the above-prohibited conduct.

(5) Nothing contained in this section shall apply to the premises of any mainstream performance house, museum or theater that derives less than 20 percent of its gross annual income from the sale of alcoholic beverages.

(6) The findings and statement of purpose from the Flowery Branch Adult Entertainment Ordinance are hereby incorporated by reference as if fully set forth herein as the purpose for this section and all amendments hereto.

Sec. No. 67. Inspections.

Any establishment holding a license issued under this ordinance shall at all times, during the period allowable by law for operation of the business, be open to inspection by any officer of the Police Department, any license inspector of the city, or to any person designated by the Chief of Police or the City Manager. In addition, if the premises are being used after hours by employees or the owners or their agents, the premises may be inspected at this time by the designated persons in this section.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 287, § 33, 10-22-2002)

Sec. No. 68. Emergency Closure or licensed premises.

The city clerk or his/her designee may immediately close an establishment licensed under this chapter in case of emergency, for the safety of the public or to investigate a crime, for a period of time not to exceed 24 hours.

Sec. No. 69. Advertising.

All advertising of alcoholic beverages or consumption of alcoholic beverages on the premises is hereby prohibited except as provided for in the following:

(1) Licensee shall not display signs advertising, directly or indirectly, the sale of alcoholic beverages other than in the principal building for which the license is issued. Such signs displayed within the principal buildings shall not be displayed within view of the general public from the doors or windows of such principal building. Any sign placed on or off the licensed premises, within view of the general public, and with the intent to bring attention to the fact that alcoholic beverages can be bought at that location shall be in violation of this section.

(2) Wholesale and consumption on the premises licensees shall be permitted to advertise by means of radio, T.V. or newspaper provided that prices and brand names of alcoholic beverages shall not be used.

(3) Notwithstanding the foregoing, no tradename, corporate name, or name of a business shall be allowed to use the words "Beer", "Wine", or "Beer and Wine" in such name.

(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999)

Sec. No. 70. Hours and days of sale.

It shall be unlawful to sell alcoholic beverages on any day or at any time when such sale or consumption is prohibited by law.

(a) The hours of sale of malt beverages and wine for consumption on the premises are:

(1) On election days, whether primary or general election, the hours of legal sale shall be the same as any other such day of the week, except that no such alcoholic beverages shall be sold for consumption on the premises in City within two hundred fifty (250) feet of any polling place or within two hundred fifty (250) feet of the outer edge of any building within which such polling place is established.

(2) On Monday through Saturday between the hours of 7:00 a.m. and 2:00 a.m.

(3) On Sunday between the hours of 12:30 p.m. and 12:00 midnight so long as the establishment derives at least fifty percent (50%) of its total annual gross sales from the sale of prepared meals.

(b) The hours of sale of malt beverages and wine for consumption off the premises are between 7:00 a.m. and 12:00 midnight, Monday through Saturday. No sales of alcoholic beverages for consumption off the premises shall be allowed on Sundays.

(c) The hours of sale of distilled spirits to be consumed on the premises shall be:

(1) On election days, whether primary or general election, the hours of legal sale shall be the same as any other such day of the week, except that no distilled spirits shall be sold by the drink the in City within two hundred fifty (250) feet of any polling place or within two hundred fifty (250) feet of the outer edge of any building within which such polling place is established.

(2) On Monday through Saturday between the hours of 7:00 a.m. and 2:00 a.m.

(3) On Sunday between the hours of 12:30 p.m. and 12:00 midnight so long as the establishment shall be in full and complete compliance with the provisions of Section Twelve hereof.

(d) The exterior entrances of package stores must be locked not later than 12:00 midnight. Licensees shall not engage in the sale of such liquor except on Monday through Saturday between the hours of 7:00 a.m. and 12:00 midnight. Except as provided herein, no license for the sale of spirituous liquors by the package at retail shall permit his or her place of business to be open for the sale of alcoholic beverages or to sell alcoholic beverages on Sundays.
(Ord. No. 54-F, 5-2-2007; Ord. No. 170-D, 5-2-2007; Ord. No. 287-A, 5-2-2007)

Sec. No. 71. Consumption-only sales.

Persons holding a license to sell alcoholic beverages for consumption on the premises shall not be permitted to sell any alcoholic beverage by the package or bottle for consumption off premises.

Sec. No. 72. Consumption license exclusive of wholesale business.

It shall be unlawful for any person to hold an alcoholic license for consumption who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license for consumption to accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.
(Ord. No. 170, § 12, 5-18-1999)

Sec. No. 73. Clearing service areas.

All licensees for the sale of alcoholic beverages for consumption on the premises shall remove, or cause to be removed, from the area of the premises utilized by customers or patrons all alcoholic beverages within forty-five (45) minutes after the closing time for the sale of said alcoholic beverages.
(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999)

Sec. No. 74. Delivery.

The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to general public use is prohibited, except that private parties or conventions, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and provided further that this prohibition shall not apply to private clubs hereunder, nor to the sale for consumption hereunder to the registered guests of any hotel or motel in their designated rooms.
(Ord. No. 54, § 8, 10-22-1987)

Sec. No. 75. Food sale requirement.

Consumption on the premises licensees shall maintain more than forty (40%) percent of their business volume from the sale of food; and for the purposes of this section, food shall be defined as any product intended for human consumption, except those containing alcohol, or those sold as over the counter medicines. The forty (40%) percent ratio shall be determined on a calendar quarter basis on the monthly reports submitted by each licensee. In the event food sales fall below forty (40%) percent of the business volume sales for any quarter, then the licensee shall be placed on probation for the next succeeding quarter. At the end of the next succeeding quarter, if food sales have not attained more than forty (40%) percent of business volumes sales then the clerk shall suspend such license in accordance with sections Nine and Eleven. Nothing herein provided shall prevent the city from suspending or revoking such licenses for any other violation of this ordinance. Authorized officials of the city may examine the records of businesses licensed hereunder at any reasonable time to ascertain that the requirements of this and other provisions of this ordinance are met.
(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 12, 5-18-1999)

Sec. No. 76. Restrictions on other mercantile establishments.

A licensee of a retail establishment permitted to sell spirituous liquors under this ordinance shall not operate such business in connection with any other mercantile establishment, except a retail store selling package malt beverages and wine and then only if such package malt beverages and wine store sells only malt beverages, wine and items of convenience normally associated with the retail sale of package malt beverages, and then only if such package malt beverages and wine is sold only for carry out purposes. No such retailer shall sell, offer for sale, display or keep stocked in his or her

place of business where package spirituous liquors are offered for sale any other product or commodity except:

(a) Wine (if licensed);

(b) Beverages containing no alcohol and commonly used to dilute distilled spirits.

(c) Tobacco products;

(d) Malt beverages and beer (if licensed); and

(e) Package ice, snacks, supplies, and accessories (including but not limited to containers and/or serving devices) as permitted by law.
(Ord. No. 287, § 10, 10-22-2002)

Sec. No. 77. Applicability of article to those businesses operating both the retail sale of spirituous liquors and package malt beverages and wine.

For licensees who wish to operate a business which conducts both the retail sale of spirituous liquors and package malt beverages and wine, in the case of conflict, the provisions of this article regulating the sale of spirituous liquors shall prevail, and compliance with these provisions, rather than those provisions applicable to the license permitting the sale of package malt beverages and wine, is required. The applicant shall be required to meet all licensee qualifications and requirements under both this article and the article governing the licensing and sales of package malt beverages and wine.
(Ord. No. 287, § 23, 10-22-2002)

Sec. No. 78. Transfer of licenses; change of location.

(a) Licenses permitting the retail sale of package spirituous liquors shall not be transferable except as otherwise provided for in this section.

(b) In case of the death of any person owning a license, or any interest greater than ten percent (10%) therein, the license may, with the approval of the City Council, and subject to the terms of this article, be transferred to the administrator, executor or personal representative of the deceased person, or the lawful heirs of the deceased person, if such heirs make application and meet all of the other qualifications contained herein. The license of such deceased person shall be held by the administrator, executor or personal representative of such deceased person only for the time necessary to complete execution of the estate and dispose of the license or interest therein, but in no event to exceed twelve (12) months, unless renewed in accordance herewith. In the event of the bankruptcy or in the event that any applicant shall have a receiver appointed by any Court of competent jurisdiction, such license shall be transferable to such receiver or trustee in bankruptcy for such period of time as may be granted by the City Council for the proper liquidation of such assets and stock and goods of spirituous liquors.

(c) Nothing in this section, however, shall prohibit one (1) or more of the partners of a partnership holding a license to withdraw from the partnership and to assign his/her interest in such partnership to one (1) or more of the partners who were partners at the time of the issuance of the license. Such a withdrawal shall not, however, serve to bring any new ownership into the partnership, unless all provisions of this ordinance are fully complied with, and then only upon the approval of the City Council, or its designee. This section shall not prohibit transfer of stock to persons who held more than ten percent (10%) of any class of stock in the corporate ownership at the time of issuance of the license.

(d) A licensee may take in partners or additional stockholders; provided, however, that any additional partners or any new stockholders holding more than ten percent (10%) of any class of corporate stock must be approved by the City Council as provided hereunder.

(e) A change of location shall be allowed for any license under this ordinance provided the licensee files with the City Manager the following information on the new location:

(1) proof of planning and zoning compliance;

(2) proof of building code compliance;

(3) a legal description of the property upon which the new premises is located;

(4) an affidavit from a registered surveyor stating that the establishment complies with any distance or location requirements contained in this Ordinance; and

(5) proof or ownership, or control, of the premises of the new location in accordance with this ordinance.

(f) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.

(g) Any change of location allowed under this section may be denied or revoked on the same basis as for an application for license.

(h) In the event of the total sale of a business which holds a valid license pursuant to this ordinance, the purchaser of said business may continue to operate said business pursuant to this ordinance so long as the purchaser completes the application process described herein prior to assuming responsibility for operating said business. No additional licensing fee shall be due from purchaser until the expiration of the license in existence at the time of the sale of said business.
(Ord. No. 287, § 27, 10-22-2002)

Sec. No. 79. Unlawful sales.

(a) No licensee nor any agent or employee of a licensee shall sell, offer for sale, possess, or permit the consumption on the licensed premises of any kind of alcoholic beverages, the sale, possession or consumption of which is not authorized under his license.

(b) No licensee nor any agent or employee of a licensee shall offer, sell or serve multiple drinks, reduced price drinks or increased alcoholic volume drinks which is prohibited as follows:

(1) Offer or deliver any free drinks to the general public;

(2) Sell, offer to sell, or deliver more than one drink to one person at one time;

(3) Sell, offer to sell, or deliver to any person or group of persons any drink or drinks at a price less than the price regularly charged for such drinks during the preceding calendar week except at private functions as defined herein;

(4) Sell, offer to sell, or deliver to any person or group of persons an unlimited number of drinks during any set period of time for a fixed price, except at private functions as defined herein;

(5) Sell, offer to sell, or deliver alcoholic beverages, by the pitcher, except to two or more persons at any one time;

(6) Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price charged for such drink;

(7) Encourage or permit on the licensed premises any game or contest which involves drinking or the awarding of drinks as prizes.

(c) The prohibitions and restrictions in the foregoing subsection which apply to licensees or agents or employees of licensees shall not:

(1) Apply at private functions;

(2) Prohibit the offering of free food or entertainment at any time;

(3) Prohibit including drinks as part of the price of a hotel, travel, entertainment, or meal package;

(4) Prohibit the sale, offer to sell, or delivery of wine or malt beverage by the bottle, pitcher or carafe; or

(5) Prohibit any motel or hotel from offering room service to registered guests.

(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999)

Sec. No. 80. Audits.

In the event the city clerk deems it necessary to conduct an audit of the records and books of the licensee, she shall so notify the licensee of the date, time and place of the audit at least five business days prior to the date on which the audit is to occur.
(Ord. No. 287, § 36, 10-22-2002)

Sec. No. 81. Accounting and invoices.

(a) Upon each and every delivery by a licensed wholesaler to a licensed retailer under this ordinance, an invoice shall be prepared, showing the quantities and brands of distilled spirits delivered, together with the price thereof and the excise tax due and collected thereon. The invoice shall be delivered by the wholesaler to the retailer simultaneously with such delivery. The wholesaler shall retain a copy of such invoice and shall keep it for a period of twelve (12) months after the date of delivery and during the twelve-month period, such invoices shall be made available for inspection by the City Council, or its designee. Upon request of the City Council, or its designee, a copy of the invoice shall be attached to any reports requested or required by the City.

(b) Each retail licensee hereunder shall keep and maintain the invoice of each sale to or purchased by the licensee from any wholesaler of any distilled spirits for at least twelve (12) months after the date of the purchase and shall maintain records to show the sales of distilled spirits and any other records required by the City Council, or its designee. The City Council, or its designee, shall have the right to inspect the records of each licensee and make a complete audit of records of each licensee at any time. Failure of a licensee to properly maintain records showing receipt of distilled spirits, payment therefor, and payment of the taxes due thereon to the appropriate wholesaler, and records, which clearly show the sales, the amount of sales, and the types of sales of each licensee may result in the revocation or suspension of the license.
(Ord. No. 287, § 5, 10-22-2002)

Sec. No. 82. Management and operation.

(a) It shall be unlawful for any person to hold an alcoholic beverage license who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license to accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.

(b) The licensee shall be responsible for the management and operation of the business for which the license is granted and shall be responsible for all violations of this chapter by the licensee's agents and employees.
(Ord. No. 54, § 8, 10-22-1987)

Sec. No. 83. Purchase and receipt of alcoholic beverages.

(a) No licensee shall receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a conveyance owned and operated by a wholesale dealer with a permit from the city to make such deliveries. Transportation of alcoholic beverages by any other means shall be grounds for revocation of all licenses concerned.

(b) No licensee shall buy or arrange to buy, accept, or in any way cause the transfer of any alcoholic beverages except from licensed wholesalers, dealers, or distributors except such as are licensed by the State of Georgia Department of Revenue. A licensee under this chapter shall take delivery only at the licensed place of business from a licensed wholesaler, dealer, or distributor or licensed common carrier acting for a licensed wholesaler, dealer, or distributor. A licensee shall comply with all other requirements including, without limitation, those set forth at Chapters 560-2 (Alcohol and Tobacco Tax Division) and 560-8 (Alcohol and Tobacco Tax Division- Malt Beverages, Wine, Tobacco) of the Georgia Administrative Code, as well as the rules and regulations of the Georgia Department of Revenue.
(Ord. No. 54, § 7, 10-22-1987; Ord. No. 170, § 10, 5-18-1999; Ord. No. 287, § 12, 10-22-2002)

Sec. No. 84. Inventory of alcoholic beverages.

(a) All alcoholic beverages shall be stored only on the premises for which the license is issued.

(b) It shall be unlawful for any person or corporation not holding an alcoholic beverage license granted by the City to store any alcoholic beverages on the grounds of any retail establishment excluding alcoholic beverages for personal consumption in accordance with all applicable provisions of law.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999; Ord. No. 287, § 16, 10-22-2002)

Sec. No. 85. Production of records.

(a) In conjunction with any license application or any license issued under the terms hereof, or in conjunction with the revocation, suspension or cancellation of any license or in conjunction with any of the hearings contemplated by this chapter, or in conjunction with the payment or nonpayment of any excise tax levied or to be collected hereunder, the city council shall have the right to subpoena all or any part of the records, books, documents, reports or invoices of any applicant or licensee. Said subpoena right shall be had for the purposes of auditing the records of such applicant or licensee, securing compliance by such licensee with the provisions of this ordinance, proving or disproving violation of any part of this chapter by any licensee, or to show payment or nonpayment of any taxes, fees, charges or the like due hereunder.

(b) Upon the failure of any person selling alcoholic beverages in the City of Flowery Branch to furnish to the secretary to the City Council any report required by the ordinances of said city or to pay any tax due said city for the sale of said commodities, promptly when due, there shall be assessed a penalty of ten percent (10%) of the amount of tax due or shown to be due by any such report, in addition to said tax.
(Ord. No. 54, § 8, 10-22-1987; Ord. No. 170, § 12, 5-18-1999)

Sec. No. 86. Compliance with laws.

In addition to the rules and regulations set out in this chapter, each licensee under this chapter shall comply with all statutory laws of the State of Georgia, all federal statutory laws, and all rules and regulations of the State Revenue Commissioner relating to the sale and distribution of malt beverages and/or wine in Georgia; and any violation of same shall subject said licensee to suspension or revocation of his license and also may subject said licensee to criminal prosecution by the proper authority as provided by law and the ordinances of The City of Flowery Branch, Georgia.

Sec. No. 87. Violations.

(a) Any violation of this ordinance that may warrant revocation of a license including false, untrue or misleading statements in the application for a alcoholic beverage license shall be reported by any person to the city clerk who shall promptly notify the city council who shall have the power in their discretion to suspend the license for a period not to exceed ten days pending a hearing before the city council on the question of whether or not the license shall be revoked for cause.

(b) Upon a charge that there has been a violation of this ordinance, the city council may order the place of business charged closed pending a hearing on the charge.

(c) The chief of police or any police department shift commander on duty at the time may close any location holding a license for a period not in excess of 24 hours in the event there shall occur on the premises any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence or other occurrence which is contrary to the public health, welfare, safety or morals when in the judgment of the chief of police or shift commander such action is necessary to protect the public health, welfare, safety or morals.

(d) The city shall have the right to suspend any license pending the hearing provided for in this article where in the judgment of the city such action is necessary to protect the public health, safety, welfare and morals.

(e) Any suspension as provided herein shall be in writing, with the reasons therefor stated and shall be delivered to a license holder or the person in charge of the place of business if the license holder cannot be located.

(f) The violation of any of the provisions of this ordinance by a holder of an

alcoholic beverage license, or his agent or employee shall be unlawful, and shall be punishable as provided in this ordinance and shall subject the holder of such license to suspension or revocation of such license as the city deems proper.
(Ord. No. 54, § 6, 10-22-1987; Ord. No. 170, § 9, 5-18-1999)

RESOLUTION NO. 09-011

A RESOLUTION ESTABLISHING THE AMOUNT OF ALCOHOLIC BEVERAGE LICENSING FEES; REPEALING CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Ordinance No. 424 authorizes the City Council of the City of Flowery Branch to set the amounts of fees for alcoholic beverage licensing by resolution.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Flowery Branch that the rates for alcoholic beverage licensing shall be as follows:

Section 1. Alcoholic Beverage Licensing Fees.

LICENSE TYPE	LICENSE FEE
Beer: Retail Package	$ 700.00
Beer: Consumption on Premises	$ 700.00
Wine: Retail Package	$ 700.00
Wine: Consumption on Premises	$ 700.00
Distilled Spirits: Retail Package	$5,000.00
Distilled Spirits: Consumption on Premises	$5,000.00

Section 2. Repeal of Conflicting Resolutions. Any part of any prior resolutions in conflict with the terms of this Resolution, are hereby repealed to the extent of the conflict; but it is hereby provided, that any resolution, ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this Resolution on behalf of the City of Flowery Branch.

Section 3. Severability. If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Resolution shall be declared invalid or unconstitutional by any court or competent jurisdiction or if the provisions of any part of this Resolution as applied to any particular situation or set of circumstance shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Resolution not so held to be invalid, or the application of the Resolution to other circumstances no so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Flowery Branch to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Signatures Continued Next Page

Section 4. Effective Date. This Resolution shall become effective the date it is adopted by the Council of the City of Flowery Branch.

SO RESOLVED this 19th day of August, 2009.

_____
Diane C. Hirling, Mayor

_____
Craig Lutz, Council Member, Post 1

_____
Chris Fetterman, Council Member, Post 2

_____
Pat Zalewski, Council Member, Post 3

_____
Allen J. Bryans, Sr., Council Member, Post 4

_____
Mary Jones, Council Member, Post 5

ATTEST:

_____
Melissa McCain, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney