

ORDINANCE 2007- 4
AN ORDINANCE REGULATING THE SALE AND DISTRIBUTION OF ALCOHOLIC
BEVERAGES WITHIN THE CITY OF THOMASVILLE, ALABAMA;
ESTABLISHING LICENSE FEES AND TAXES;
PROVIDING LICENSE PROCEDURES;
ESTABLISHING PUNISHMENT FOR VIOLATIONS, AND OTHER MATTERS

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Thomasville, Alabama, sitting in regular session on the 14th day of May, 2007, as follows:

ARTICLE I. GENERAL PROVISIONS

SECTION 1 - SHORT TITLE

This ordinance shall be known and may be cited as the “*Thomasville Alcoholic Beverage Ordinance.*”

SECTION 2 - PURPOSE

This ordinance is enacted for the purposes, among others, of promoting the general health, safety, and welfare of the City, of establishing reasonable standards for the regulation and control of the sale, delivery, and consumption of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, all with the general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values, and to the prevention of undesirable persons from engaging in or having any interest in alcoholic beverages. This ordinance shall be construed as an exercise by the City of the police power of the state delegated to the City for the regulation of traffic in alcoholic beverages within the City as provided by the applicable provisions of the *Alabama Code* (1975).

SECTION 3 - APPLICABILITY

The provisions of this ordinance shall only be in force and effect within the corporate limits of the City of Thomasville, Alabama, (“City”), and shall not apply within the police jurisdiction outside the corporate limits of the City.

SECTION 4 – DEFINITIONS

The following terms shall have the following meanings for the purposes of this ordinance:

Abandonment: The closing of a licensed business for a period of time greater than twelve (12) months, regardless of the purpose, reason, or circumstances.

Alcoholic Beverages: Any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or

mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.

Association: A partnership, limited partnership, or any other form of unincorporated enterprise.

Bartender/Server/Waiter/Waitress: An employee of a retail alcoholic beverage license who is directly involved with the opening, mixing, dispensing, serving, or final sale of alcoholic beverages to a customer of the licensed establishment.

Board: The Alcoholic Beverage Control Board of the State of Alabama.

Beer or Malt or Brewed Beverages: Any beer, lager beer, ale, porter, malt, or brewed beverage, or similar fermented malt liquor, containing one-half of one percent of alcohol or more by volume and not in excess of five percent alcohol by weight and six percent by volume, by whatever name the same may be called. Beer shall include draft beer or beer served on tap.

Carton: The package or container or containers in which alcoholic beverages are originally packaged for the market by the manufacturer or importer and from which the alcoholic beverage is consumed by or dispensed to the public.

Child Care Facility: Any state or locally licensed child care or development facility, program, or club that provides or promotes child care and/or educational services.

Church: Church shall mean an entire house or structure set apart primarily for use for purposes of public worship, and which is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure, not rented or leased, is kept for that use and not put to any other use inconsistent therewith.

Club: A corporation or association organized or formed in good faith by authority of law and which must have at least 150 paid-up members. It must be the owner, lessee, or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature or the like, but not for pecuniary gain, and the property as well as the advantages of which belong to all the members and which maintains an establishment provided with special space and accommodations where, in consideration of payment, food with or without lodging is habitually served. The club shall hold regular meetings continue its business through officers regularly elected, admit members by written application, investigation and ballot and charge and collect dues from elected members. The club shall have and provide to the City a copy of their federal non-profit certification.

Container: The single bottle, can, keg or other receptacle in which alcoholic beverages are originally packaged for the market by the manufacturer or importer, and from which the alcoholic beverage is consumed by or dispensed to the public.

Corporation: A corporation or joint stock association organized under the laws of this State, the United States, or any other State, Territory or Foreign Country, or Dependency.

Distributor: Any person or association who directly sells alcoholic beverages to retailers and business owners who are involved in the retail sale of alcoholic beverages.

Engaged in Business: A person shall be deemed to be engaged in business within the City corporate limits if that person has a fixed place of business offering for sale or consumption any alcoholic beverages within the corporate limits, or if pursuant to an agreement of sale, expressed or implied, that person delivers any alcoholic beverage within the corporate limits.

Fixed Place of Business: Any place where any alcoholic beverage is kept or stored for sale or delivery.

Fortified Wine or Vinous Liquor: Any wine containing more than 14.9 percent alcohol by volume but not more than 24 percent. Fortified wine is vinous liquor.

Grocery Store: A retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales of alcoholic beverages do not exceed ten percent (10%) of its total gross sales and whose floor space is at least seventy five hundred (7,500) square feet.

Importer: Any person, association or corporation engaged in importing alcoholic beverages, liquor, wine, or beer, manufactured outside of the United States of America into this state or for sale or distribution in this state, or to the board or a licensee of the board.

License: Authorization to engage in an activity involving alcoholic beverages as evidenced by a writing issued by the City or the Board, limited in scope as provided in such writing.

Licensee: Any person licensed by the City or the Board to engage in business involving the sale or delivery of any alcoholic beverage.

Liquor: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, fermented, vinous or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more by volume, except beer and table wine.

Liquor Store: A liquor store operated by the board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

Manufacturer: Any person, association or corporation engaged in the producing, bottling, manufacturing, distilling, rectifying or compounding of alcoholic beverages, liquor, beer or wine in this state or for sale or distribution in this state or to the board or to a licensee of the board.

Meal: A diversified selection of food some of which is not capable of being consumed in the absence of at least some articles of tableware and which cannot be conveniently consumed while one is standing or walking about.

Minor: Any person under 21 years of age.

Opened Container: A container containing alcoholic beverages, which has been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

Package Store: Those retail liquor licensees who declare to the Board that their primary business shall be the sale of alcoholic beverages for off-premises consumption and who further declare their compliance with Regulation 20-X-5-.13 of the Board.

Person: A natural person, association, or corporation, or other legal entity. Whenever used in a provision prescribing a fine or imprisonment, the term "person" such term as applied to "association" shall mean the partners or members thereof. As applied to corporation, the term "person" shall mean the officers thereof, except as to incorporated clubs, the term "person" shall mean such individual(s) who, under the bylaws of such clubs, shall have jurisdiction over the possession and sale of alcoholic beverages therein.

Person In Charge (PIC): Each licensee, except a licensed individual who is on the premises, shall have a designated person who is at least 21 years of age present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated person of every retail licensee shall be posted in an area of the establishment, readily available to ABC Board personnel, in letters not less than one inch in size, during the time he is in charge.

Privilege License: A privilege license issued by the City of Thomasville to a person or persons to conduct routine business.

Privilege License Fee: A fee charged by the City of Thomasville to a person or persons that has been granted approval by the Board the privilege of selling alcoholic beverages within the corporate limits of Thomasville as herein enumerated and defined.

Public Place: Any place or gathering which the public generally attends or is admitted to either by invitation, common consent or right, or by payment of an admission or other charge, and without limiting the foregoing, shall include any streets, alleys, sidewalks, public easements, rights-of-way, or parking lots designed for use by the general public, public buildings, buildings which are open to the public including but not limited to school buildings or grounds, parks, libraries, places where school related and recreational games or contests are held, theaters, auditoriums, skating rinks, dance halls or other place of amusement or any club, provided that such terms shall not mean or include premises which have been duly licensed under the ordinances the City and the laws of the state for the sale or consumption of such beverages, and provided further that no private gathering is included within the meaning of the term "public place" with respect to the owners or occupants of such premises, or to any persons invited therein.

Restaurant: A reputable place licensed as a restaurant, operated by a responsible person of good reputation, in which a selection of food, refreshments, and alcoholic beverages are offered for sale for consumption within the building or adjacent outdoor seating areas, if such are authorized by the Zoning Ordinance of the City of Thomasville, Alabama. All areas of the restaurant shall comply with applicable building code occupancy requirements. In order to be deemed a restaurant, the following criteria must be met:

1. The facility shall have a kitchen in which food is prepared for consumption by the public, which is separate and apart from the dining area, in which the food or meals are served. To meet the definition of "Restaurant," the establishment or facility shall serve at least four meals per week when open for business, which shall be for no less than four (4) days per week, with the exception of holidays, vacations, and periods of repair, maintenance, or improvements.
 - (a) The facility shall meet the minimum requirements for an *Alabama Alcoholic Beverage Control Board* on-premises license.
 - (c) The dining area shall have adequate climate control, with the exception of any outdoor seating area(s), if such is authorized by the Zoning Ordinance of the City of Thomasville.
 - (d) The serving of food or meals shall constitute the principal business of such establishment, with the serving of alcoholic beverages being only an incidental part of the business, as defined as follows: During any ninety (90) day period, the gross receipts from the serving of meals and food shall constitute at least fifty percent (50%) of the total gross receipts of the business. The licensee shall maintain separate cash register receipts, one for food and one for alcoholic beverages. In addition, the licensee shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three (3) years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the City Clerk, or duly authorized representative, may request.

Restaurant, Class I: A facility or establishment which meets the criteria of "Restaurant" above, and which meets the following additional requirements:

- (a) Total dining area of greater than or equal to four hundred (400) square feet.
- (b) The dining area shall be equipped with tables and chairs accommodating equal to or greater than twenty-five (25) people at one time.
- (c) At least seven (7) meals per week shall be served when open for business, which shall be for no less than four (4) days a week, with the exception of holidays, vacations and periods of repair, maintenance, or improvements.

Restaurant, Class II: A facility or establishment which meets the requirements of "Restaurant" above, but which fails to meet the criteria of "Restaurant, Class I" as

provided above, with the following exception: An establishment or facility that meets all of the requirements of a "Restaurant, Class I," and such establishment or facility is associated with a golf course (with no less than nine holes), public or private, such facility shall have no minimum meal per day requirement, and provided further that food sales in any ninety (90) day period shall equal a minimum of twenty percent (20%) of gross revenue of food and beverage operation.

Restaurant, Class III: A facility or establishment which meets all the requirements of "Restaurant, Class I" above, except that such facility or establishment allows no one under nineteen (19) years of age on the licensed premises and provided further that such facility or establishment food sales in any ninety (90) day period shall equal a minimum of twenty percent of gross revenue of food and beverage operation and further such establishment or facility requires the payment of an admission fee of one dollar (\$1.00) per person per day.

Retailer: Any person licensed by the board to engage in the retail sale of any alcoholic beverages to the consumer.

Sale or Sell: Any transfer of alcoholic beverages for consideration, and any gift in connection with, or as part of, a transfer or property other than alcoholic beverages for consideration.

School: A public or private elementary, intermediate, middle, junior high, senior high school or college.

Table Wine: Any wine containing not more than 14.9 percent alcohol by volume. Table wine is not liquor, spirituous or vinous.

Unopened Container: A container containing alcoholic beverages, which has not been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

Wholesaler: Any person licensed by the Board to engage in the sale and distribution of alcoholic beverages within this state, at wholesale only, to be sold by export or to retail licensees or other wholesale licensees or other within this state lawfully authorized to sell alcoholic beverages for the purpose of resale only.

Wine: All beverages made from the fermentation of fruits, berries, or grapes, with or without added spirits, and produced in accordance with the laws and regulations of the United States, containing not more than 24 percent alcohol by volume, and shall include all sparkling wines, carbonated wines, special natural wines, rectified wines, vermouths, vinous beverages, vinous liquors, and like products, including restored or un-restored pure condensed juice.

ARTICLE II. CONTROL OF ALCOHOLIC BEVERAGES

SECTION 1 - LOCATION OF PREMISES NEAR CHURCH, SCHOOL, OR CHILD CARE FACILITY

(1) Subject to the exceptions contained in this section, no facility or establishment shall be authorized to be engaged in business involving alcoholic beverages, pursuant to any category of license, where the building in which the facility or establishment is located is less than 300 (three hundred) feet from any building in which there is located a church, school, or child care facility. This distance restriction shall not apply in the following cases:

- (a) Where the church, school, or child care facility was established after the licensed premises became licensed to be engaged in business involving alcohol and said operation has not been abandoned or discontinued for any reason for a period of twelve (12) months or longer.
- (b) Where the licensed premises is a grocery store as defined herein.

(2) When measuring from a church, school, or day care facility, the closest point on the exterior wall of the closest building of the church, school, or day care facility to the license applicant shall constitute the beginning point for measurement. When measuring from the license applicant, the closest point on the exterior wall of the building occupied by the applicant shall be used for measurement purposes if the building is occupied solely by the applicant; otherwise, such measurement shall be made from the closest point of the applicant's occupancy within the building in question. The method of measurement is a straight line between these defined points.

SECTION 2 - MAINTENANCE OF ORDER, REPORT OF VIOLATION

It shall be the duty of each licensee and of each person-in-charge at any time charged with the management and supervision of any licensed premises, while the same is open to the public, to maintain order upon the premises and to exclude from the premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses or engages in offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned. It shall be the duty of each person-in-charge of any licensed premises within the City to immediately make a verbal report to the City Police Department of each incident involving physical harm to a person occurring on the licensed premises while open for business. It shall further be the duty of each licensee to make a written report of each such incident to the Police Department of the City and to the local field office of the Board within thirty-six (36) hours thereof.

SECTION 3 - OFFENSES IN PUBLIC

(1) It shall be unlawful for any person to drink, sell, serve, dispense, give away, or attempt to drink, sell, serve or give away, any alcoholic beverages while upon any street, alley, sidewalk, public easement, rights-of-way, or parking lots designed for use by the general public or in any public building (excluding any private recreation areas, leased or rented to individuals or clubs for special events) or upon any public property, or while in

any other public place in the City except when approved for special events by the City Council.

CROSS REFERENCE: See Section 12, Alcoholic Beverages in Open Containers.

SECTION 4 - MINORS – OFFENSES BY SELLER OR AGENT.

(1) It shall be unlawful for any person or for any employee, servant, or agent of any person to sell, or offer for sale, any alcoholic beverage to any person visibly intoxicated, or to any minor person. The person selling alcoholic beverages shall request a photo-id as proof of age for any person purchasing alcoholic beverages.

(2) It shall be unlawful for any person to serve to a minor or allow a minor to be served any alcoholic beverage in any place where such beverages are sold.

(3) It shall be unlawful for any person who operates any business licensed to be engaged in the business of alcoholic beverages to allow any such beverages to be sold to any minor person, or to be consumed by any minor person, on the premises where such alcoholic beverages are sold.

SECTION 5 – MINORS – OFFENSES GENERALLY

It shall be unlawful to do or perform any of the acts designated as follows:

(1) For any minor person, directly or indirectly, to purchase any alcoholic beverage, or to attempt to purchase any alcoholic beverage.

(2) For any minor person to possess or to consume any alcoholic beverage, or to attempt to possess or consume any alcoholic beverage.

(3) For any person to sell, furnish, give to, or purchase for any minor person any alcoholic beverage, or to attempt to sell, furnish, give to, or purchase any alcoholic beverage for any minor person.

(4) For any person to hire, employ or permit any minor person to serve or dispense alcoholic beverages of any kind. However, this prohibition does not apply when the only license held by the licensee is an off-premises beer license or an off-premises table wine license or combination thereof, and provided there is a person over the age of twenty-one (21) in attendance at all times. Provided further that persons who are nineteen (19) years of age or older working as a waiter, waitress, or server at a restaurant which holds a restaurant retail license may serve alcoholic beverages, provided that the licensee has been annually certified as a responsible vendor under the *Alabama Responsible Vendor Act* as provided in *Alabama Code* §§ 28-10-1 *et seq.* (1975). Penalties for violation of the provisions of this paragraph shall be as provided by *Alabama Code* § 28-1-5 (1975).

(5) For any minor person, directly or indirectly, to falsely represent that he or she is twenty-one (21) years of age or older, by means of which false representation such

person buys, receives or otherwise obtains, or attempts to buy, receive, or otherwise obtain any alcoholic beverage.

(6) For any person, directly or indirectly, to falsely represent that a person is twenty-one (21) years of age or older, by means of which false representation such person aids or abets or attempts to aid or abet such minor person to buy, receive, or otherwise obtain any alcoholic beverage.

SECTION 6 - FALSE REPRESENTATION

It shall be considered a false representation that a minor person is twenty-one (21) years of age or older if the purchaser fails to disclose that the person making the purchase, obtaining, or securing such alcoholic beverage through the purchase has not reached the age of twenty-one (21) years.

SECTION 7 - AUTHORIZED HOURS

It shall be unlawful for any person, whether an alcoholic beverage licensee or not, to sell, offer for sale, or to serve, dispense or offer for reward, or to offer to serve or dispense for reward any alcoholic beverage for on-premises consumption between the hours of 12:00 AM and 6:00 AM on Monday, Tuesday, Wednesday, Thursday, Friday or Saturday of any week; or, between the hours of 12:00 AM on Sunday of any week and 6:00 AM of the following Monday.

SECTION 8 - REGULATION OF CONDUCT

It shall be unlawful for any person or association of persons, or an officer, member, agent, servant, employee or person-in-charge thereof at any licensed premises to permit, allow, conduct, or condone adult activities or entertainment as defined in Article VI of Ordinance 2006-16 of the City of Thomasville and as the same is amended from time to time and any of the following:

- (1) Topless or bottomless waitresses, waiters, dancers, servers, performers, or cashiers, or any lewd or indecent conduct.
- (2) Acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
- (3) Acts, or simulated acts, of caressing or fondling of the breasts, buttocks, anus or genitals.
- (4) Acts involving the displaying of the anus, vulva or genitals.
- (5) Permitting any patron, customer or member to touch, caress or fondle the breasts, buttocks, anus or genitals, or any part of the body or clothing of a performer or entertainer.
- (6) Permitting the showing of films, still pictures, electronic reproductions or other visual reproductions depicting:
 - (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

- (b) Any person being touched, caressed or fondled on the breasts, buttocks, anus or genitals.
 - (c) Scenes wherein a person displays the vulva or the anus or the genitals.
 - (d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above in this section.
- (7) Any employee including, but not limited to, waiter, waitress, dancer, entertainer, performer, or model employed upon the licensed premises to sit at tables with customers, members, or guests while so employed and while open for business.
- (8) Any person at the time employed or engaged on the licensed premises as an entertainer or performer to also serve as a waiter or waitress while so employed.
- (9) The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the darkened area surrounding the nipple, or the depiction of covered male genitals in a lewd or indecent manner by any waiter, waitress, dancer, entertainer, employee, model, or customer.
- (10) To rent or sublease any portion of any licensed premises for private parties where the conduct specified in subsection one through nine hereof is permitted allowed, conducted or condoned.

SECTION 9 – RECORDS AND REPORTS

It shall be the duty of each person subject to the license tax imposed by this ordinance to keep full and complete records of all purchases, sales, and deliveries of alcoholic beverages, from which records can be readily obtained information as to the correct amount of license tax due the City. As a part of such records, each wholesaler shall keep an individual ledger or card account for each of his customers, and said ledger or card account shall show the correct name and address of each person to whom any alcoholic beverages are delivered, together with the dates thereof and the number of cases sold or delivered, and each wholesaler shall also keep, as evidence of the foregoing, a receipted delivery ticket signed by each purchaser or his authorized agent. Each retailer shall keep an individual ledger or card record showing the correct name and address of each person from whom he purchased alcoholic beverages, a delivery ticket evidencing each such purchase, the date thereof and the number of cases purchased. The aforesaid records shall be kept posted currently and shall be preserved for not less than three (3) years following each calendar year. All such records shall be available for inspection and audit at the licensed premises within the City during regular business hours by the City Clerk, or duly authorized representative, as requested. Failure to keep any of the records required by this section, or elsewhere in this ordinance, or refusal to make any records available to the City Clerk, or duly authorized representative, shall constitute grounds for revocation of any license issued under this ordinance. Further, an annual report, under oath, shall be filed with the City Clerk, or duly authorized representative, in January of each year, showing the purchases of the entire previous calendar year.

SECTION 10 - PACKAGING OF BEVERAGES

Retail licensees for off-premise sale of individual or packages of six (6) or less alcoholic beverages must place each container thereof in a bag, box, or other similar opaque covering prior to the customer's leaving the license building used for alcoholic beverage sales.

SECTION 11 - DELIVERY VEHICLES

A manufacturer, importer, or wholesaler, servant, agent, or employee of the same, shall deliver all alcoholic beverages in vehicles bearing the required information on each side of the vehicle as required by the Board.

SECTION 12 - OPEN CONTAINERS

It shall be unlawful for any person to:

- (a) Possess or consume any open container containing alcoholic beverages while upon or along any public place, street, road or highway in the City or while in any automobile or other motor vehicle on or along any public street, road or highway in the City, or while in any other public place in the City except when approved by the City Council for special events.
- (b) Possess or consume any alcoholic beverages at any public park, municipal playground, municipal recreation facility, school playground, school, stadium, or school recreational facility.
- (c) Possess or consume any alcoholic beverage in an open glass, bottle, cup, can, keg, bag or other receptacle not its original container while upon or along any public street, road, or highway in the City or while on any automobile or other motor vehicle on or along any public street, road or highway in the City, or while in any other public place in the City.
- (d) The above provisions notwithstanding, this section shall not apply to any person that has in his or her possession an alcoholic beverage in an open container in the passenger area of a motor vehicle of any kind as contemplated and defined by *Alabama Code* § 32-5A-330 (1975). State law shall govern in such situations.

SECTION 13 – CONSUMPTION AFTER HOURS

It shall be unlawful to consume alcoholic beverages on premises of a licensee of this ordinance during the hours when it is unlawful for alcoholic beverages to be sold as set out in Article Two – Section Seven of this ordinance.

SECTION 14 – INSPECTION

The premises of each licensee shall have an on site inspection conducted randomly monthly by the Thomasville Police Department and/or Fire Chief of the City of Thomasville or his designee either which shall provide a written report of each inspection. Such report will be delivered to the City Clerk of the City of Thomasville as a public record.

ARTICLE III. LICENSES

SECTION 1 - REQUIRED; TRANSFER; SUSPENSION; DISPLAY

(1) It shall be unlawful for any person to have in such person's possession any alcoholic beverage with the City for the purpose of sale, storage, or delivery without having first procured from the City a privilege license and from the Board a license entitling the applicant to engage in the alcoholic beverage transactions authorized thereby. Licenses issued under this ordinance may not be assigned or transferred. The City is hereby authorized to allow the address for the privileged licensed premises to be changed from one place to another within the City, as the City may determine appropriate, but shall not allow the transaction of business at a place for which the license could not originally have been issued lawfully.

(2) In the event of a change of ownership of a licensed establishment, the current licensee shall be required to file a written statement of intent with the City Clerk prior to either completing the sale of the licensed business, or relinquishing management or financial control of the business operation, whichever occurs first; and additionally, the party to whom the licensed establishment is to be sold must file with the City a completed application for a City license within twenty (20) days of notification to the City of the intent to sell, transfer, or assign the establishment. Upon request of the City Clerk, or designated representative, any applicant may be requested to produce records of the business or the transaction surrounding the sale of the business. These records include, but are not limited to, lease agreements, land sale agreements, bank statements, stock transfers, minutes of corporate board meetings, bills of sale, and/or purchase invoices. Any failure to produce the requested records, or a determination by the City that the transaction is not in compliance with the requirements specified herein, shall result in immediate forfeiture of the City license upon notification of this determination and an opportunity for a public hearing by the City Council as provided in Section 5 of this Article.

(3) Licenses issued by the City shall be deemed to terminate, by operation of law, when there is a change in ownership in a licensed establishment, or when a licensed establishment is leased, rented, or abandoned, or when possession is otherwise surrendered to another party or parties. Provided, however, that an applicant for a new license at a currently licensed establishment may be allowed to operate the establishment for a period not to exceed thirty (30) days if said applicant is in compliance with subparagraph (2) of this section. In such case, the original licensee shall continue to be responsible for the conduct, operation, and City tax liabilities of the establishment until such time as a license is issued by the City in the new licensee's name.

(4) Upon the temporary closing of the licensed establishment for a period in excess of thirty (30) days the City license to sell alcoholic beverages shall be immediately returned to the City Clerk, or designated representative, to be held pending the reopening of the business. In the event the temporary closing is due to any renovation, remodeling, or repair to the licensed premises, the licensee shall provide written evidence of compliance with applicable building, fire, and health codes to the City Clerk, or designated representative, prior to the release of the license. In the event that the establishment

remains closed for twelve (12) months or greater, for any purpose, the license shall be deemed terminated by operation of law.

(5) For the purposes of this section, the sale or transfer of twenty-five percent (25%) or more of a corporation's stock or interest in the business shall constitute a change in ownership of the licensed establishment.

(6) The City shall have the right to revoke any privilege license issued by the City for any violation of this chapter or the regulations of the Board, after notice and opportunity for a hearing before the City Council in accordance with the provisions of Section 4 of this Article.

(7) Every privilege license issued by the City to conduct normal and routine business and every license issued by the Board shall be conspicuously and constantly exposed under a transparent substance in an area visible to the general public on the licensed premises.

SECTION 2 - APPLICATION FOR LICENSE; PAYMENT

Each applicant seeking the issuance of any license provided in Section 6 of this Article shall make application to the Board Field Office as required in this ordinance and as provided by any policies or procedures adopted by the City or any of its departments as authorized by this ordinance. Said application shall be upon the appropriate Board application form supplied by the Board Field Office. Upon successful screening by the Board Field Office and passing of the criminal investigation check, the state application will be forwarded to the City Clerk. The applicant shall make payment to the City Clerk the application fee as required by Section 5. The applicant shall further pay to the City Clerk an amount equal to any further costs incurred, or to be incurred by the City in conducting criminal background checks.

Application for a license shall be made in accordance with any policies and/or procedures which may be adopted to aid in the administration of the provisions of this ordinance, although they shall not in any event conflict with the provisions of this ordinance.

There is hereby created for the purpose of assisting and advising the City Council in the review of applications for alcoholic beverage license, and inquiry and recommendation concerning complaints or disciplinary action of an alcoholic beverage licensee, a committee to be known and designated as the Alcohol License Review Committee to be composed as follows:

- (1) City Clerk or his designated representative
- (2) Chief of Police or his designated representative
- (3) Building Inspector or his designated representative
- (4) Fire Chief or his designated representative
- (5) Citizen appointed by the Mayor
- (6) Two citizens appointed by the Council

The committee shall hold meetings as are necessary to review alcohol license applications or make inquiry into the compliance of a current alcoholic beverage license with this chapter and other provisions of the code. (see Attachment A)

SECTION 3 - REVIEW OF APPLICATIONS

- (1) The Board application shall be forwarded to the City Clerk, or designated representative from the Board Field Office.
- (2) The City Clerk, or designated representative, shall be responsible for ensuring that applicable written approvals from City departments are included as a part of the application indicating compliance, or lack thereof, with the applicable requirements of each respective department. It will then be presented to the city council.
- (3) The City Clerk shall present the application at the next meeting of the city council. An application shall not be finally approved or denied until the next following regular meeting of the city council; however any application may be held under advisement for a longer period. No initial application shall be approved except by the city council in a regular meeting, and the City Council may in such regular meeting direct that any renewal application, specifying the particular application, be withheld.
- (4) Subsequent to the City Council approval and the applicant's compliance with subsection (2) of this section, the City Clerk, or designated representative, is hereby authorized to indicate, and communicate in writing, the City's approval for the issuance of a license for the applicant to the Board. The method for the communication of this approval by the City shall be determined based on the most current mechanism indicated as acceptable by the Board Field Office supervisor responsible for Clarke County.
- (5) Upon notification of Board approval of the applicant for a State license then the City of Thomasville shall issue a City license to the application after receiving the appropriate license fee.

SECTION 4 - CONSIDERATION OF APPLICATION; REVOCATION

- (1) In rendering a decision on each application for a license under this chapter, the City Council may consider, among others, the following factors:
 - (a) The effects upon residents, real property owners and businesses within 300 (three hundred) feet of the property for which a license is sought.
 - (b) The character and reputation of the applicant.
 - (c) The criminal records or background of the applicant.
 - (d) The location of the premises for which a license is sought and the number of establishments presently holding licenses within 300 hundred feet of the property for which the license is sought.
 - (e) Compliance by the applicant with the laws of the State and ordinances of the City.
 - (f) Any other information deemed by the City Council to be relevant to the public health, safety, and welfare of the City of Thomasville.
- (2) In its sole discretion, the City may reconsider the issuance of any license, provided that seven (7) days notice is given to the licensee and a public hearing is conducted by the City Council. At such hearing, the City Council may consider any of the factors provided in paragraph (a) of this section, regardless of whether such information arose before or after the issuance of the license. The City may revoke any license, in its discretion, if it finds that continued authority for the licensee to conduct business in alcoholic beverages is not in the interests of the City's health, safety, or welfare or if the

licensee has violated any provision of this ordinance or the State Alcoholic Beverage Code.

(3) Any determination by the Board to suspend or revoke a license issued by the Board shall be recognized and given full force and effect by the City such that any license granted by the City permitting the licensee to engage in the same conduct or business shall thereby be suspended or revoked, as the case may be, effective simultaneously with the Board's decision.

SECTION 5 - FILING FEE

The applicant shall pay to the City Clerk a filing fee, to cover the costs of processing and investigating each application filed with the City for a City license of any class with the exception of a special events license, the sum of \$100.00 (One hundred Dollars and No Cents).

All application fees and costs shall be non-refundable, and the City shall retain these moneys, whether or not said application results in approval or denial. The City Clerk, or duly authorized representative, shall not accept any application for any such license not accompanied by said fees required herein.

SECTION 6 - LICENSE FEES AND TAXES

(1) Each person licensed by the Board who engages in transactions involving alcoholic beverage within the City limits, prior to engaging in such business shall pay to the City, for the privilege of so engaging in business, privilege license fees and further license taxes as provided below:

- (a) Manufacturer License. Each person who has obtained a manufacturer license from the Board pursuant to *Alabama Code* § 28-3A-6 (1975) shall pay to the City an annual privilege license fee of \$500.00 (Five Hundred Dollars and No Cents).
- (b) Importer License. Each person who has obtained an importer license from the Board pursuant to *Alabama Code* § 28-3A-7 (1975) shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state beer license by the State of Alabama.
- (c) Liquor Wholesale License. Each person who has obtained a liquor wholesale license from the Board pursuant to *Alabama Code* § 28-3A-8 (1975) shall pay to the City an annual privilege license fee of \$500.00 (Five Hundred Dollars and No Cents).
- (d) Beer Wholesale License. Each person licensed as a beer wholesaler pursuant to *Alabama Code* Section 28-3A-9 shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state beer license by the State of Alabama. In addition, each licensee will remit to the City Clerk, on forms provided by such Clerk, each month, the privilege or excise tax levied on the sales of beer by the "*Alabama Beer Tax Act*", *Alabama Code* §§28-3-190, *et. seq.* Wholesale beer dealers and distributors will not sell to any retail outlet that does not have a current City license.

- (e) Wine Wholesale License. Each person licensed by the Board as a wine wholesaler pursuant to *Alabama Code* Section 28-3A-9 shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state wine license by the State of Alabama. In addition, each licensee will remit to the City Clerk, on forms provided by such Clerk, each month, the privilege or excise tax levied on the sales of table wine by the “*Alabama Table Wine Act*”, *Alabama Code* §§ 28-7-1. *et. seq.* Wholesale wine dealers will not sell to any retail outlet that is not properly licensed by the City.
- (f) Wholesale License for Beer and Wine. Each person licensed by the Board as a beer and wine wholesaler pursuant to *Alabama Code* § 28-3A-9 (1975) shall pay to the City an annual privilege license fee of fifty percent (50%) of the amount charged for a wholesale license for beer or table wine license by the Board. In addition, each such licensee shall remit to the City Clerk each month, on forms provided by such Clerk, the privilege or excise tax levied on the sales of beer by the “*Alabama Beer Tax Act*,” *Alabama Code* §§ 28-3-190, *et seq.* (1975). In addition, each licensee will remit to the City Clerk each month, on forms provided by the Clerk, the privilege or excise tax levied on the sales of table wine by the “*Alabama Table Wine Act*,” *Alabama Code* §§ 28-7-1, *et seq.* (1975). Wholesale beer and wine dealers shall not sell to any retailer, business, or person that is not properly licensed by the City.
- (g) Warehouse License. Each person licensed by the Board as a warehouse for alcoholic beverages pursuant to *Alabama Code* § 28-3A-10 (1975) shall pay to the City an annual privilege license fee of \$200.00 (Two Hundred Dollars and No Cents).
- (h) Package Store Retail Liquor License. Each person licensed by the Board to operate a retail package store pursuant to *Alabama Code* § 28-3A-11 (1975) shall pay to the City an annual privilege license fee of \$2,500.00 (Two Thousand Five Hundred Dollars and No Cents).
- (i) Club Retail Liquor License. Each person licensed by the Board to operate a Club, pursuant to *Alabama Code* § 28-3A-12 (1975) shall pay to the City an annual privilege license fee of \$1,000.00 (One Thousand Dollars and No Cents).
- (j) Restaurant Retail Liquor License. Each person licensed by the Board to sell alcoholic beverages in connection with the operation of a restaurant pursuant to *Alabama Code* § 28-3A-13 (1975) shall pay to the City an annual privilege license fee of \$750.00 (Seven Hundred Fifty Dollars and No Cents).
- (k) Retail Table Wine License for On-premises and Off-premises Consumption. Each person licensed by the Board to sell table wine at retail for on-premises and off-premises consumption pursuant to *Alabama Code* § 28-3A-14 (1975) shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state wine license by the State of Alabama.
- (l) Retail Table Wine License for Off-premises Consumption. Each person licensed by the Board to sell table wine for off-premises consumption pursuant to *Alabama Code* § 28-3A-15 (1975) shall pay to the City an

annual license fee of fifty percent (50%) of the amount charged for state wine license by the State of Alabama.

- (m) Retail Beer License for On-premises and Off-premises Consumption. Each person licensed by the Board to sell beer for on-premises and off-premises consumption pursuant to *Alabama Code* § 28-3A-16 (1975) shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state wine license by the State of Alabama.
- (n) Retail Beer License for Off-premises Consumption. Each person licensed by the Board to sell beer at retail for off-premises consumption pursuant to *Alabama Code* § 28-3A-17 (1975) shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for state wine license by the State of Alabama.
- (o) Special Retail License. Each person who has obtained a special retail license from the Board pursuant to *Alabama Code* § 28-3A-19 (1975) shall pay to the City a privilege license fee of \$250.00 (Two Hundred and Fifty Dollars and No Cents) when the period of use is thirty (30) days or less. Such person shall pay to the City a privilege license fee of \$350.00 (Three hundred and Fifty Dollars and No Cents) when the period of use is more than thirty (30) days, but in no event shall the duration of the license exceed one year. Further, the terms of such license shall not exceed or conflict with the license issued by the Board. These privilege license fees shall be due for every license issued under this subsection, not on an annual basis.
- (p) Special Events Retail License. Each person who has obtained a special events retail license from the Board pursuant to *Alabama Code* § 28-3A-20 (1975) shall pay to the City a license fee of \$100.00 (One Hundred Dollars and No Cents). No such license shall be issued for a period in excess of seven (7) days, and the terms of such license shall not exceed or conflict with the terms of the license issued by the Board. All applications for special events retail licenses shall be filed with the City Clerk at least 25 days in advance of the event for which a license is sought. This privilege license fee shall be due for every license issued under this subsection, not on an annual basis.
- (q) Social Retail Liquor License. Each person licensed by the Board to operate a retail facility, Class 1, pursuant to *Alabama Code* § 28-3A-9 (1975) shall pay to the city an annual privilege license of \$1,000.00 (One Thousand Dollars and No Cents) provided however that such facility allow no one person under 19 (Nineteen) years of age on the licensed premises and further provided that such facility 's food sales in any 90 day period shall equal 20% (Twenty Percent) of gross revenue of food and beverage operations and further such establishment requires the payment of admission fee of at least \$1.00 (One Dollar) per person per date.

(2) The term "gross receipts" as used in Subsection (1) of this Section shall not include any taxes, but shall include only those amounts derived from the sale of alcoholic beverages as provided above.

(3) The privilege license fees levied under Subsection (1) of this Section, with the exception of Paragraphs (o) and (p) above, shall be due and payable in conjunction with the schedule for license renewal required by the Board for renewal of licenses granted by the Board as set forth in *Alabama Code* §28-3A-5. Pursuant to said section, privilege licenses granted by the City shall be valid from October 1 of each year until September 30 of the following calendar year. Licenses shall become due and payable on or before September 30 of each year, or on the date established by the Board for the ensuing year, and shall be delinquent if not secured each year by October twentieth or the twentieth day of the first month of the license year established by the Board. If the license is not secured by October twentieth or by the twentieth day of the first month of the license year established by the Board, such person or firm failing or refusing to file application and obtain said license, as provided in this chapter, while continuing to enjoy the privilege allowed under said license, shall be subject to a penalty of 50 percent of the City's license fees and taxes, which penalty shall be collected at the time of issuance of another license. If said license is not renewed as provided herein, or if any fees or taxes due the City are not paid as required by this Ordinance, the licensee shall be deemed delinquent and the City shall be entitled to take any action set forth in this Article.

(4) All license taxes levied under Subsection (1) of this Section shall be delinquent if not reported and paid by the twentieth (20th) day of the calendar month provided above. If reports are not filed within the time herein provided and/or the taxes not paid by the dates herein provided, such person shall pay to the City the full amount of tax together with interest at the rate of 10% (Ten Percent), compounded monthly, prorated from the date such tax payment became delinquent, a penalty of 10% (Ten Percent) of the amount of the tax, and a citation fee of \$150.00 (One Hundred and Fifty Dollars and No Cents).

SECTION 7 - REPORTS OF BUSINESS DONE AND TAX DUE

Each licensee shall file with the City Clerk a report in such form as the City Clerk may prescribe on or before the final date on which the tax may be paid without a penalty evidencing the amount of business done and the amount of license tax or other tax due thereon, together with full payment for any tax liability. Any failure to comply with this Section shall be considered a violation of this ordinance, and penalties, interest, and fees shall be due and payable as provided in Section 6 of this Article.

SECTION 8 - ALABAMA RESPONSIBLE VENDOR ACT

Sections 28-10-1 through 28-10-8 of the *Alabama Code* (1975) are hereby adopted by reference, and made a part hereof as if fully set forth herein.

- (1) Each licensee of the City shall obtain Certification through the *Alabama Responsible Vendor Program* within thirty (30) days of license approval by the Board.
- (2) Upon losing certification through the *Alabama Responsible Vendor Program*, the City privilege license shall be suspended until such time as the licensee achieves re-certification or the license expires or is terminated as otherwise provided herein, whichever shall occur first.

ARTICLE IV. MISCELLANEOUS PROVISIONS

SECTION 1 - VIOLATIONS DECLARED MISDEMEANOR

Any person who violates any provision of this Ordinance or fails to comply with any requirements hereof shall be guilty of a misdemeanor and, unless otherwise provided herein, upon conviction or adjudication of guilt shall be sentenced to a fine not to exceed five hundred dollars (\$500.00) and/or incarceration for a period not to exceed six (6) months for each separate offense or violation of this ordinance. Each day of violation shall be considered a separate offense and shall be punished as such.

SECTION 2 – GAMING DEVICES

No licensee under this ordinance shall have any gambling or gaming devices of chance on the licensed premises whether or not the reward is cash, gift or merchandise.

SECTION 3 - SEVERABILITY

The provisions of this ordinance are severable. If any part or provision hereof is declared unconstitutional, void, or invalid by a court of competent jurisdiction, all other parts and provisions hereof shall not be affected by such declaration and shall remain in full force and effect as though the unconstitutional, void or invalid provision had not been included in the ordinance as originally adopted.

SECTION 4 – SIGNS ADVERTISING ALCHOLIC BEVERAGES OUTSIDE PLACES OF BUSINESS

It shall be unlawful for any person to display any electric or painted signs outside any place of business advertising alcoholic beverages as enumerated and defined in this ordinance.

SECTION 5 - CONFLICTS WITH STATE STATUTES AND REGULATIONS

This ordinance shall be deemed cumulative with and supplemental to any and all statutes and regulations of any administrative body of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes or regulations of the State of Alabama. Any provision hereof in conflict with any provision of any state statute or regulation shall be construed so as to be in harmony with the same where possible, and otherwise to be superseded by the provisions of such state statute.

SECTION 6 – COMPLIANCE WITH FIRE PREVENTION AND BUILDING CODES

No license shall be issued under this chapter unless the building inspector certifies that the premises is in substantial compliance with the city's building electrical and fire safety codes and ordinances as the same apply to the proposed licensed premises.

SECTION 7 – NOTICE OF AMENDMENT AND HEARING

This ordinance shall not be significantly amended without first having a public hearing with notice thereof to be published not less than ten days prior to such hearing.

SECTION 8 - EFFECTIVE DATE

This ordinance shall be effective immediately upon its adoption, approval and publication according to law.

ADOPTED sitting in regular session this 14th day of May, 2007.

Sheldon A. Day, Mayor

ATTEST:

Deborah P. Ballard, City Clerk