

AN ORDINANCE REGULATING THE SALE OF WINE AND MALT BEVERAGES IN OCONEE COUNTY, GEORGIA, AND THE ISSUANCE OF LICENSES IN CONNECTION THEREWITH AND FOR OTHER PURPOSES.

Be it ordained by the Oconee County Board of Commissioners, for the purposes of:

- (1) Promoting the health and general welfare of the community;
- (2) Establishing reasonable and ascertainable standards for the regulation and control of the licensing and sale of alcoholic beverages;
- (3) Protecting and preserving schools and churches; and
- (4) Preventing undesirable persons from engaging in or having any interest in alcoholic beverages;

It is hereby ordained as follows:

Section 1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

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

Alcoholic beverage: Includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Board: The Oconee County Board of Commissioners.

Church: Any permanent building which houses the main sanctuary in which persons regularly assemble for religious worship and which is publicly designated as a church and which is either owned or held under a lease of at least five years by or on behalf of such persons, but shall not include a residence also used for religious purposes. The term "church" shall not include the temporary housing of a religious group in an otherwise commercial center.

Election Day: That period of time beginning with the opening of the polls and ending with the closing of the polls.

Financial interest: Includes, but is not limited to, holding any indebtedness or security interest in a business.

Licensee: The individual to whom a license is issued, or, in the case of a partnership, limited liability company or corporation, all partners, members, managers, officers, and directors of the partnership, limited liability company or corporation and in the case of any other business entity, any person filling an analogous role in such entity.

Malt beverages: Any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt hops or any other similar product, or any combination of such products in water, containing not more than fourteen (14) percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Oconee County: A political subdivision of the State of Georgia and, for the purposes of this ordinance, the unincorporated portions thereof.

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

Restaurant: An established place of business actively in operation within Oconee County, Georgia, where meals with substantial entrees selected by the patron from a full menu are served during all hours of operation with (a) a minimum of three (3) full time employees, (b) a minimum of fifty (50) paved off-street parking facilities, (c) suitable kitchen and dining room space and equipment to serve meals or appetizers for at least 50 patrons, (d) a minimum of seventy-five percent (75%) of its gross income deriving from the sale of such meals or appetizers, with each sale which includes an alcoholic beverage including a reasonable order of a meal or appetizer; and (e) a minimum schedule of serving at least one meal a day for at least five days a week, with the exception of recognized holidays, reasonable vacation time and periods of actual redecoration. Each such restaurant must be classified, under the Unified Development Code of Oconee County, herein the "UDC", as one of the following: Custom Service, Family, Quality or Rooming or Boarding House.

Retailer or retail dealer: Except as to distilled spirits, any person who sells alcoholic beverages in unbroken packages at retail only to consumers and not for resale.

School building or educational building on a college campus: governmental or church school buildings and such buildings at such other schools as teach the subjects commonly taught in the common schools and colleges of this state.

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

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

shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

Section 2. LICENSE REQUIREMENTS

(a) *Generally.* It shall be unlawful for any person to sell or offer for sale, at retail or wholesale, within Oconee County any malt beverage or wine, without having a license issued under the provisions of this Ordinance or in violation of the terms of such license or this Ordinance. The sale of malt beverages or wine within Oconee County is declared to be a privilege and not a right and such privilege shall not be exercised except as licensed hereunder. It shall be unlawful for any person to manufacture, sell or offer for sale, at retail or wholesale, within Oconee County any alcoholic beverage not specifically licensed hereby, except for those sales authorized by the ordinance regulating the sale of malt beverages and wine at private clubs. It shall be unlawful for any person to bring an alcoholic beverage of any kind onto the premises of any restaurant or similar eating facility or to permit same within Oconee County except as provided for hereunder.

(b) *Classes.* The licenses shall be divided into the following classes:

1. Class B-1, wholesale malt beverages, which shall permit only the sale of malt beverages at wholesale;
2. Class B-2, retail malt beverages by the package in food stores, grocery stores, supermarkets and convenience food stores, which shall permit the sale of malt beverages by the package as an item incidental to the sale of food stuffs and groceries;
3. Class B-3, retail malt beverages by the package, which shall permit only the sale of malt beverages by the package in stores where alcoholic beverages are the primary item sold;
4. Class B-4, retail malt beverages by the drink, which may only be issued for a restaurant as defined herein;
5. Class C-1, wholesale wine, which shall permit only the sale of wine at wholesale;
6. Class C-2, retail wine by the package in food stores, grocery stores, supermarkets and convenience food stores, which shall permit the sale of wine by the package as an item incidental to the sale of food stuffs and groceries;
7. Class C-3, retail wine by the package which shall permit only the sale of wine by the package in stores where alcoholic beverages are the primary item sold; and
8. Class C-4, retail wine by the drink, which may only be issued for a restaurant as defined herein

(c) *Fees.* The basic fees for each type of license listed in subsection (b) hereinabove shall be as follows:

Class B-1	\$100
Class B-2	\$500
Class B-3	\$500
Class B-4	\$1,000
Class C-1	\$100
Class C-2	\$500
Class C-3	\$500
Class C-4	\$1,000

(d) *Payment.* The fees referred to in this section shall be payable annually on a calendar-year basis except for the initial year when they will be prorated for the number of quarters remaining in the calendar year at the time the license was purchased. If the license is purchased and is not used for the full calendar year, there shall be no refunds for any portion of the fees.

(e) *License Modification.* In the event a licensee desires to modify or amend the license held by such licensee, a new application shall be made with such information as the Clerk may require to reasonably facilitate the evaluation of such modification accompanied by a fee of \$500.00. Changes to a license made at the time of renewal shall not require a fee, but all changes from any previously requested license shall be clearly set out on the renewal application and shall be subject to the Clerk’s request for additional information.

Section 3. LICENSE APPLICATION PROCEDURE.

(a) *Generally.* The applicant for a license under this Ordinance shall make a written application under oath on the form as provided by County Clerk or the Clerk’s designated representative, herein the “Clerk”. Such application shall be a public record and open to public inspection by any citizen of Oconee County at a reasonable time and place. The application shall include such matters as may be reasonably required by the County to aid in its decision on whether to issue a license or not.

(b) *Investigation fee.* The applicant shall, upon turning in a complete application to the Clerk, at the same time provide a certified check for \$100.00 made payable to Oconee County for the investigation fee.

(c) *Non-Individual Ownership.* All applicants who are non-individual persons shall list the names, addresses and ownership interest of each owner of a 5% or greater interest in such entity. If a named owner is another non-individual person, the same information shall be given for such further entity. If during the life of the license the identity of the owners or their percentage of ownership should change, that information shall be sent to the Clerk for processing. All non-individual applicants, without regard to the number of owners, shall list the names and addresses of their officers. In addition thereto, they shall name an agent whose name shall appear as such on the license issued. The applicant shall provide the name and address of the agent, who shall be the individual who does in fact have regular, managerial and supervisory authority over the business conducted on the

licensed premises. In addition, the manager shall be an agent for service for the entity in addition to all other methods allowed for service by the laws of Georgia. Any person who has been an agent/manager of an entity whose license has been revoked is ineligible to act as an agent/manager for any non-individual licensee thereafter.

(d) *Investigation.* The Clerk shall submit the application within five (5) business days after filing to the sheriff's department. The sheriff's department shall obtain fingerprints and make an arrest and conviction investigation, including national, state and local information, concerning any applicants hereunder, if individuals, and the officers and the designated agent or manager if applicant is a non-individual applicant and shall submit the results of the investigation to the Clerk within 30 days of submission.

(e) *Offenses.* Any person making a false statement in any application for a license, or statement in connection with renewal thereof, shall be guilty of an offense and punished as provided by state law relating to false swearing, and further, a license, if previously granted or renewed, may be revoked for the violation. It shall be an offense for any person to give other than the true and correct legal name of the intended licensee.

(f) *Duration; renewal.* All licenses are issued only on a calendar-year basis and shall come up for renewal each year following issuance. Each licensee shall make a written application for renewal in December of each year following issuance. Each licensee shall make a written application for renewal on or before November fifteenth of each calendar year which shall swear to the truthfulness of such information that is the same as the prior application and shall set forth facts which are different from the prior year's application. The form shall be approved by the Clerk. All fees shall be tendered with the application. In addition, all holders of a Class B-4 or Class C-4 license shall provide evidence satisfactory to the Clerk that such licensee is in full compliance with the definition of Restaurant hereinabove and of such other matters of compliance with this ordinance as the Clerk may require.

(g) *Penalty for filing renewal application and license fee payment after November fifteenth.* There shall be a penalty fee charged for filing alcoholic beverage renewal application and license fee payments after November fifteenth as follows:

November 16--November 30	\$50.00
December 1--December 15	100.00
After December 15	10% of annual license fee but not less than \$100.00

Alcoholic beverage license renewal application fees paid to Oconee County after November thirtieth shall be deemed in proper form only if presented as a cashiers' or bank check. Personal or company checks will not be acceptable forms of payment after November thirtieth. If an alcoholic beverage license renewal application and license fee has not been filed with the Clerk by January fifteenth, the license shall be declared to be abandoned and any relicensing shall require a new application.

(h) *Alcohol Training Program.* All new businesses at locations in Oconee County, where a license has not previously been issued, where there is a change of ownership of the license, or where there is any change of licensee, and the licensee has not previously attended a responsible alcohol sales and service policy workshop for owners and managers, the licensee and the licensee's managers shall attend a workshop which has been approved by the County. The licensee shall attend said workshop prior to the issuance of any alcoholic beverage license. Such workshop shall be attended by the licensee at the licensee's expense. If at the time the application is considered by the County, the licensee has not provided evidence that the licensee has successfully completed the alcohol sales and service workshop, the application shall be denied. Effective January 1, 2009, the provisions of this section shall apply to renewal applications as well. The workshop provision shall not be waived. Instructors, trainers or any persons associated or employed by the person or organization conducting the training referenced in this subsection shall not appear as a representative, attorney, advocate, or witness for any applicant. All such licensees shall attend such workshop at least every third year after their initial attendance.

Section 4. ISSUANCE OF LICENSE.

(a) *Issuance of license limitations.* Issuance of licenses is limited as follows:

(1) No license defined herein shall be issued to a person who is not a legal resident of the United States and at least 25 years of age.

(2) No license defined herein shall be issued to a person:

(a). Who has been convicted of a felony or a crime involving moral turpitude;

(b). Who has twice been found in violation of the ordinances of Oconee County, or any other county or any municipality, governing alcoholic beverages licenses within the last five years immediately prior to the filing of the licensee's application with the Clerk;

(c). Who has been convicted of the violation of any state laws or federal laws pertaining to the manufacture, possession, use, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof, within the last ten years immediately prior to the filing of the licensee's application with the Clerk.

(3) For 12 consecutive months immediately following the date of the revocation, no person whose license was revoked for selling alcohol to underage persons shall be eligible for renewal of or issuance of a license at the same location for which the previously revoked license was issued. Furthermore, during said 12-month period, the person whose license was revoked shall not be eligible to apply for any additional licenses above the number of licenses held immediately prior to

said revocation. In determining the number of licenses that may be renewed or issued to said person after revocation, the Clerk shall not include the revoked license.

(4) No person shall hold a license in any retail category hereunder and a license under any wholesale category at the same time.

(b). *Standards for issuance.* The following standards shall be applied to all decisions pertaining to the issuance or denial of licenses hereunder by the County:

(1) All applicants must show financial responsibility. The County may require all applicants to provide financial statements and other evidence of financial responsibility in conjunction with the application.

(2) All applicants must be of good business reputation, and all operators, managers, clerks, or other employees, or officers shall be of good character.

(3) No license shall be granted to an applicant, an officer of which has been convicted under any Federal, State, or County law for a criminal offense involving alcoholic beverages, gambling, or tax law violations, if such conviction tends to indicate that the applicant would not maintain the operation for which a license is being sought in conformity with Federal, State or County laws.

(4) A license application may be denied to any applicant for a license where it appears that the applicant would not have ownership, control and direction of the operation of the business, or where it appears that the applicant is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license for any reason whatsoever.

(5) The County, in its discretion, may consider any extenuating circumstances which may reflect favorably or unfavorably on the applicant, application or the location of the licensee's facility. If, in its judgment, circumstances are such that the granting of the license would not be in the best interest of the general public, such circumstance may be grounds for denying the application.

(c). *Time for action.* The Clerk shall transmit the license application to the Board within 60 days of its being filed in a completed state by the applicant based on the foregoing standards and requirement. The Board shall act on such application at its next regular meeting which is more than fourteen days after such referral. If the Clerk does not transmit the application within such time period, the applicant may appeal the failure to act to the Board which shall act to issue or deny such application at its next regular meeting which is more than thirty days after such appeal is filed. The Board shall not act on any new license unless the applicant or its authorized representative is present and available for comment at the meeting at which action is to be taken. At its discretion, the Board may require applicants for a renewal license to be present at the meeting at which action is to be taken.

Section 5. GENERAL REGULATIONS PERTAINING TO LICENSES.

(a) *Employment and supervision of underage persons.* For all Class C-4 and Class B04 licensees, it shall be unlawful for any person to allow or require a person in his employment under nineteen years of age or the minimum age designated by law, whichever is greater, to dispense, serve, sell or take orders for any alcoholic beverages. For all other licensees, it shall be unlawful for any person to allow or require a person in his employment under the minimum age designated by law to dispense, serve, sell or take orders for any alcoholic beverages. Alcoholic beverages may not be sold by any licensee hereunder unless there is on duty at the licensed location at the time of such sale a person of at least 25 years of age who is in charge of that location at that time. Such on duty personnel shall be present at the premises except for job related absences not exceeding one hour.

(b) *License not transferable to another location.* Each license is issued for a specific location only and may not be transferred to another location without making a new application.

(c) *Compliance with regulations; suspension, revocation, etc., of license.*

1. Each licensee and its agents and employees shall be subject to and comply with all ordinances and laws of Oconee County, the state or units thereof and the federal government. Upon the violation thereof by a licensee or its agents or employees, any license may, after a hearing before an administrative hearing officer, be revoked, suspended or put on probation under conditions. In addition, upon the violation thereof each licensee and its agents or employees shall be subject to the criminal punishment allowed by law, after hearing before the judge of the magistrate court.

2. Within 30 days of the issuance of the establishment's initial Oconee County alcohol license, the licensee must apply for the licensee's state license and provide a copy of the state license application to the Clerk. Further, the licensee must provide a copy of the state alcohol license to the Clerk within 90 days of the issuance of the establishment's initial Oconee County alcohol license. If the licensee fails to comply with these provisions, the Clerk shall notify the Oconee County Sheriff's Department of such failure, and initiate Oconee County procedures for the suspension of said license.

(d) *Transfer of license to another person.* No alcoholic beverage license shall be transferred from one person to another during the year in which the license was obtained, except in the case of the death of a person holding a license, in which event his executor or administrator may continue to operate under the license for six months from the date of his qualification.

(e) *Operation by new owner under prior license.* Upon the sale of any licensed business hereunder, the new owner may not operate the business under the old license under this Ordinance, but must make application for a new license hereunder.

(f) *Location.* No license for any class license shall be issued except in those zones allowed by the UDC. Licenses for all classes shall not be issued for a location in violation of the state required minimum distances of a school building, school grounds or college campus. Additionally Class B-3 and Class C-3 licenses shall not be issued for any location within one mile of any other holder of such license. Such distances shall be measured as provided by state law and regulations.

Class B-4 and Class C-4 licenses shall not be issued for any location which is within six hundred feet of a school building, school grounds or college campus or a church. Such distance shall be measured from the main door of the licensed premises along the nearest direct route of travel to the main door of the school building or church sanctuary. Additionally, Class B-4 and Class C-4 licenses shall only be issued for locations within the areas designated "Service Area" on the map attached to this ordinance as Exhibit A and incorporated herein by reference.

All licensees for alcoholic beverages within the county in compliance with county ordinance requirements involving residency, distance, location, parking and type of building structure in effect at the time of first receiving the license and continuing to be in compliance therewith shall be exempt from the requirements of this chapter involving residency, distance, location, parking and type of building structure. Renewals of such licenses shall also be deemed in compliance under this section to the extent provided in this subsection.

(g) *Interests of public employees.* No license shall be granted to any Oconee County, state or federal employee whose duties include the regulation or policing of alcoholic beverages or alcohol licenses or any tax-collecting activity related to same.

(h) *Failure to open or operate.* All holders of licenses issued hereunder must, within six months after the issuance of such license, open for business the establishment referred to in the license. Failure to open the licensed establishment as referred to within such period shall serve as a forfeiture and cancellation of the unused license and no refund of the license fee shall be made to the license holder.

(i) *Sales, etc., to persons under legal age.* It shall be unlawful to provide alcoholic beverages to any persons under the age permitted by O.C.G.A. § 3-3-23.

(j) *False representation of age.* It shall be unlawful for any person to misrepresent his age in any manner whatsoever for the purposes of purchasing or otherwise acquiring any beverage licensed hereunder.

(k) *Misrepresentations.* It shall be unlawful for a licensee hereunder or his agents to add to the contents of a bottle or to refill an empty bottle or in any manner to misrepresent the quantity, quality or brand name of any beverage licensed hereunder.

(l) *Hours of operation.* Holders of Class B-2, B-3, C-2 and C-3 licenses shall not engage in the sale of alcoholic beverages except between the hours of 7:00 a.m. and 11:59 p.m., Monday through Saturday. Holders of Class B-4 and C-4 licenses shall not engage in the sale of alcoholic beverages except between the hours of 11:30 a.m. and 11:00 p.m., or 12:30 a.m. on New Years Day, Monday through Saturday.

(m) *Sales prohibited, limited on certain days.* All alcoholic beverages licensed hereunder shall not be sold on the following days: Christmas Day or Sundays. The sale of alcoholic beverages on any election day shall be permitted in accordance with O.C.G.A. § 3-3-20.

(n) *Suspension of sales during civil emergency.* The Chairman of the Board of Commissioners may, upon determining that there is an immediate danger of civil disorder or natural disaster or any other immediate threat to the public peace and order, by executive order, suspend the sales of all beverages licensed under this Ordinance until such danger or threat has passed and for a reasonable period of time thereafter.

(o) *On-premises signs.* No sign of any kind, painted or electric, advertising any brand or price of alcoholic beverage shall be permitted on the exterior or in the window of any licensed premises hereunder. No plaque or sign of any kind which is visible from the exterior of the licensed premises shall make reference to the price of any alcoholic beverage sold therein, except for a normal price tag showing the price of individual bottles or containers to the edge of the shelf wherein such bottles or containers are located.

(p) *Open retail containers, sale of draft beer at retail package stores.* The original retail containers of any alcoholic beverage sold by a retail package licensee hereunder shall not be opened on the lot or premises of the location licensed for the sale thereof. The sale of draft beer from a tap in a retail malt beverage package store shall not be sold in less than one-half-gallon quantities.

(q) *Display of license number.* Each licensee for the sale of beverages by the package at retail licensed hereunder shall have printed on the front window of the licensed premises the name of the license together with the inscription, "Oconee County License Retail Number _____," in uniform letters, not less than four inches in height.

(r) *Bringing beverages purchased elsewhere or deadly weapons onto premises.*
No licensee for the sale of malt beverages or wine shall authorize or permit any patron or customer to bring onto the premises malt beverages, wine or distilled spirits purchased elsewhere; nor shall any such licensee authorize or permit any patron or customer to bring or carry any deadly weapon or firearm on the premises except a law enforcement officer on duty or other person authorized by federal or state law; nor shall the licensee act as a keeper, bailee or custodian of any kind of deadly weapon or firearm for any customer or patron thereof.

(s) *Chilled alcoholic beverages.* It shall be unlawful for a Class B-2, B-3, C-2 or C-3 licensee to have chilled beverages at or near the cash register or any other place where the customer of such establishment consummates their purchase.

(t) *Visibility into interior, lighting of retail package store.* No screens, blinds, curtains, partitions, articles or things which shall prevent a clear view into the interior shall be permitted in the window or from the doors of any retail store for the sale of alcoholic beverages by the package and no booth, screen, partition or other obstruction shall be permitted within the interior of any such store. Each store shall be so lighted that the interior of the store is visible day and night.

(u) *Sales areas, activities.* It shall be unlawful for any licensee to make delivery of any alcoholic beverages licensed to be sold except inside of the premises or area licensed for sale thereof. No package store licensee shall permit the consumption of alcohol sold by him by the package on the lot or premises where the licensed establishment is located, nor shall any individual consume the contents of such packages on the lots or premises of the licensed establishment. No Class B-4 or Class C-4 licensee shall allow the consumption of alcohol sold by such licensee outside of the area designated for the serving and consumption of alcoholic beverages as described pursuant to Section 5(w).

(v) *Possession of unlicensed beverages.* All licensees hereunder are forbidden to possess, keep, maintain or otherwise store or keep any alcoholic beverages for which the licensee does not hold a license on the premises so licensed.

(w) *Licensed Premises.* No license shall be issued to any person unless the licensed premises is complete and detailed plans of said building and outside premises are attached to the application. The completed building or the proposed building shall comply with ordinances of the County, regulations of the State Revenue Commissioner, and the laws of the State of Georgia, and shall show all areas where alcoholic beverages may be sold, or in the case of Class B-4 and Class C-4 licenses, served or consumed. Each such building shall contain sufficient lighting so that the building itself and the premises on all sides of the building are readily visible at all times from the front of the street on which the building is located, so as to reveal all of the outside of said building. Each applicant for a license shall attach to its application evidence of ownership of the building or a copy of the lease if the applicant is leasing the building. All restaurant premises for which a Class C-4 or Class B-4 license shall be issued shall afford therein adequate sanitary toilet facilities and shall be adequately illuminated so that all hallways, passage ways and open areas may be clearly seen by patrons. It is contemplated Class B-4 and C-4 licenses may allow outdoor seating, but same shall be clearly shown on such plans and must be approved as a part of the license issuance. Such approval may be withheld in the County's discretion even if the license is issued.

(x) *Entertainment.* There shall be no live entertainment on any licensed premises which uses sound amplification of any kind outside the walls of the building located on the premises and licensed hereunder. Adult entertainment as defined in "An Ordinance to Control and Regulate Adult Entertainment Establishments" is prohibited at any licensed location as more specifically set out in such ordinance.

(y) *Alcohol promotions.* No Class B-4 or Class C-4 licensee or their agent or employee shall engage in promotions involving alcohol, specifically including, without limitation, any of the following practices in connection with the sale or other disposition of alcoholic beverages:

(1) The giving away of any ticket, token or any other item that can be exchanged for any alcoholic beverages with the sale of any other alcoholic beverage;

(2) The sale of two or more alcoholic beverages for a single price, or the sale of one alcoholic beverage with a ticket, token or any other item redeemable for a subsequent alcoholic beverage. Also prohibited hereunder is the sale of all such beverages a customer can or desires to drink at a single price.

(z) *Evidence of Compliance.* In addition, all holders of a Class B-4 or Class C-4 license, upon written request of the Clerk, shall remain in full compliance with the definition of restaurant hereinabove and provide satisfactory evidence to the Clerk that such licensee is in full compliance with the definition of Restaurant hereinabove and of such other matters of compliance with this ordinance as the Clerk may require. If the Clerk deems the evidence unsatisfactory to establish compliance, the Clerk, on behalf of the County, may employ an outside auditor to review the books and financial records of the licensee to determine compliance with this ordinance. The costs for such audit shall be borne by the licensee and payment for same shall be due 30 days after the submittal of an invoice for same by the Clerk to the licensee.

(aa) *Sales to intoxicated persons.* It shall be unlawful to provide alcoholic beverages to any person in a state of noticeable intoxication as provided by O.C.G.A. § 3-3-22.

(bb) *Gambling or games of chance.* There shall be no gambling, betting, games of chance, punch boards, vending machines, slot machines, pin-ball machines, lotteries, or tickets of chances therein or the operation of any schemes for hazarding money or any other thing of value in any licensed premises or any room adjoining same, owned, leased or controlled by the licensee, except that the sale of Georgia Lottery tickets in compliance with O.C.G.A. §50-27-1, *et. seq.*, shall be permitted as provided by such state law.

Section 6. EXCISE TAXES

(a) *Generally.* There is hereby imposed and levied a specific excise tax upon all wholesale dealers in malt beverages and/or wine selling, transferring or dispensing malt beverages and/or wine within Oconee County, as follows:

(1) Upon all malt beverages: \$0.004166 per ounce of malt beverages (the proportional equivalent of \$0.05 per 12 ounces of malt beverage); except in the case of all malt beverages sold in or from a barrel or bulk container, and being commonly known as tap or draft beer, which shall be subject to an excise tax of

\$6.00 for each barrel or bulk container having a capacity of 15 1/2 gallons and at a like rate for fractional parts thereof, or \$12.00 for each barrel or bulk container having a capacity of 31 gallons and at a like rate for fractional parts thereof.

(2). Upon all wine by the package: \$0.22 per liter, and a proportionate tax at like rates on all fractional parts of a liter.

(b) *Cumulative.* The taxes shall be in addition to all other taxes and/or license fees heretofore or hereafter imposed and to be paid and collected as provided by this Ordinance.

(c) *Payment.* The excise tax provided for herein shall be imposed upon and shall be paid by the wholesale dealer (duly licensed by proper authorities under the laws of Georgia) in malt beverages and/or wine selling, transferring or dispensing such malt beverages and/or wine within Oconee County. The taxes shall be paid by such wholesale dealer on or before the tenth day of the month following the calendar month in which the beverages are sold, transferred or dispensed within Oconee County. Each wholesaler responsible for the payment of the excise tax shall file a report on or before the tenth day of each month with the Clerk showing for the preceding calendar month the exact quantities of malt beverages and/or wine, by size and type of container, constituting a beginning and ending inventory for the month, sold, transferred or dispensed within Oconee County. The wholesaler shall remit the tax imposed hereunder to Oconee County on or before the tenth day of the month next succeeding the calendar month in which such sales or transfers were made.

(d) *Untaxed beverages.* No wholesale or retail dealer in malt beverages and/or wine in Oconee County shall offer for sale or transfer for gift any malt beverages and/or wine unless the excise tax levied herein has been paid on the items sold, dispensed or otherwise transferred. No retailer in malt beverages or wine shall purchase any such items except from a wholesale dealer duly licensed by proper authority of the laws of Georgia.

(e) *Wholesale sales.* No wholesale malt beverage or wine dealer shall sell malt beverages or wine at retail at the same location where malt beverages or wine is sold at wholesale.

(f) *Inspection.* The Code Enforcement Officer or designee shall be authorized to enter upon the premises of any wholesale or retail malt beverage or wine dealer at responsible hours to make any inspection of books, records or inventory as he deems necessary to ensure compliance with this section.

(g) *Violations.* If any wholesaler or retail dealer subject to the provisions of this section shall willfully violate the same, or fail or refuse to comply with the provisions thereof, such dealer shall be punished as provided herein below and shall be subject to such license being revoked, suspended, put upon probation, if issued by Oconee County, or other penalty imposed.

(h) *Penalties.* The Clerk may issue execution against the responsible party for failure to pay any excise tax when due. As a penalty for failure to pay any tax imposed hereunder on time and as provided hereby, there shall be added thereto a penalty of 10 percent of the amount of such tax, plus interest at the legal rate and after three months there shall be added an additional penalty of 10 percent of the amount of such tax thereto.

Section 7. VIOLATIONS; UNLAWFUL ACTIVITIES

(a) *Violations.* It shall be a violation of this Ordinance for any licensee to permit any person, including the licensee, to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of the state or federal government or any ordinance of Oconee County.

(b) *Penalties.* Any person holding any license issued pursuant to this Ordinance or any employee or agent of such person who violates any provision of this Ordinance, or directs, consents to, permits, or acquiesces in such violation either directly or indirectly shall, by such conduct, subject the license to suspension, revocation or probation upon conditions. In addition, a maximum civil fine of \$1,000.00 may be imposed on the licensee for each violation. In considering the amount of the civil fine, if any, the administrative hearing officer shall consider the following factors:

1. The gravity of the violation;
2. Any previous violations for which a fine was not assessed or for which the administrative hearing officer reduced an assessed fine;
3. The costs to Oconee County related to compliance or enforcement efforts undertaken by Oconee County in pursuing the case; and
4. The costs incurred by Oconee County in order to mitigate a condition remaining as the result of the violation.

(c) *Consequences of civil fines and actions against licenses.* The imposition of a civil fine under the provisions of this section shall not prevent the suspension, revocation, or non-renewal of the license or the taking of punitive or remedial action for any other violation of the ordinances of Oconee County or for subsequent violations of this section. No license shall be renewed if any civil fines imposed pursuant to this section have not been paid by the licensee prior to renewal. Any action taken by the administrative hearing officer to suspend or revoke a license issued hereunder, shall not preclude, and may be in addition to, any criminal prosecution by a proper authority as provided by the laws and ordinances of the County, the State of Georgia, or the United States. Whenever any action is taken by the administrative hearing officer to suspend or revoke any license issued hereunder, the administrative hearing officer shall provide written notice to the licensee of the action taken and state the reasons therefor. The licensee shall have fifteen days following notification of such action to request a hearing before the governing authority.

The licensee shall be entitled at such hearing to present evidence and cross-examine opposing witnesses.

(d) *Enforcement actions.* The Oconee County Sheriff is authorized to conduct any enforcement actions necessary to determine compliance with this ordinance.

Section 8. ADMINISTRATIVE HEARING OFFICER

There is hereby created the position of administrative hearing officer whose term and duties shall be as set out below:

(a) *Appointment.* The administrative hearing officer shall be appointed by the Board of Commissioners. The initial appointment shall run until the first Tuesday in January 2009. Thereafter, the term of office of the administrative hearing officer shall run for a term of four years. The salary of the hearing officer shall be as set by the Board of Commissioners and shall be comparable to that paid the Magistrate of Oconee County. The administrative hearing officer shall be an attorney who is a member in good standing of the State Bar of Georgia.

(b) *Duties.* The duties of the administrative hearing officer shall be the hearing of all issues under this Ordinance which would determine the granting, denial, probating, suspending or revoking of any license or permit granted hereunder.

(c) *Jurisdiction.* The jurisdiction of the hearing officer over the licenses or permits shall be in addition to and concurrent with that of the Magistrate Court of Oconee County, except that the hearing officer is specifically prohibited from awarding any punishment involving imprisonment. The administrative hearing officer may award civil fines where same are specifically provided.

Jurisdiction and procedures for administrative hearing officer:

(1). The administrative hearing officer shall have jurisdiction over:

(a). Any action against any licensee holding a license hereunder. Said action shall be brought by the County Attorney, the Code Enforcement Officer, the Sheriff's department, or the Clerk; and

(b). Any claim by any citizen aggrieved by an administrative decision arising from this Ordinance.

(2). Any hearing before the administrative hearing officer shall be on a date and time certain which shall be reflected on the summons issued by the attorney or by the clerk of the Magistrate Court on behalf of any aggrieved citizen.

(3). The notice of administrative hearing shall contain a place, date and time certain and shall be served on responding party more than five days before any scheduled hearing. The notice of administrative hearing shall be served as follows:

(a). By certified mail return/receipt requested; or

(b). By leaving a copy thereof at the licensed business location with an employee working therein (and in the case of an alcohol licensee, said notice shall also be sent by regular mail to the agent set out on the license or listed on the license application); or

(c). By personal service on the responding party or on an agent authorized by law or by appointment to receive service of process. All service shall be by an authorized person in the Oconee County Code Enforcement Office or by any authorized Oconee County Deputy Sheriff.

(4). The administrative hearing officer shall have the authority to hear evidence and subpoena witnesses on behalf of Oconee County or the aggrieved citizen and shall generally conduct the hearings in accordance with the requirements of due process as required by the United States Constitution and the Constitution of the State of Georgia. The administrative hearing officer shall entertain any and all evidence relevant to the matter without regard to evidentiary rules regarding hearsay.

(5). The standard of review to be used in cases of a citizen aggrieved by an administrative decision is: arbitrary and capricious.

(6). The standard of review to be used in cases of an action against a licensee or permittee is: preponderance of the evidence.

(7). The administrative hearing officer may promulgate any rules of procedure not in conflict with this Ordinance or other law.

(e) *Pro hac vice.* Whenever, from any cause, the administrative hearing officer is unable to be in attendance, or is disqualified in any case, it shall be the duty of the administrative hearing officer to appoint a hearing officer pro hac vice to preside over the hearing in place and stead of the administrative hearing officer, and all actions of the appointee shall be binding as if performed by the administrative hearing officer.

(f) *Other duties.* The Board of Commissioners may provide for the administrative hearing officer to hear civil violations of other County ordinances.

ARTICLE 5: MISCELLANEOUS

(a) *Severability.* In the event any provision of this Ordinance is in conflict with any state or federal law or with any rule, regulation or order of any state or federal agency having jurisdiction over the subject matter of this Ordinance, it is hereby deemed to be the intention of the Board of Commissioners that the state or federal law, rule, regulation or order, as the case may be, shall prevail over any such provision, and the remaining portion of this Ordinance shall be deemed to be, and continue, in full force and effect.

(b) *Repealer.* Except for the Ordinance enacted in connection with the sale of alcoholic beverages in private clubs, the existing ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, effective August 1, 2008.

(c) *Short Title.* This Ordinance may be know and cited as the Oconee County Malt Beverages and Wine Ordinance.

(d) *Effective Date.* This Ordinance shall become effective and shall be enforced from and after the date of August 1, 2008.

Adopted and approved by the Board of Commissioners of Oconee County, Georgia, this 8th day of April, 2008, after a first reading on the 1st day of April, 2008.

Chairman

Member

Member

Member

Attest: _____
Gina Lindsey, County Clerk

Member

(County Seal)