

MEMORANDUM

To: Mayor and City Council

From: Chris Pike, Finance Director

Date: May 08, 2017

Subject: **First Read to expressly address rules related to allowance (or forbiddance) of BYOB for certain businesses.**

ITEM DESCRIPTION

First read to expressly address rules related to allowance (or forbiddance) of BYOB for certain businesses.

BACKGROUND

Since incorporation, the City has allowed businesses to operate under certain BYOB models. In the past, the legal opinion provided was that if the ordinance didn't forbid BYOB, it was allowed and not an enforcement issue. Businesses operated with a BYOB model for things such as painting classes, pottery classes and cooking classes where customers would bring their own wine with them, serve and consume it themselves while attending the establishment. At some point over the years, the legal position changed to be if it is not expressly allowed, then it is disallowed. Another legal opinion is that if the ordinance is silent, then it is up to the Police Department to determine whether or not there is a violation. Both legal opinions come from the firm serving as our City Attorney; supporting the confusion whether or not it is allowed. For the benefit of licensing staff, the police department, and the business community, I feel the ordinance should specifically address BYOB business models.

This model is unique from other issues involving the alcohol ordinance and should be treated as such. Mainly, at no point is the business operator buying, serving or otherwise providing alcohol to its customers. The customers would purchase the alcohol prior to arrival and the amount allowed would be limited.

At the advice of counsel, provisions in the ordinance include certain safeguards to protect the general public including no opened products will leave the business, the amount allowed would be limited, and the operators on site shall meet minimum requirements similar to those required for other businesses that allow consumption on the premises.

ALTERNATIVES

Council may choose to reject staff's recommendation to allow BYOB business models to operate in the City. In which case, staff still requests the ordinance to be amended to expressly prohibit BYOB business models. This will prevent future ambiguity within the ordinance.

#12.



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RECOMMENDED ACTION

First read to consider staff's recommendation to allow BYOB establishments within Dunwoody.

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY AUTHORIZING BYOB FOR CERTAIN RETAIL ESTABLISHMENTS AND CREATING A LIMITED ON-PREMISES CONSUMPTION ALCOHOL LICENSE FOR CERTAIN BUSINESSES AUTHORIZING SAME

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody’s Alcohol Beverages Ordinance, Chapter 4, currently requires that anybody serving or dispensing alcohol in the City, whether for sale or not, do so only in conjunction with properly acquired City license; and

WHEREAS, the Alcohol Beverage Ordinance currently does not authorize or provide for the brining of personal bottles of wine or beer by the patrons into any retail establishment, whether one licensed for consumption on the premises or not; and

WHEREAS, the Mayor and City Council recognize that certain kinds of businesses provide the kind of service or event which usually conducted with a casual consumption of wine and beer and the City does intend to allow patrons to bring their own bottles of wine or beer for consumption while they are in attendance at said establishments.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Alcohol Beverages, Chapter 4 of the City of Dunwoody Code, Article II (Licensing), Section 4-25 (Retail Consumption on the Premises Licenses) is hereby amended to read as follows:

Sec. 4-25. Retail Consumption on the Premises Licenses.

- (a) ~~Four~~Five classes of retail consumption on the premises licenses are available. Unless otherwise specifically provided below or in this chapter, retail consumption on the premises licenses are available only to establishments having a full-service kitchen prepared to serve food every hour they are open.
 - (1) Full pouring license: Retail sale of distilled spirits, wine, and beer by the drink.
 - (2) Limited pouring license: Retail sale of wine or malt beverages by the drink.
 - (3) Limited pouring license: Retail sale of wine and malt beverages by the drink.

(4) Brewpub: See definition in section 4-2.

(5) Limited pouring license: BYOB at certain retail establishments.

- (b) The application shall be accompanied by the requisite fee in an amount as set by resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the city council. Sunday sales may be made, upon payment of an additional fee, as set by resolution of the city council, provided the licensee otherwise meets the qualifying requirements for Sunday sales. Service from more than one bar at a licensed location may be made upon payment of an additional fee per bar, as set by resolution of the city council.
- (c) Any establishment that has over 75 percent of its total gross sales from the sale of malt beverages or wine is exempt from the requirement in this section of having a full service kitchen in order to obtain a limited pouring license. This exemption does not apply if a licensee sells distilled spirits or has a full pouring license.

Section 2: That Chapter 4 of the City Code is further amended by adding a new Code Section 4-196 (“BYOB; Limited Pouring Licenses for Certain Retail Establishments to allow BYOB”), to Article VII to read as follows:

Sec. 4-196. BYOB; Limited Pouring Licenses for Certain Retail Establishments to allow BYOB.

It is prohibited for any person to bring his own alcoholic beverage into any retail establishment without regard to whether such establishment is licensed to serve alcoholic beverages except for the following specific exceptions:

- (1) This section shall not prohibit any person dining at a retail establishment licensed to sell wine and/or beer for consumption on the premises from bringing an unopened bottle of wine or two or less, 16 ounce or smaller, unopened bottles or cans of beer into said establishment for consumption where the establishment has a policy permitting same.
- (2) This section shall not prohibit any person who is a patron of a retail establishment from bringing an unopened bottle of wine or two or less, 16 ounce or smaller, unopened bottles or cans of beer into the establishment on Monday - Saturday where the owners or their agents have a policy permitting a patron to bring an unopened bottle of wine or bottle(s)/can(s) of beer into the retail establishment for consumption on the premises by the patron and the establishment complies with the following:
 - (i) Such retail establishment, shall be required to be licensed by the City and meet all application

requirements and be governed by the ordinance provisions as set forth in Article II of this Chapter for a Limited Pouring License for Wine and/or Malt Beverage.

- (ii) No retail establishment so licensed shall have any employee under the age of 18 working in the establishment, and the retail establishment shall have an established closing time no later than 10:00 p.m.
 - (iii) The fee for this retail establishment to permit wine and/or beer to be brought into such establishment, shall be in an amount set by resolution of the City Council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the City Council.
 - (iv) Said establishment, before they allow the bringing in of the wine and beer, must apply for and receive a State of Georgia alcohol license of the kind received by any licensee for consumption on the premises.
 - (v) This exception shall not apply to any establishment not meeting the distance requirements of this Chapter or state law for receiving a license for consumption on the premises or to any establishment categorically prohibited from serving alcohol by any provision of the City of Dunwoody Code or State or Federal law.
- (3) Any opened bottle of wine, or opened bottle/can of beer, not consumed at a retail establishment, as described in subsections (1) and (2) of this section, shall be disposed of at the premises and not carried out in an open container, unless the retail establishment is able and authorized to reseal and repackage the opened bottle of wine as required by O.C.G.A. §3-6-4.
 - (4) All applicable state laws and city ordinances which address the use and serving of alcoholic beverages shall apply to this section.
 - (5) For purposes of this section, the term retail establishment shall not include a private hotel room or other similar guestroom or a private club.

Section 3: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ____ day of _____, 2017.

Approved:

Denis L. Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney