



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Paul Leonhardt, Planning & Zoning Manager

Date: November 28, 2022

Subject: Text Amendment
Chapter 4 – Adjust Alcohol Licensing Requirements

ITEM DESCRIPTION

This item presents ordinance changes that ease alcohol permitting requirements for specific businesses. The changes are listed below:

1. For eating establishments, reduction in the required food sales from a 60% food / 40% alcohol split to a **50%/50% split**.
2. Creation of two new groups of businesses eligible to sell distilled spirits for consumption on the premises: **entertainment and spectator sports, and personal improvement services**. These businesses are required to meet the following requirements:
 - Over 50% of revenues must be from entertainment and spectator sports or personal improvement services; and
 - Any entertainment and spectator sports establishments must be in an established Entertainment District (either Perimeter Center or Dunwoody Village); and
 - Business must close by 12:00am; and
 - Adult uses, massage establishments, and spa establishments are excluded.
3. **Clarified language** that requires minimum food sales for any not specifically referenced use as a condition for a distilled-spirits consumption-on-the-premises license.

DISCUSSION

The goal of this text amendment is to allow new types of experiential businesses to choose Dunwoody for their locations and to offer a broader range of entertainment and service options to residents. At the same time, the proposed regulations are not intended for Dunwoody to become a nightlife destination and any associated negative impacts.

Dunwoody currently only provides liquor on-the-premises licenses to restaurants who generate at least 60% of their revenue through food sales. From time to time, the staff receives inquiries from service or entertainment businesses that would like to sell mixed drinks or liquor drinks while providing services. Examples include indoor axe throwing and minigolf businesses as well as barber shops. These businesses may choose to serve food but may find it difficult to meet sales quotas since food service is not their core business.

Lynn Deutsch Mayor
Eric Linton ICMA-CM City Manager
Sharon Lowery CMC City Clerk

Catherine Lautenbacher City Council Post 1
Rob Price City Council Post 2
Tom Lambert City Council Post 3

Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6

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Restrictive alcohol licensing requirements lead these types of businesses to look for alternative locations. Of Dunwoody's peer communities, Sandy Springs, Alpharetta, and Chamblee only require a 50%/50% food/alcohol split while Tucker has no required food sales. Brookhaven requires a 60%/40% split similar to current Dunwoody regulations. Most cities also provide exemptions for specific uses: Brookhaven exempts taverns/pubs, Alpharetta exempts cigar shops, and Chamblee exempts bowling alleys.

Should this amendment be passed, the existing distance requirement from schools, educational buildings, and adult entertainment establishments will apply to the newly specified uses. The staff proposes several safeguards to the newly included entertainment and spectator sports and personal improvement services uses.

The most common calls the Dunwoody Police Department receives related to alcohol businesses are those for public indecency (urination), disorderly conduct, and driving under the influence. Calls to the Police generally are most common where alcohol uses abut residential properties and will likely increase with any extension of alcohol licenses. To limit negative externalities, the proposed ordinance restricts the new uses to the City's two entertainment districts and excludes alcohol sales after midnight.

ATTACHMENTS

Ordinance

Lynn Deutsch Mayor

Eric Linton ICMA-CM City Manager

Sharon Lowery CMC City Clerk

Catherine Lautenbacher City Council Post 1

Rob Price City Council Post 2

Tom Lambert City Council Post 3

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AN ORDINANCE TO AMEND CHAPTER 4 (ALCOHOLIC BEVERAGES) OF THE CITY OF DUNWOODY CODE OF ORDINANCES; TO AMEND ALCOHOL LICENSING REQUIREMENTS FOR BUSINESSES AND OTHER PURPOSES;

WHEREAS, the City of Dunwoody provides for the general health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody issues licenses for the sale and pouring of alcoholic beverages and collects all appropriate fees and taxes; and

WHEREAS, businesses increasingly create business concepts wherein they couple the consumption of alcoholic beverages with typical personal improvement services and entertainment and spectator sports businesses; and

WHEREAS, the City of Dunwoody wishes to accommodate these businesses to foster economic development and to provide its residents a broad selection of services and entertainment options; and

WHEREAS, the City of Dunwoody sets limits and restrictions for the sale of alcoholic beverages to limit negative impacts on its residents and businesses; and

WHEREAS, this amendment is necessary to ensure the health, safety, and welfare of Dunwoody residents.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody HEREBY ORDAIN that Chapter 4 is amended as follows:

Section I: That Chapter 27 of the City Code is further amended by amending Code Section 4-2, to be entitled "Definitions", to read as follows:

Sec. 4-2. – Definitions.

Unless a contrary intention is clearly apparent from the context, any term used in this chapter shall have the same meaning as when used in a comparable provision of the Georgia Alcohol Beverage Code, O.C.G.A. §§ 3-1-1 through 3-12-3. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult use includes the following:

- (1) Body art service, which means establishments providing any of the following procedures: body piercing, tattooing, cosmetic tattooing, branding or scarification. This definition does not include practices that are considered medical procedures by the Composite Medical Board, which may not be performed in a body art services establishment.
- (2) Sexually oriented business, which means an adult bookstore, an adult cabaret, an adult motion picture theater, a semi-nude model studio or a sexual device shop. It shall also include the definitions in Sec. 27-149 of the Zoning Ordinance.

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

Alcoholic beverage means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

Alcoholic beverage caterer means any retail dealer licensed pursuant to the alcoholic beverage ordinance of the City of Dunwoody who provides alcohol at authorized events or functions, special events, or special events facilities.

Beer or malt beverage means 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 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.

Barrel means 31 gallons when applied to brewers and 53 gallons when applied to distillers.

Bottle club means any restaurant, music hall, theater or other establishment providing food or entertainment in the normal course of business, and in which the owners or their agents knowingly allow patrons to bring in and consume the patrons' own alcoholic beverages.

Brewer means a manufacturer of malt beverages.

Brewery means a facility involved in the creation of malt beverages that produces 15,000 barrels or more (or the equivalent) per year of malt beverages.

Brewpub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form. In calculating the total annual gross food and beverage sales for any such establishment for the purpose of determining whether the establishment constitutes an eating establishment as defined herein, barrels of malt beverages sold to licensed wholesale dealers, as authorized pursuant to subparagraph (D) of paragraph (2) of O.C.G.A. § 3-5-36, or to the public for consumption off the premises in accordance with subparagraph (A) and (D) of paragraph (2), paragraph (3) and paragraph (4) of O.C.G.A. § 3-5-36, shall not be used.

Chief of police means the chief of police of the City of Dunwoody, or his designate.

Church means any permanent place of public religious worship.

Distance means the measurement in horizontal lineal feet.

Distilled spirits or spirituous liquor means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume including, but not limited to, all fortified wines.

Distiller means a manufacturer. In the case of distilled spirits, "manufacturer" means any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits.

~~*Eating establishment* means an establishment which is licensed to sell or otherwise dispense distilled spirits, malt beverages, or wines and which derives at least 60 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.~~

Entertainment and spectator sports means the provision of cultural, entertainment, athletic and other events, such as typically occurs in theaters, cinemas, auditoriums, special events facilities, stadiums and arenas. Entertainment and spectator sports do not include adult uses.

Food caterer means any person who prepares food for consumption off the premises.

Fortified wine means any alcoholic beverage containing 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, brandy.

Full-service kitchen means a kitchen consisting of a commercial sink and refrigerator and either a commercial stove, grill or microwave oven approved by the city manager or his designee.

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Growler means a container made of a material customary to the industry provided that the container is capable of being sealed with a tamper-proof cap, top or other seal for the purpose of complying with open container laws, and further provided that the container may hold less than 12 ounces, but not to exceed 68 ounces, and is filled with malt beverage drawn from a barrel, cask, tank, or keg by a licensee, or an employee of a licensee, holding a package malt beverage license issued by the City of Dunwoody.

Immediate family of a person means all persons related to such person by consanguinity or affinity within the first degree, as computed according to state law.

Interest includes any pecuniary interest and any ownership interest, whether present or future, whole or partial, legal or beneficial, contingent or vested, direct or indirect, and any right, power, or authority of control.

Licensee means the individual to whom a license is issued or, in the case of a partnership, corporation, or company, all partners, officers, members, managers, and directors of the partnership, corporation, or company.

Manufacturer means any maker, producer, or bottler of an alcoholic beverage. The term also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;
- (2) In the case of malt beverages, any brewer; and
- (3) In the case of wine, any vintner.

Microbrewery means a facility involved in the creation of malt beverages that produces fewer than 15,000 barrels per year.

Package means a bottle, can, keg, barrel, or other original consumer container.

Personal improvement service means informational, instructional, personal improvement services of a nonprofessional nature. These are distinguished from professional services such as attorneys, architects, or doctors by generally not requiring special training in the arts or sciences. Typical personal improvement services uses include hair salons, barber shops, beauty shops, nail salons, esthetician services, yoga or dance studios, personal fitness training studios, and martial arts schools. Personal improvement services include neither adult uses, nor massage establishments, nor spa establishments.

Premises means a definite closed or partitioned establishment, whether a room, shop or building, wherein alcoholic beverages are sold or consumed. The term "premises" also includes any privately owned or leased courtyard or patio which is architecturally visibly defined.

Registered agent means that individual who is a resident of the county and at least 21 years of age, required to be designated by a licensee to receive any process, notice, or demand required or permitted by law or under this chapter to be served upon a licensee or owner.

Retail consumption dealer means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

Wine means any alcoholic beverage containing not more than 21 percent alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term "wine" 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 "wine" 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 the point in the manufacturing process when it conforms to the definition of wine contained in this section.

Wine specialty shop means a retail establishment which has both package sales of wine and limited consumption on the premises of wine and draft craft beer.

(Comp. Ords. 2008, ch. 4, art. 1, § 2; Ord. No. 2018-04-07, § I, 4-9-2018; Ord. No. 2020-03-05, § I, 3-9-2020)

Section II: That Chapter 4 of the City Code is further amended by amending Code Section 4-25, to be entitled "Retail consumption on the premises licenses", to read as follows:

Sec. 4-25. - Retail consumption on the premises licenses.

- (a) 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 eating establishments having a full-service kitchen prepared to serve food every hour they are open and deriving at least 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food.
 - (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: Bring your own beverage 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.
- (d) Any establishment that is located in an entertainment district (See Sec. 4-142) and has over 50 percent of its total gross sale from entertainment and spectator sports is exempt from the requirement in this section of having a full service kitchen and the specified prepared meal or food sales in order to obtain a full pouring license or limited pouring license. Establishments utilizing this exemption shall close to the public no later than 12:00am on every day the business opens.
- (e) Any establishment that has over 50 percent of its total gross sale from personal improvement services is exempt from the requirement in this section of having a full service kitchen and the specified prepared meal or food sales in order to obtain a full pouring license or limited pouring license. Establishments utilizing this exemption shall close to the public no later than 12:00am on every day the business opens.

Section III: That Chapter 4 of the City Code is further amended by amending Code Section 4-132, to be entitled "Purchase and sales records", to read as follows:

Sec. 4-132. - Purchase and sales records.

- (a) Every licensee shall keep and preserve records of all alcoholic beverages purchased and sold or otherwise dispensed by the licensee. All consumption on the premises licensees shall keep and preserve records of all food and nonalcoholic beverages purchased and sold or otherwise dispensed by them. Such records, more specifically described in subsection (c) of this section, shall at all times be open for inspection by the city manager or his designee. These records shall be maintained for a period of at least three years unless the city manager determines that no such records exist, and it is

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not financially practical, based on the net income of the licensee, to require the keeping of such records.

- (b) If the city manager deems it advisable to conduct an audit of the records of a licensee, he shall notify the licensee of the date, time, and place of the audit. The city manager may designate the city's internal auditor or other person to perform the audit, and the licensee shall cooperate with the audit or be subject to having his license suspended or revoked.
- (c) At the request of the city manager or his designee, the licensee shall make available the following records required to be kept for at least three years:
 - (1) Monthly income or operating statements;
 - (2) Daily sales receipts showing liquor, beer, wine, ~~and food~~, entertainment and spectator sport, and personal improvement service sales separately (this requirement does not apply to package beer and wine licensees);
 - (3) Daily cash register receipts such as Z tapes or guest tickets;
 - (4) Monthly state sales and use tax reports; and
 - (5) Federal income tax returns.

SO ORDAINED, this ____ day of _____, 2022.

Approved:

Lynn P. Deutsch, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney