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To: Mayor and City Council

From: Cory Betterson, Accountant II

Date: April 9, 2018

Subject: Second read of ordinance amending Chapter 4 of the City's Code of Ordinances to provide for the licensing and regulation of brewpubs and manufacturers and the sale of growlers

ITEM DESCRIPTION

Second read of ordinance amending Chapter 4 of the City's Code of Ordinances to provide for the licensing and regulation of brewpubs and manufacturers and the sale of growlers

BACKGROUND

Per the request of council, staff has updated the ordinance amendment to include language for the regulation of all alcohol manufacturers in addition to brewpubs. With recent passing of SB85, which allows alcohol manufacturers to sell directly to consumers, alcohol manufactures have become immensely popular in Georgia. The proposed amendment to the alcohol ordinance will allow for the licensing and regulation of brewpubs and manufacturers. Additionally, the proposed amendment will address the sale of growlers. Growlers are presently being sold in Dunwoody, but our ordinance does not clearly define what a growler is and what is required to sell them. The ordinance amendment specific to growlers will clearly define what a growler is and what is required by the business to make these sales. A retail package license will be required to sale growlers for consumption off the premises. The proposed fees for brewpubs and manufacturers are set forth by resolution.

ALTERNATIVES

Council may choose to reject staff's recommendation to provide for the licensing and regulation of brewpubs and manufacturers and the sale of growlers.

RECOMMENDED ACTION

Second read to consider staff's recommendation to provide for the licensing and regulation of brewpubs and manufacturers and regulate the sale of growlers.

Denis Shortal Mayor
 Eric Linton, ICMA-CM City Manager
 Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
 Jim Riticher City Council Post 2
 Doug R. Thompson City Council Post 3

Terry Nall City Council Post 4
 Lynn Deutsch City Council Post 5
 John Heneghan City Council Post 6

Packet page:...

AN ORDINANCE TO AMEND CHAPTER IV (ALCOHOLIC BEVERAGES) TO PROVIDE FOR THE LICENSING OF BREWPUBS AND MANUFACTURERS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and Council of the City of Dunwoody (“City Council”) are charged with the protection of the public health, safety, and welfare of the citizens of the City of Dunwoody; and

WHEREAS, Georgia Law grants municipalities the authority to regulate the sale of alcoholic beverages within their jurisdiction; and

WHEREAS, the Mayor and Council of the City of Dunwoody wish to change the City of Dunwoody Code to allow the manufacturers of alcoholic beverages and brewpubs to conduct business within the City of Dunwoody.

WHEREAS, the City intends to utilize this policy and procedures in all applications which warrant such oversight.

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY ORDAIN THAT CHAPTER IV IS AMENDED AS FOLLOWS:

Section I: Section 4-2 of the code is hereby amended as follows:

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.

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Growler means a bottle 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 twelve (12) ounces, but not to exceed sixty-eight (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.

Section II: Section 4-24(a) is amended as follows:

Sec. 4-24. – Retail Package Licenses

(a) Applicants may apply for one or more of the following type retail licenses:

- (1) Package malt beverage license: Retail sale of malt beverages in the original package **and retail sale of growlers as authorized herein.**
- (2) Package wine license: Retail sale of wine in the original package.
- (3) Package distilled spirits license: Retail sale of distilled spirits in the original package.
- (4) Ancillary wine or malt beverage tasting license.

Section III: Section 4-137 is amended as follows:

Sec. 4-137. - Delivery and storage.

- (a) **Except as may be otherwise specifically provided herein as to brewpubs, Aalcoholic** beverages shall be delivered to and received at licensed premises in the original container and in a conveyance owned and operated by a licensed wholesale dealer (or a licensed common carrier acting for a wholesaler) with a permit from the city to make deliveries in the city. Alcoholic beverages shall be sold at retail only on the licensed premises.
- (b) A retail licensee shall store alcoholic beverages only on the licensed premises and at no other place. All stock shall be available at all times for inspection by any authorized agent of the city. **Except as may be otherwise specifically provided herein as to brewpubs, Aa**Any alcoholic beverages

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found in any retail licensee's stock which were not received from a wholesaler licensed to make deliveries in the city shall be subject to immediate confiscation.

Section IV: Section 4-138 is amended as follows:

Sec. 4-138. - On-premises consumption unlawful.

- (a) It shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the licensed premises. This section shall not apply with respect to sales pursuant to a license for consumption on the premises.*
- (b) Notwithstanding the foregoing, the sale of growlers, as defined in subsection 4-2, is authorized for and by those licensees holding a package malt beverage license, with or without a package wine license, but not authorized under any circumstances for licensees holding a package distilled spirits license, and who do not sell, or offer for sell [sale], vehicular fuel. The filling of growlers with malt beverage drawn from a tap on a barrel, cask, tank, or keg on the premises shall not constitute the breaking of a package as contemplated by O.C.G.A. § 3-3-26 or other provisions of this chapter, provided that no filled growlers may be consumed on the premises. Only professionally sanitized and sealed growlers may be filled and made available for retail sale. Each growler must be securely sealed and removed from the premises in its original sealed condition. In order to be securely sealed, the growler must be sealed with a tamper-proof cap or seal. With the exception of brewpubs pursuant to subsection (c), growlers may only be filled from kegs procured by the licensee from a duly licensed wholesaler.*
- (c) Notwithstanding any other provision of this chapter to the contrary, in the case of a brewpub holding a license to sell malt beverages by the package, growlers may be filled from barrels, casks, tanks, or kegs of malt beverages manufactured on the licensed premises, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36.*

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Section V: Sections 4-41 through 4-48 of the code are hereby amended as follows:

Sec. 4-41. – License required to manufacture.

It shall be unlawful for any person to manufacture any alcoholic beverages within the city except under a license issued under this Article and Chapter.

Sec. 4-42. Manufacturer defined.

As used herein, A manufacturer means any maker, producer, or bottler of an alcoholic beverage and

- (a) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; and*
- (b) In the case of malt beverages, any brewer, excepting, however, brewpub brewers, licensed under section 4-XX of article II of this chapter; and*
- (c) In the case of wine, any vitner.*

Sec. 4-43. – Compliance with state law required.

The applicant for a manufacturer license shall be subject to and comply with all state laws and regulations.

Sec. 4-44. – Application for manufacturer license.

Application for a manufacturer license shall be made in the same manner and subject to the same rules and procedures as an application for any other license authorized under this Chapter. The application shall be accompanied by the requisite fee in an amount as set by the resolution of the city council, which amount shall remain in effect until modified or amended by subsequent resolution adopted by the council.

Sec. 4-45. – Manufacturer Licenses.

Manufacturer licenses which may be issued under the Article shall be specific to the alcoholic beverages to be manufactured:

- (A) Manufacturer license for distilled spirits*

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- (B) *Manufacturer license for malt beverages*
- (C) *Manufacturer license for wine.*

Sec. 4-46. Manufacturer of Distilled Spirits.

- (A) *Barrel, as used in this section, means 53 gallons.*
- (B) *As provided by O.C.G.A. 3-4-24.2, a limited exception to the three-tier system for the distribution and sale of distilled spirits shall include the right to sell up to 500 barrels of distilled spirits per year produced at the distiller's licensed premises to individuals who are on the premises for: (1) consumption on the premises, and (2) consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 2,250 milliliters of distilled spirits per consumer per day.*
- (C) *A distiller may sell distilled spirits pursuant to subsection (A) of this section on all days and at all times that sales of distilled spirits by retailers and retail consumption dealers are lawful, including, but not limited to Sundays.*
- (D) *A distiller shall not sell any distilled spirits for consumption off the premises pursuant to subsection (A) of this section at a price less than the price at which a person licensed to sell distilled spirits by the package is permitted to sell distilled spirits pursuant to O.C.G.A 3-4-26(b).*
- (E) *Any distiller engaging in sales of distilled spirits pursuant to subsection (A) of this section shall remit all sales, use, and excise taxes to the proper tax collecting authority.*

Sec. 4-47. Manufacturer of Malt Beverages.

- (A) *Barrel, as used in this section, means 31 gallons.*
- (B) *As provided by O.C.G.A. 3-4-24.1, a limited exception to the three-tier system for the distribution and sale of malt beverages shall include the right to sell up to 3,000 barrels of malt beverages per year produced at the brewer's licensed premises to individuals who are on the premises for: (1) consumption on the premises, and (2) consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 288 ounces of distilled spirits per consumer per day.*

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- (C) *A brewer may sell malt beverages pursuant to subsection (A) of this section on all days and at all times that sales of malt beverages by retailers are lawful, including, but not limited to Sundays.*
- (D) *A brewer engaging in sales of male beverages pursuant to subsection (A) of this section shall remit all sales, use, and excise taxes to the proper tax collecting authority.*

Sec. 4-48. – Sale allowed only to wholesalers.

Distilled spirits, malt beverages, and wine manufactured pursuant to a manufacturer license issued hereunder shall be sold only to wholesalers and not directly to retailers or end consumers except as may otherwise be allowed by state law and City code.

Secs. 4-419 - 4-68. - Reserved.

Section VI:

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no

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section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section VI:

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

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Section VII:

This Ordinance shall be codified in accordance with state law and the Code of the City of Dunwoody, Georgia. This Ordinance shall become effective upon the effective date of Georgia Senate Bill 17 2018.

SO ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY, GEORGIA this the ____ day of _____, 2018.

Approved:

Denis L Shortal, Mayor

Attest:

Sharon Lowery, City Clerk
Seal

Approved as to Form and Content

City Attorney