Introduction 9/8/11

Adopted 9/22/11

**ORDINANCE NO: 11-654**

**BE IT ORDAINED** by the City Council of the City of Huntsville, Alabama as follows:

**Section 1.** Chapter 3 of the Code of Ordinances of the City of Huntsville, Alabama is hereby amended as follows:

## ARTICLE I. IN GENERAL

### DIVISION 1. GENERALLY.

**Sec. 3-1. Definitions.**

(a) 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. Except as may be otherwise provided in this section or where the context clearly indicates a different meaning, all words, terms, and phrases used in this chapter which are defined in Code of Ala. 1975, § 28-3-1 shall have the meanings ascribed to them in that section, and which are defined in the glossary of terms section of the rules and regulations promulgated by the ABC board shall have the meanings ascribed to them in that section.

*Alcoholic beverage control board* or *ABC board* or *board* shall mean the Alabama Alcoholic Beverage Control Board.

*City license* or *license* means licenses issued pursuant to this chapter which are business or privilege licenses which allow the holder thereof to conduct the kind of business identified in the license in accordance with this chapter.

*City licensee* or *licensee* means the holder of a license issued pursuant to this chapter.

*City licensed premises* means the licensed premises of a city licensee.

*Licensee's parking area* means any parking lot or garage or other area outside the building, room, or area encompassed within the city licensed premises, when any part of such parking lot or garage or other area is adjacent to the city licensed premises, and when such parking lot or garage or other area is owned, rented, leased, regulated, controlled, or provided, directly or indirectly, by such licensee.

*Manager* means each person responsible for the management of an establishment and shall include the designated person in charge.

*Owner* means each individual owner of a sole proprietorship, officer of a corporation, and partner or member of an association, except as to incorporated clubs the term shall mean such individuals who, under the bylaws of such clubs, have the jurisdiction over the possession and sale of alcoholic beverages therein.

*State alcoholic beverage control laws* mean the alcoholic beverage control laws of the state as set forth in title 28 of the Code of Ala. 1975 and the rules and regulations promulgated thereunder by the ABC board, as such laws may be amended or superseded from time to time.

(b) Where not otherwise defined in subsection (a) of this section, the words, terms and phrases, when used in this chapter, shall have the meanings and rules of construction ascribed to them in section 1- 2 of this Code, except where the context clearly indicates a different meaning.

**Sec. 3-2. Interpretation and construction of chapter; territorial application.**

(a) This chapter shall be deemed as an exercise of the police power of the city for the protection of the public welfare, health, peace, temperance, safety, and morals of the people of the city, and shall have force and effect throughout the corporate limits.

(b) The provisions of this chapter shall be construed according to and in conformity with the state alcoholic beverage control laws and nothing in this chapter shall be construed to excuse noncompliance with any federal or state law or other city law.

**Sec. 3-3. Duties and powers of city clerk-treasurer generally.**

The city clerk-treasurer shall administer and enforce the licenses imposed by this chapter. He shall have the power to enter upon the premises of any city licensed premises and to examine, or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, memoranda, or other documents bearing upon the administration or enforcement of this chapter.

**Sec. 3-4. Compliance with state alcoholic beverage control laws.**

(a) It shall be unlawful and a violation of this chapter for any person to do anything or commit any act or omission constituting a misdemeanor under the state alcoholic beverage control laws, which includes rules or regulations promulgated by the ABC board the violation of which have been denominated by section 28-3-20 of the Code of Ala. 1975 as constituting a misdemeanor; which laws are incorporated herein by reference as if fully set forth.

(b) Where the state alcoholic beverage control laws described in subsection (a) of this section refer to a state license, class of license, licensee, or licensed premises, the terms shall also mean and include a city license, class of license, licensee, or licensed premises.

(c) Subject to the provisions of this chapter governing hours of operation and motion pictures and shows, where the aforementioned state alcoholic beverage control laws, which includes section 28-3A-25 of the Code of Ala. 1975, establish unlawful acts or offenses relative to state licensees, their servants, agents, or employees, or to state licensed premises, in such case city licensees, their servants, agents, or employees, and city licensed premises, shall be subject to the same requirements, and failure to comply with same shall be a violation of this chapter.

**Sec. 3-5. Penalty, nuisance.**

(a) The penalty provisions of section 1-7 of this Code shall apply to a violation of this chapter.

(b) This chapter is enacted for the protection of the health, morals, comfort, and welfare of the community and any violation of this chapter is declared to be a nuisance as being injurious thereto.

**Secs. 3-6—3-20. Reserved.**

## ARTICLE II UNLAWFUL ACTS AND OFFENSES.

**Sec. 3-21. Definitions.** The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Authorized licensed premises* means a place, whether publically or privately owned or controlled, that is properly licensed, which includes the proper class of license, in accordance with this chapter.

*Authorized special event* means a special event in a public park in the central city area hosted by a bona fide non-profit entity holding a bottle permit issued in accordance with section 3-23.

*Banquet establishment* means a duly licensed establishment, operated for profit, whether or not a profit is made, that provides facilities for gatherings or events, which includes private events, and which establishment does not hold a city license for the on-premises sale of alcoholic beverages.

*Banquet services* mean the services, staffing, or equipment provided by a banquet establishment. The term shall not include the providing of alcoholic beverages.

*Brown bagging* means the bringing, taking, or carrying of any alcoholic beverage into any business holding, or required to hold, a city business license (whether or not the business holds a city license for alcoholic beverages) by a customer, member, guest, invitee, or patron thereof.

*Fundraiser* means a social function held for the purpose of raising donations for a bona fide non-profit organization duly formed in accordance with federal and state tax laws and where no proceeds derived from the event are paid to any person hosting the fundraiser and where all of the net proceeds of the fundraiser are used for the bona fide nonprofit.

*Guest* means an invitee of the owner or person in control or possession of a premises, the host of the event, or a member of a private club, provided the invitation is not to members of the general public or a substantial portion thereof.

*Host* means to organize, sponsor, conduct, host, or hold an event, and includes the person hosting the event.

*Illegal sales* means any sale, keeping for sale, or offering for sale of any alcoholic beverages without the benefit of the proper city license, which includes the proper class of license, issued pursuant to this chapter.

*Illegal sales premises* means a place, whether publically or privately owned or controlled, where there are illegal sales of alcoholic beverages, which may include a private club and a private dwelling typically known as a "shot house", where alcoholic beverages are sold or offered or kept for sale by the drink or in any quantity less than 3.4 fluid ounces, or sold or offered or kept for sale for consumption on the premises where sold.

*Open container* means any bottle, can, cup, glass, or other receptacle containing any alcoholic beverage which is open, which has been opened, which has its seal broken, or which has had its contents partially removed.

*Other city business licensee* means the holder of a business or privilege license issued by the city that does not include an alcoholic beverage license issued pursuant to this chapter.

*Private club* means a club that is limited to members of the club and their guests and which does not hold a city license for the on-premises sale of alcoholic beverages.

*Private dwelling* means a private residential dwelling, which includes its curtilage and yard.

*Private event* means a private party, banquet, seminar, prom, reception, wedding, reunion, fundraiser, or other such occasion, which is by invitation only to guests of the host, and which is hosted by persons that do not receive, either directly or indirectly, any form of consideration therefor, which shall not be construed to include gifts suited for the occasion, such as wedding or birthday presents, or donations which are strictly voluntary in the case of a fundraiser.

*Private use* means the possession, display, or consumption of alcoholic beverages, which does not include the sale thereof, on private premises by the occupants, residents, or members thereof, and their guests.

*Private premises* means premises that are, at the time, closed or inaccessible to the general public, which may include private clubs and private dwellings.

*Public place* means a place, whether publically or privately owned or controlled, to which the general public, or a substantial portion thereof, has access or that is open to the general public, or a substantial portion thereof. The term includes common areas of apartments, condominiums, and other multi-unit buildings to the extent access to such areas is not restricted to the occupants or residents of the building and their guests. The term does not include a place that is, at the time, closed or inaccessible to the general public.

*Sale* or *sell* is as defined by the state alcoholic beverage control laws. The term includes the indirect sale of alcoholic beverages through the use of tickets, cover charges, door charges, gate fees, membership fees, or other like charges or other forms of consideration that entitle a person to possess or consume alcoholic beverages.

**Sec. 3-22. Prohibitions concerning open containers, drinking in public places, and upon illegal sales premises.**

(a) *State open container law.* It is a violation of this chapter for any person to violate the Alabama Open Container Law, section 32-5A-330 of the Code of Ala. 1975.

(b) *Prohibition against drinking in a public place.* Except for a place that is an authorized licensed premises or except in the case of an authorized special event, it shall be unlawful for any person to have in an open container or to drink any alcoholic beverage at any public place, which includes vehicles located on a public place, that the person knows or should know is not an authorized licensed premises or an authorized special event. It shall be unlawful for any person to knowingly allow a violation of this subsection (b) to occur at a public place under that persons care, custody, or control.

(c) *Prohibitions regarding illegal sales premises.* It shall be unlawful for any person to purchase any alcoholic beverage at or from an illegal sales premises, or to drink any alcoholic beverage or have an open container, upon an illegal sales premises, which the person knows or should know is an illegal sales premises. It shall be unlawful for any person to knowingly allow a violation of this subsection (c) to occur on premises under that persons care, custody, or control.

(d) *Private use.* Nothing in this section shall be construed to prevent private use on private premises, provided that in no event are illegal sales allowed.

**Sec. 3-23. Bottle permit for authorized special event.**

(a) *Purpose; application required.* It is the goal of the city to promote the use and enjoyment of public parks in the central city area, as that area is delineated in section 18-31of this Code, by allowing attendees, excluding minors, of an authorized special event to bring, take, or carry, in original unopened containers, beer or table wine only into the event for their personal consumption during the event. Subject to the eligibility requirements of this section, any bona fide non-profit organization duly formed in accordance with federal and state tax laws that is hosting a special event in a public park in the central city area, that does not include the sale of alcoholic beverages, is eligible to apply to the city clerk-treasurer for a bottle permit on forms provided by the city clerk-treasurer. The permit would allow attendees of the event, excluding minors, to bring, take, or carry, in original unopened containers, beer or table wine only into the event for their personal consumption during the event.

(b) *Approval process.* The city clerk-treasurer, as a part of the application process, may require information of the applicant, consistent with section 3-84 of this chapter, which he determines to be appropriate in order to determine eligibility and suitability. Upon submittal of a completed application an investigation may be conducted in accordance with section 3-86.

(c) *Requirements for issuance.* Bottle permits will be issued for qualified entities hosting special events in public parks in the central city area only where each of the following requirements is met:

(1) The special event must be free of charge and not involve any type of fee or other form of remuneration for those attending the event, which includes ticket sales, entrance fees, and cover charges. This prohibition does not preclude duly licensed vendor sales, excluding alcoholic beverage sales.

(2) For profit entities may provide voluntary contributions for the special event, but may not act as a host of the event.

(3) The event may not be licensed for the sale of alcoholic beverages.

(4) Attendees of the event, excluding minors, may bring, take, or carry, in original unopened containers, beer or table wine only into the event for their personal consumption during the event. Kegs shall not be allowed. The host of the event shall in no event furnish any alcoholic beverages to the attendees of the event.

(5) No open containers shall be removed from the event area and it shall be the responsibility of the host of the event to ensure compliance with this provision.

(6) A sign shall be posted at each entrance of the event notifying attendees that the event holds a bottle permit allowing attendees of the event, excluding minors, to bring, take, or carry, in original unopened containers, beer or table wine only into the event for their personal consumption during the event.

(7) The duration of the event shall be limited to the time specified in the approved bottle permit.

(8) The applicant shall, where required to do so by the city clerk-treasurer, obtain a lease from the city council for use of the public space, which may include indemnification and insurance requirements. All required permitting for the event shall be obtained, which may include a special event permit pursuant to section chapter 23, article VI of this Code.

(d) Where all of the eligibility requirements are met for qualified applicants, the city clerk-treasurer shall report his findings to the liquor license review committee, which is authorized, on behalf of the city council, to issue a bottle permit for an authorized special event. Permits may be issued for a one time event or a reoccurring event, at the discretion of the committee. In addition, the committee may attach reasonable conditions to the permit, not inconsistent with this chapter or state alcoholic beverage control laws, which it deems relevant for the public health, safety, and general welfare, which may include security requirements for the event.

(e) Failure to comply with the permitting requirements or conditions shall constitute a violation of this section.

**Sec. 3-24. Removal of alcoholic beverage in open container; consumption restricted to premises.**

(a) It shall be unlawful for any person to take from any authorized licensed premises any open container.

(b) It shall be unlawful for any licensee, its owner, manager, servant, agent, or employee, to knowingly allow any person to take from the authorized licensed premises any open container.

(c) It shall be unlawful for any city on-premises licensee, its owner, manager, servant, agent, or employee, to sell, provide, serve, or allow consumption of alcoholic beverages within any areas of an establishment that are not a part of the authorized licensed premises.

(d) It shall be unlawful for any city licensee, its owner, manager, servant, agent, or employee, to knowingly allow any person to have an open container upon or allow any person to consume any alcoholic beverage in or upon the licensee's parking area; provided however, that if such licensee shall post and maintain a legible, painted or printed sign in at least two separate prominent places on such licensee's parking area, with sufficient illumination directed thereon to be clearly visible during the hours of darkness while such place of business is open, in letters of not less than three inches in height, stating:

WARNING
DRINKING ALCOHOLIC BEVERAGES ON THIS LOT
PROHIBITED BY CITY ORDINANCE
UP TO $500 FINE AND/OR 6 MONTHS IN JAIL FOR VIOLATION

or in substantially similar appropriate language, such signs shall constitute prima facie evidence that such licensee, its owner, manager, servant, agent, or employee, is not operating in violation of this subsection (d).

**Sec. 3-25. Prohibitions against brown bagging, exceptions.**

(a) *Brown-bagging prohibited.*

(1) Consistent with the rules and regulations promulgated by the ABC board, it shall be unlawful for a licensee holding a city license issued pursuant to this chapter to allow on the city licensed premises the consumption or possession of any type of alcoholic beverage which the licensee is not authorized to sell. Further, the practice of brown bagging or customers bringing on the licensed premises their own alcoholic beverages is prohibited on city licensed premises. This brown bagging provision shall not apply to alcoholic beverages, for which the appropriate Alabama tax has been paid, which are brought on the premises of a class I club (not operated for pecuniary gain) licensees. The same prohibitions concerning the practice of brown bagging shall also apply in regard to other city business licensees, their customers, and their premises.

(2) It shall be unlawful for a city licensee and an other city business licensee, their respective owners, managers, servants, agents, or employees, to knowingly allow the practice of brown bagging to occur on the premises for which the license is held.

(3) It is shall be unlawful for a customer, member, guest, invitee, or patron of a city licensee or other city business licensee to violate the prohibition of brown bagging.

(b) *Exception for private events at banquet establishments.*

(1) Notwithstanding the foregoing prohibitions in subsection (a) of this section, it shall not be unlawful for any person hosting a private event held at a banquet establishment to furnish alcoholic beverages, not for sale, to the guests or attendees of the private event.

(2) Notwithstanding the foregoing prohibitions in subsection (a) of this section, it shall not be unlawful for a duly licensed banquet establishment to provide facilities, which includes banquet services, for a private event provided:

a. The person hosting the event furnishes the alcoholic beverages, not for sale, for the event;

b. No person, which includes those hosting or attending the event, is charged, either directly or indirectly, by the banquet establishment for the furnishing of alcoholic beverages. Prima facie proof of a violation of this section shall occur when the banquet establishment charges an event that does not include alcoholic beverages less than a private event that includes alcoholic beverages for the same facilities, which includes banquet services. The banquet establishment shall post in a visible location on the premises all charges and fees for its facilities and banquet services, which shall be available for inspection upon request by the city clerk-treasurer or by the chief of police during normal business hours.

c. No person connected with the banquet establishment, which includes as owner, manager, servant, agent, or employee, or those that otherwise have a profit or pecuniary interest in the premises or the establishment, shall host a private event at the banquet establishment where alcoholic beverages are served or provided.

d. The area where the private event is held shall have adequate lighting, which means ambient lighting that is adequate for the purposes of observing the operation of or patrons within the premises.

e. The banquet establishment shall be responsible for providing adequate security for a private event based on the number or anticipated number of attendees, the nature of the event, and the prior history of the same or similar events.

(c) Nothing in this section shall be construed to allow a violation of state and local laws concerning persons under the legal drinking age to occur at a banquet establishment.

**Sec. 3-26. Persons under the legal drinking age.**

(a) It shall be unlawful and a violation of this chapter for any person to do anything or commit any act or omission that is in violation of the state alcoholic beverage control laws governing persons under the legal drinking age, which includes sections 28-1-5, and 28-3A-25 (3), (19), and (22), of the Code of Ala. 1975, and 20-X-6-.09 of the rules of the ABC board.

(b) Where the violations of this section are committed or allowed to occur on the city licensed premises by the licensee, its owner, manager, servant, agent, or employee, it shall be a violation of this chapter and, in such cases, the city licensed premises has been conducted in a manner prejudicial to the welfare, health, peace, temperance, safety, or morals of the public and the city license shall be subject to action being taken against it.

**Secs. 3-26—3-50. Reserved.**

## ARTICLE II. - LICENSES

### DIVISION 1. - GENERALLY

**Sec. 3-51. City license required; application of business license chapter.**

(a) It shall be unlawful for any person who has not been licensed to do so under the appropriate provisions of this chapter to sell, offer for sale, or have in his possession for the purpose of sale any alcoholic beverages.

(b) All applicable provisions of chapter 15 of this Code, not inconsistent with the provisions of this chapter, are hereby referred to and made a part of this chapter to the same extent as if herein set out in full.

**Sec. 3-52. Transfer of state license; new city license required.**

(a) No city license issued under the provisions of this chapter shall be transferred or assigned from one location to another or from one licensee to another person.

(b) Where a city licensee makes application with the ABC board for a transfer of its state license from one location to another or from one licensee to another person, then the transferee must obtain approval from the city for the state transfer and, in addition, must apply for a new city license for the new location or new person and meet all the requirements of this chapter for the new license. The transferee shall have 60 days from the date the transfer application is made with the state to complete the transfer process and obtain a new city license, subject to extensions granted by the city clerk-treasurer upon written request for good cause shown. In the case of a location transfer, no business regulated by this chapter shall be conducted at the proposed location until the process is complete and a new license has been issued for the new location.

(c) In the case of failure to complete the transfer process and obtain a new city license in a timely

manner, where the ABC board in accordance with state alcoholic beverage control laws allows the original licensee to resume control and operation of the licensed premises, then the original city licensee shall also be allowed to resume its operations at the original location.

**Sec. 3-53. Change of ownership, management, or name of licensee; expansion of city licensed premises.**

(a) *Change of ownership, etc.* Subject to section 3-52 concerning state transfers and new city licenses, city licenses shall be deemed to expire, terminate, or otherwise be void when there is a substantial change of ownership in the licensee; when a licensed establishment is leased, rented, or abandoned; or when possession is otherwise surrendered to another person. A city license issued to a corporation does not terminate by transfer of ownership of its stock, and a new license is not required even with a complete change in ownership of the capital stock of a corporate licensee, although the provisions of section (d), below, shall apply.

(b) *Temporary closure or interruption.* Upon the death of an individual city licensee, sale of the licensed business, temporary closing of the licensed business, or other interruption in the operation of a licensed business, the city license shall immediately be delivered to the city clerk-treasurer, to be held pending the reopening of said business according to this chapter. However, where there is a surviving partner in a partnership entity possessing a city license, or a surviving spouse of a deceased licensee, such survivor may complete the current license year operating as a city licensee, having the same rights and responsibilities as the named licensee, without obtaining a new city license, provided: (1) the survivor notifies the city clerk-treasurer in writing within 20 days after the death of the licensee, and (2) the survivor is otherwise qualified to hold a city license. A surviving spouse or partner must complete a new application in his/her own name and receive approval prior to operation the next license year.

(c) *New officers or directors of licensed corporations.* When a licensed corporation elects new officers or directors, said corporation shall notify the city clerk-treasurer in writing within 20 days thereafter. Such notification shall contain the names, positions, social security numbers, places of birth, dates of birth, home addresses, and how long the newly-elected officials have lived at said addresses. No person shall serve as a director or officer of a licensed corporation who is otherwise unqualified to obtain an original city license in their own name, and the city license shall be subject to action being taken against the license, where the person continues to hold the position of director or officer with the licensed corporation. This section shall not apply to corporations whose shares are customarily and regularly traded or sold on recognized stock exchanges.

(d) *New shareholders of licensed corporations.* When ownership of 20% or more of a corporation's shares is transferred or there accrues a 20% transfer of shares since the licensing year began, a corporation shall notify the city-treasurer in writing within 20 days thereafter. The letter shall contain the name of the persons to whom the stock was transferred, social security number, place of birth, date of birth, home address, how long the stock transferee has lived at that address, and what quantity of shares was transferred. No person shall own shares through transfer or accrual in a licensed corporation who is otherwise unqualified to obtain an original city license in their own name. The license review committee shall have discretion in determining the qualifications of any transferee of stock shares, and may, in its discretion, suspend the corporation's license during the period of time that the unqualified shareholder retains ownership of said shares, subject to the right of appeal to the city council in accordance with section 3-91. This section shall not apply to corporations whose shares are customarily and regularly traded or sold on recognized stock exchanges.

(e) *Non-corporate licensees.* When a non-corporate licensee has a change of ownership effecting 20% or more thereof, the licensee shall notify the city clerk-treasurer in writing within 20 days thereafter, and a

new application shall be submitted by the new entity created by such change of ownership. No person shall become the owner or otherwise be interested in the operation of a non-corporate city licensed premises who is otherwise unqualified to obtain an original license in their own name.

(f) *Additional information.* Additional information concerning licensed businesses and persons associated therewith shall be submitted when requested by the city clerk-treasurer.

(g) *Change of trade name.* In the event a city licensee changes its trade name during a license year, the licensee must notify the city clerk-treasurer within 20 days of such change.

(h) *Expansion of licensed premises.* All expansions of city licensed premises shall be subject to the city's approval. Whenever a licensee proposes to expand its city licensed premises it shall make application therefor with the city clerk-treasurer and shall submit such relevant information as the city clerk-treasurer may require. The application for expansion shall be considered by the license review committee, on behalf of the city council, in accordance with this article and the committee's decision is subject to the same right of appeal as for original license applications.

**Sec. 3-54. Duration.**

Licenses issued under the provisions of this chapter shall be valid for the license year which shall begin on January 1 of each year and expire on December 31 of each year.

**Sec. 3-55. Licenses conditional.**

(a) All licenses issued pursuant to this chapter shall be conditioned upon the holder thereof continuing to meet the requirements and qualifications of licensing and, failing therein, it shall be a violation of this chapter.

(b) All licenses issued under this chapter shall be conditioned upon the holder thereof being duly licensed by the ABC board and any failure to be so licensed or any suspension or revocation of such licensing shall cause an automatic denial, suspension, or revocation of a city license without the need for notice or an opportunity to be heard. Where a suspended state ABC board license is re-instated, then the city's license shall be automatically reinstated unless the city takes action against the city license.

**Secs. 3-56—3-80. Reserved.**

DIVISION 2. APPLICATION, LICENSING REQUIREMENTS, ETC.

**Sec. 3-81. Classification and qualifications of licensing.**

(a) *Classifications.* Subject to subsection (b) of this section, upon approval of an application, the city clerk-treasurer is authorized to issue alcoholic beverage licensing in accordance with the classifications and qualifications established by the state alcoholic beverage control laws and this chapter.

(b) *Zoning requirements.* Where the city's zoning laws, which includes variances or special exceptions granted pursuant thereto, establish certain requirements, qualifications, or conditions for city licensees or city licensed premises, which includes the requirement that an on-premises retailer maintain a minimum in sales of meals or other items, it shall be a requirement, qualification, or condition for licensing under this chapter, and failure to comply therewith shall constitute a violation of this chapter.

**Sec. 3-82. Application filing fee for license.**

There is required, as a filing fee to cover the costs of processing and investigating each application filed with the city for an alcoholic beverage license of any kind or class, the sum of $100.00; and the city clerk-treasurer shall not accept any application for any such license not accompanied by payment to the city. The filing fee shall be retained by the city to cover the expenses of processing and investigating the application, whether or not the application results in approval or denial; however, the filing fee for special events license applications shall be $25.00.

**Sec. 3-83. When application for license refused.**

(a) The city clerk-treasurer shall not accept an application for an alcoholic beverage license from any applicant which has had a license application for the same classification of license at the same location denied within 180 days immediately preceding the date of application; however, the liquor license review committee may vote to consider any such application upon written request where the committee finds a substantial change in the ownership or circumstances with respect to the application. The committee's decision regarding whether to so consider such application is final.

(b) The city clerk-treasurer shall not accept an application for an alcoholic beverage license from an applicant whose state license has been denied, or is under suspension or revocation.

**Sec. 3-84. Application.**

(a) *Generally.* Each applicant for a license shall make application to the city as required in this section. The application shall be upon an appropriate form supplied by the city clerk-treasurer for such purpose and shall be signed and verified by oath or affirmation by the owner if a natural person or, in the case of an association, partnership, or limited liability company, by a member or partner, or in the case of a corporation by an executive officer, or any person specifically authorized by the corporation to sign the application to which shall be attached written evidence of his authority.

(b) *Contents generally.*

(1) For purposes of this subsection (b), the term *information* shall mean information of any kind or in any form specified by the application, which may include but is not necessarily limited to documentation, statements, certifications, evidence, site plans, reports, and instruments.

(2) Every applicant for a license, in addition to information required under the state alcoholic beverage control laws, which includes the rules and regulations promulgated by the ABC Board governing applications, shall also provide, as part of such application, information which the city clerk-treasurer determines is relevant for a determination of qualification of licensing and compliance with this chapter and the laws of the state and city, which includes detailed information about:

a. the applicant, which includes formation documents for a business or non-profit entity;

b. persons having ownership, control, or management of or an interest in the establishment to be licensed, which includes identifying information, residency history, contact information, background information, and criminal history;

c. the funding of the business;

d. past licensing;

e. the proposed city licensed premises, which includes its location and a site plan that includes patios and parking areas;

f. on-premises meal preparation and service, which, in the case of mandatory on-premises meal preparation and service, shall include the description of a fully functional kitchen;

g. premises operation, which includes security personnel and their background, which includes criminal history; and

h. the ownership or lease of the proposed city licensed premises, which includes, in the case of a tenancy, the landlord and his interest in or control of the proposed licensee, if any.

(c) *Security plan.*

(1) For purposes of this subsection (b) the term *approved security plan* means the security plan approved by the chief of police in accordance with this subsection, as such plan may be amended from time to time as hereinafter provided. The approved security plan shall constitute the minimum security measures which must be taken by the licensee and nothing in this subsection (b) shall be construed to prevent the licensee, at any time and from time to time, from implementing additional or more stringent security measures above the minimum approved security plan without the need to obtain the approval of the chief of police.

(2) An applicant for an on premises license with a maximum occupancy exceeding 250 persons shall submit a proposed security plan with its application. The plan shall explain in detail the security measures which the applicant proposes to use for the proposed city licensed premises and proposed licensee's parking area, which includes security personnel, methods of crowd control, prevention of underage drinking, access control of minors under the age of 19 in the case of class I lounge liquor retailers, security lighting, and such other security measures the chief of police may require based on the proposed location, the class of license, the proposed occupancy number, prior history, and whether the establishment will have entertainment.

(3) The plan shall be subject to the approval of the chief of police and, once approved, shall be a qualification for and condition of licensing. It shall be a violation of this chapter for the licensee to fail to follow the approved security plan.

(4) At any time or from time to time the licensee may request in writing that the chief of police reduce the approved security measures contained in the approved security plan where the applicant is able to demonstrate to the satisfaction of the police chief that the remaining security measures are adequate under the circumstances to protect the public health, safety, and general welfare. At any time and from time to time the police chief may require an enhancement in the security measures contained in the approved security plan where he determines such enhancement is required in order to protect the public health, safety, or general welfare due to occurrences on the licensed premises or licensee's parking area.

(d) *Fingerprints.* As a part of the application process the city clerk-treasurer may require that persons

having ownership, control, or management of or an interest in the establishment to be licensed, as well as its security personnel, submit fingerprints to the chief of police who shall forward the fingerprints to the appropriate agencies for identification and investigation.

(e) *Duty to update.* Subject to section 3-53, a licensee shall have an ongoing duty to notify the city clerk-treasurer in writing of any applicable changes in: (1) the persons having ownership, control, or management of or an interest in the licensee, (2) the licensee's security personnel, and (3) the landlord and his interest in or control of the licensee. The licensee may be required to make application for such changes, which shall be processed as for an original application, subject to the same rights of appeal.

(f) *False information.* It shall be unlawful for an applicant to knowingly submit false or incorrect information with an application. In the event any false, incorrect, or incomplete information is found on an application for a license, the license is subject to denial, action being taken against it, or other appropriate action, and no waiver, estoppel, or laches will run against the city, in connection with any false, incorrect, or incomplete information made by an applicant on an application.

**Sec. 3-85. Notice.**

(a) All applicants for a license shall provide written notification in accordance with this section to all current owners of real property, as shown in the records on file in the tax assessor's office, and occupants of residential dwellings, which are located within 500 feet of the property to be licensed, which includes the proposed licensee's parking area, as measured from the external boundary of the property to be licensed, which includes the proposed licensee's parking area.

(b) The notice shall include the date and time the application is scheduled to be voted on by the license review committee, the location of the meeting, and such other information the city clerk-treasurer may require, which includes the right of interested persons to appear before the committee, and also of their right to appeal any ruling of the committee to the city council. Notice shall be sent via U.S. Mail, proper postage prepaid to said owners and occupants and notice shall be completed at least one week before the meeting at which the application is scheduled to be acted upon by the committee.

(c) The applicant shall file with the city clerk-treasurer a list of the names and street addresses to which notice was sent and shall certify that the required notice was given. In lieu of notice being sent by first class mail, the city clerk-treasurer is authorized to require that notice be sent by certified mail, return receipt requested, as proof of delivery, which proof shall be submitted to the city clerk-treasurer upon request.

(d) Nothing herein shall be construed to prevent, as a part of the investigation required in section 3-86, the city clerk-treasurer or chief of police from contacting or notifying owners or occupants of real property adjacent to or in the vicinity of the proposed city licensed premises about the pending application and to advise them of their right to be heard on the application.

**Sec. 3-86. Investigations.**

Upon receipt of a completed application the city clerk-treasurer and chief of police shall each conduct or cause to be conducted an investigation and inquire into all matters and things contained in the application as well as other matters relevant to the pending application and to submit their findings to the license review committee for its consideration, on behalf of the city council, after the investigation is complete, together with recommendations for

action.

**Sec. 3-87. License review committee.**

(a) There is created, for the purpose of assisting the city council in reviewing and approving applications for licenses and performing other matters specifically assigned to the committee by this chapter, a committee to be known as the license review committee. The committee shall assist the city council in the consideration and special investigation of all applications for licensing under this chapter. The committee shall be composed of the city clerk-treasurer or an administrative officer of the clerk-treasurer's office designated by the city clerk-treasurer; the chief of police or an officer of the police department designated by the chief of police; and the director of planning or an employee of the planning department designated by the director of planning.

(b) The committee shall meet on the first and third Thursday of each month to review applications which are in order for consideration. Prior to acting upon any application, the committee shall hold a hearing at which the applicant or his representative, any person required to receive notice of the meeting, and any member of the public who wishes may be heard on the application.

(c) The committee, based upon the factors set forth in section 3-89, may, on behalf of the city council, approve or deny an application. However, no license application may be acted upon at the same meeting where it is introduced. In approving a license the committee may attach reasonable conditions, not inconsistent with this chapter or the state alcoholic beverage control laws, which it deems necessary for the public health, safety, and general welfare.

(d) If an application for a license is denied by the committee, the applicant may appeal to the city council by filing a notice of appeal with the city clerk-treasurer prior to the next regular meeting of the council. In the event an application for a license is approved, any member of the public, which includes owners or occupants of nearby property, may appeal to the city council by filing a notice of appeal with the city clerk-treasurer prior to the next regular meeting of the council. The city council shall set a hearing on any such appeal within a reasonable time. The decision of the council shall be final.

**Sec. 3-88. Appeal to city council.**

(a) Upon receipt of an appeal from the license review committee, the city clerk-treasurer will notify the city council of the appeal and the city council shall set a hearing on any such appeal within a reasonable time thereafter. Notice of the date and time of the appeal shall be given to the appellant, the applicant if different than the appellant, and any person, willing to provide his address, that provided testimony for or against an application to the liquor license review committee. At the hearing on the appeal, all interested persons, which include but are not necessarily limited to those persons notified of the hearing, shall have the right to present evidence, the right to introduce witnesses, and the right to be represented by an attorney.

(b) The city council shall render a decision within 30 days after the conclusion of the hearing. In approving a license the city council may attach reasonable conditions, not inconsistent with this chapter or the state alcoholic beverage control laws, which it deems necessary for the public health, safety, and general welfare. The city council's decision shall be final.

**Sec. 3-89. Qualification for licensing.**

(a) In considering the application for a city license, whether by the liquor license review committee or

the city council on appeal, all relevant factors may be considered, which includes, among others and without limitation, the following:

(1) Compliance with this chapter and the state alcoholic beverage control laws, which includes classification specific requirements or qualifications for licensing;

(2) Compliance with other city ordinances, rules, and regulations, which includes the city's zoning laws and any variances or special exceptions granted pursuant thereto;

(3) Suitability of the applicant and persons having ownership, control, or management of or an interest in the establishment to be licensed;

(4) Any required security plan and suitability of security personnel;

(5) Location of the premises, which includes adjacent or nearby uses;

(6) Information contained in the application, which includes criminal history;

(7) Results of the investigation conducted in accordance with section 3-86;

(8) Testimony presented at any hearings conducted on the application, which includes testimony of the owners or occupants of nearby property as well as the general public; and

(9) Impact upon the welfare, health, peace, temperance, morals, and safety of the public.

(b) In an appeal to the city council, the city council may consider the decision of the license review committee and any reasons given therefor.

(c) No applicant shall be deemed eligible for a license under this chapter nor shall an application be approved without having first obtained all required permits from the health department, and without fully meeting applicable requirements of the technical codes of the city, the fire prevention codes of the state and of the city, the zoning laws of the city, and other applicable city laws which regulate the business or the premises.

**Sec. 3-90. Issuance of license; security.**

(a) Upon the approval of a license, the city clerk-treasurer shall issue the license to the applicant upon the payment of the required fee. Before any city license may be issued to a retailer that sells liquor for on-premises consumption, except for a special events retailer, such licensee shall deliver to and maintain with the city clerk-treasurer a bond, payable to the city in the penal sum of $8,000.00, which bond shall be executed by some surety company authorized to do business in the state and in the city, and conditioned to promptly pay to the city all such amounts as may become due to the city under the terms of chapter 15, article IV, chapter 24, article IV and any other amount which may become due to the city for privilege license, sales, use, or gross receipts taxes after the date of such bond. If by reason of any liabilities existing against the bond or against any additional bond provided for, it should appear to the city clerk-treasurer that such bond does not provide full security of $8,000.00 after deducting existing liability, the city clerk-treasurer, as often as such condition may exist, shall demand additional bond of $8,000.00 or more; and it shall be the duty of such licensee to furnish bond within ten days after such demand.

(b) In lieu of any bond, which it may be or become the duty of the licensee to furnish under subsection (a) of this section, such licensee may, at the discretion of the city clerk-treasurer, deposit with the city clerk-treasurer cash or readily marketable securities, satisfactory in form and content to the city clerk-treasurer of a value equivalent to the amount of security contemplated in this section to be provided by the suretyship of surety upon bond. Any such collateral securities, or letter of credit, which may be impaired in value by existing liabilities there against, or otherwise, shall be restored or repaired by furnishing additional securities or bond, so that at all times revenues to become due shall be secured to the extent of $8,000.00 or more.

(c) It shall be unlawful for any licensee to do any business in the city while in default in the provision of security as contemplated in this section, regardless of any amount of licenses or taxes which he may have heretofore paid.

(d) Such bond shall include the endorsement to the effect that such bond shall not be canceled without notice of cancellation being served on the city clerk-treasurer, in writing, by certified mail, at least 30 days prior to the date of cancellation.

**Sec. 3-91. Suspension by liquor license review committee.**

(a) *Suspension authorized.*

(1) Subject to the license holders right to appeal the decision of the committee as hereinafter provided, the liquor license review committee may, upon the petition of the city clerk-treasurer, suspend a city license for up to a period of one year for cause where the licensee, or any partners, members, officers, or directors of the licensee, has or have violated this chapter or any state alcoholic beverage control laws, or where the city licensed premises has been conducted in a manner prejudicial to the welfare, health, peace, temperance, safety, or morals of the public.

(2) Action against a license shall be commensurate with the grounds for the action and, where appropriate, shall be progressive in nature, unless the grounds for the action warrant that harsher action be taken.

(3) Nothing in this section shall be construed to prevent the city council from taking action against a city license in accordance with applicable law, which includes section 15-57 of this Code.

(b) *Process.*

(1) The license review committee, upon petition by the city clerk-treasurer, shall set a hearing on the matter as soon as practicable. Notice of the hearing, the basis for the proposed action, and the opportunity to be heard shall be provided by the committee in the same manner as set forth subsection 15-57(c) of this Code. If a party fails to appear at the hearing of the matter the license review committee may proceed with the hearing and render a decision in the absence of the party.

(3) Following the hearing the committee may take the actions as specified in subsection (c) of this section.

(4) Notification of the liquor license review committee's decision shall be mailed to the licensee in the same manner as the notice of the hearing as provided hereinabove.

(5) In the event the committee takes action against a city license, the license holder may appeal the decision to the city council by filing a written notice of appeal stating the basis of the appeal with the city clerk-treasurer within 15 days after the committee's decision. The city council shall set a hearing on the appeal as soon as practicable, and proceed in accordance with subsection 15-57(c) of this Code; provided, however, the council need not provide the appellant with the grounds for action. Following the hearing, the city council may take the actions specified in subsection (c) of this section.

(c) *Actions.*

(1) A city license may be suspended for up to one year and any licensee, which includes its owners, whose license is suspended shall be, at the discretion of the liquor license review committee or city council in the case of an appeal, ineligible to have any license under this chapter until the expiration or removal of the suspension period. A suspension may provide for automatic removal of the suspension upon the completion of remedial action.

(2) During a period of suspension no new or different alcoholic beverage license will be issued to any other applicant for the same location or in the same business name, as that of the suspended licensee; provided, however, this section is not intended to prohibit innocent landlords or lessors from exercising contractual rights under a rental agreement or a written lease in the event of default by a tenant or lessee.

(3) Immediately following a final decision to take action against a city license, a notice thereof shall be mailed to the ABC board.

(4) During a period of suspension, no alcoholic beverages may be possessed on the city licensed premises, nor may a licensee, its owners, managers, servants, agents, or employees, permit others to bring, possess, or consume alcoholic beverages on the city licensed premises during such period.

(4) During the period of suspension of a city license, the licensee shall post a sign, supplied by the city clerk-treasurer, on the city licensed premises stating that their license has been suspended and state the applicable period of suspension. The sign shall be displayed in a conspicuous location in or on a front window or door and shall be readily visible from outside the premises.

(d) *Emergency closure.*

(1) For purposes of this subsection (d) the term *emergency* means an occurrence upon a city licensed premises or the licensee's parking area that poses an immediate threat to the health or safety of the public, which includes the patrons or employees of the establishment and public officials, and that demands immediate closure of the licensed establishment in order to properly respond to the emergency.

(2) The chief of police may order an immediate closure of a city on-premises licensee without the need for prior notice or an opportunity to be heard in the case of an emergency. The licensee may reopen as soon as the emergency is over.

**Secs. 3-92—3-130. Reserved.**

DIVISION 3. - OPERATION

**Sec. 3-131. Operation of city licensed premises, etc.**

(a) Subject to section 3-173 concerning motion pictures and shows, where state alcoholic beverage controls laws, which includes chapter 20-X-6 of the rules and regulations promulgated by the ABC board, regulate the operation of licensed premises, which includes provisions applicable to state licensees, their servants, agents, or employees, the operation of city licensed premises, which includes city licensees, their servants, agents, and employees, shall be subject to the same operational requirements under city licensing, and failure to comply with same shall constitute a violation of this chapter.

(b) Where state alcoholic beverage control laws have specific requirements or conditions for a state licensee, which includes those that are classification specific, the requirements or conditions shall also apply in the case of city licensees, which includes membership requirements in the case of club licensees.

(c) Where state alcoholic beverage control laws have record keeping requirements of its licensees and the right of inspection of state licensed premises such requirements and right of inspection shall also apply in the case of city licensees and city licensed premises.

**Sec. 3-132. Hours and days of operation of state liquor stores.**

No state liquor store shall remain open for business during the hours from 9:00 p.m. to 9:00 a.m. There shall be no state liquor store operated on any Sunday.

**Sec. 3-133. Hours of sale and operation.**

(a) *Retail licensees.* Subject to subsection (d) of this section, it shall be unlawful for any retail licensee, its owner, manager, servant, agent, or employee, to sell, offer for sale or to serve, or to dispense for reward, or offer to serve, or dispense for reward, or to allow the consumption of alcoholic beverages upon the city licensed premises, on the days and during the hours hereinafter enumerated as follows:

(1) Subject to subsection (d) of this section, prohibited hours for on-premises lounge liquor retailers, special retailers, and special events retailers shall be from 2:00 a.m. to 10:00 a.m. weekdays, which includes Saturdays, and from 2:00 a.m. to 1:00 p.m. Sundays; for all other on-premises license retailers prohibited hours shall be every day from 2:00 a.m. to 10:00 a.m.

(2) Prohibited hours for off-premises class II lounge liquor retailers shall be everyday from 1:00 a.m. to 8:00 a.m.; for all other off-premises retailers prohibited hours shall be everyday from 1:00 a.m. to 7:00 a.m.

(b) *Other licensees.* It shall be unlawful for any manufacturer, importer, or wholesaler, or the servants, agents, or employees of the same, to sell, trade, or barter in alcoholic beverages between the hours of 9:00 p.m. of any Saturday and 2:00 a.m. of the following Monday.

(c) *Business hours for class I lounge liquor retailers.* It shall be unlawful for any class I lounge liquor retailer to remain open to the general public between the hours of 2:15 a.m. and 10:00 a.m. on any weekday, which includes Saturdays, and between 2:15 a.m. and 1:00 p.m. on any Sunday.

(d) *Hours proscribed by zoning ordinance.* Notwithstanding anything to the contrary in this

section, where the city's zoning laws, which includes variances and special exceptions granted under the authority of the zoning ordinance, provide for more restrictive hours of operation or sales hours for a licensee such hours shall apply in lieu of the foregoing and it shall be a violation of this chapter for any licensee to operate or sell during the prohibited hours.

**Sec. 3-134. Employees of licensees.**

(a) It shall be unlawful for any waiter, waitress, dancer, or model employed by an on-premises licensee to sit at tables with the customers or members and guests while so employed and during the time that the establishment is open for business. It shall be unlawful for any person to knowingly allow a violation of this subsection (a) to occur on city licensed premises under that persons care, custody, or control.

(b) It shall be unlawful for any person at the time employed or engaged on the city licensed premises as a entertainer, model, or dancer to also serve as a waiter or waitress while so employed. It shall be unlawful for any person to knowingly allow a violation of this subsection (b) to occur on city licensed premises under that persons care, custody, or control.

**Sec. 3-135. Service of alcoholic beverages on patios or around swimming pool areas.**

Any city on-premises licensee may serve alcoholic beverages as authorized by their license on patios or around swimming pool areas adjacent to or connected with the main city licensed premises. Said serving area shall be located so as not to be a nuisance nor readily visible from a church or school premises, shall be fenced or otherwise contained, shall have direct access from the interior of the licensed premises, shall not be located in any required parking area, and shall not be installed on a temporary or occasional basis.

**Sec. 3-136. Criminal conduct; breaches of the peace.**

(a) *Criminal conduct.*

(1) City licensees shall be accountable to the city for the criminal conduct which occurs or is suffered to occur on any part of the city licensed premises. Where such criminal conduct is allowed, caused, permitted, or suffered to occur by the licensee, its owner, manager, servant, agent, or employee, such licensee's license shall be subject to action being taken against it.

(2) Any city licensee, or owner thereof, violating any criminal law or statute of the state, whether or not occurring on the city licensed premises, may be cause for action being taken against the license.

(b) *Breaches of the peace.*

(1) It shall be the duty of each owner and designated person in charge of any retail city licensed premises, while 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 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. The same duty shall also apply to such activity that occurs upon the licensee's parking area during the licensee's hours of operation and within one hour after closing.

(2) It shall be the duty of each owner or designated person in charge of any city licensed retailer to immediately make an appropriate report by telephone to the police division of each assault, assault and battery, or affray occurring on the city licensed premises while such premises are open for business, and occurring on the licensee's parking area during licensee's hours of operation and within one hour of closing. It shall further be the duty of the person to make a written report of such incidents to the police division and to the county sheriff within 36 hours. Failure to make either report shall be grounds for action being taken against the license.

(3) Repeated breaches of the peace, affrays, assaults, assaults and batteries, or the repeated presence of disorderly persons upon the premises of a licensee during hours of operation or licensee's parking area during licensee's hours of operation and within one hour after closing shall be grounds for action being taken against the license. In addition, repeated incidents of vandalism, breaches of the peace, disorderly conduct, or other violations of state and local laws, which unreasonably interfere with the peace, quiet, comfort, and repose of persons of ordinary sensibilities in the neighborhood where such incidents may be attributable to the presence in the neighborhood of the licensed establishment shall also be grounds for action being taken against the license.

**Secs. 3-137—3-170. - Reserved.**

DIVISION 4. - ENTERTAINMENT ESTABLISHMENTS

**Sec. 3-171. Entertainment permit.**

(a) An on-premises city licensee that has any form of entertainment, whether live or taped, shall apply for an entertainment permit with the city clerk-treasurer, on forms provided by the city clerk-treasurer, which shall entitle the holder thereof to conduct the form of entertainment noted on the application. There shall be no charge for the permit or the application therefor. The permit shall be a one-time permit issued subject to and conditioned upon the permit holder's compliance and continued compliance with applicable provisions of this chapter that regulate entertainment or entertainment establishments, and with applicable provisions of the zoning laws, which includes variances and special exceptions granted under the authority of the zoning ordinance, that regulate on-premises licensees with entertainment. Permits shall be posted in a conspicuous place next to the city license.

(b) In the event of a permit holder's failure to so comply, the city clerk-treasurer may revoke the permit upon the occurrence of a third violation in any given 12 month period, subject to the right of the permit holder to appeal the revocation to the license review committee. The decision of the license review committee is final. Upon revocation of a permit entertainment shall no longer be conducted on the city licensed premises for the time period specified in the revocation, provided such period shall not exceed 6 months. The permit may be reinstated upon re-application in accordance with subsection (a) above.

(c) The permit issued pursuant to this section shall be in addition to any privilege or business license that might be required in accordance with chapter 15 of this Code, and revocation of the permit shall not revoke the privilege license.

**Sec. 3-172. Dancers in lounges.**

(a) It shall be unlawful for any city on-premises lounge liquor retail licensee, or for the owner or manager of any such licensee, to employ any person under the age of 19 years to perform as a dancer, to allow or

sponsor any contest or program where persons under the age of 19 are allowed to perform as dancers, or for any person under the age of 19 years to perform as a dancer, on any such premises, and as a form of entertainment for the patrons of the establishment.

(b) It shall be the duty of every city on-premises lounge liquor retail licensee, and of the owner or designated person in charge, to at all times see that all persons employed or allowed to perform as dancers on the premises are not under the age of 19 years; and the licensee, its owner, or designated person in charge, shall have the burden of establishing the age of any such person employed or allowed to perform upon the inquiry of the chief of police or any officer of the police division. Upon the trial of any cause under this section, proof of the failure of the licensee, owner or designated person in charge to furnish adequate proof upon the request of the chief of police or any officer of the police division shall create a presumption that the person is under the age of 19 years, and the burden to prove otherwise shall rest upon the licensee, owner, or designated person in charge.

**Sec. 3-173. Motion pictures and shows.**

(a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (a), except where the context clearly indicates a different meaning:

*Knowingly* means having actual or constructive knowledge of the character and content of the subject matter. A person has constructive knowledge if a reasonable inspection under the circumstances would disclose the nature of the subject matter and the failure to inspect for the purpose of avoiding such disclosure.

*Mainstream establishment* means:

(1) Any theater, movie house, performing arts center, civic center, concert hall, museum, gallery, or educational institution with: (i) live performances of plays, operas, concerts, dances, ballets, or dramatic performances of serious artistic merit; (ii) representational or visual works of serious artistic merit, such as paintings, sculptures, and photographs; or (iii) motion pictures, films, or video taped works of serious artistic merit, provided that no such establishment shall offer movies with a Motion Picture Association of America rating of NC-17 or greater, which includes any such succeeding MPAA ratings; and

(2) Where such performances, exhibitions, or showings of serious artistic merit comprise at least 80 percent of all performances, exhibitions, or showings of the establishment; and

(3) Where less than 30 percent of gross revenues of the establishment (which includes, for purposes of determining the percentage of gross revenues, the entire gross revenues of an establishment where only a portion of the establishment is a premises licensed to sell alcoholic beverages, provided such establishment is under common possession, ownership, and control) are attributable, directly (by way of directly invoiced charges for alcoholic beverages) or indirectly (by way of cover charges, tickets, or other charges for the price of admission, which offset the cost of the alcoholic beverage), to the sale of alcoholic beverages.

*Nudity* means 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 below the top of the darkened area surrounding the nipple, or the depiction of covered male genitals

in a discernibly turgid state.

*Sexual conduct* means the performance of acts or simulated acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or a female breast.

(b) *Nudity* or *sexual conduct.* It shall be unlawful for any owner, manager, servant, agent, or employee of any on-premises city licensee, knowingly to exhibit, allow, engage in, participate in, or be connected with any motion picture, show, performance, or other presentation upon the city licensed premises which, in whole or in part, depicts nudity or sexual conduct.

(c) *Exceptions.* This section shall not apply to performances, exhibitions, or showings in a mainstream establishment which are not distinguished or characterized by an emphasis on matter or activities depicting, displaying, describing, or featuring nudity or sexual conduct, in that the depiction, display, description, or featuring is incidental to the primary purpose of the performance, exhibition, or showing; and which are not intended to provide sexual stimulation or sexual gratification to the patrons.

(d) Nothing in this section shall be construed to allow any activity which is in violation of state or federal laws.

**Sec. 3-174. Protection of minors in entertainment establishments.**

(a) *Purpose.* The purpose of this section is to protect minors and to protect against underage drinking in entertainment establishments licensed for on-premises consumption.

(b) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adequate security measures* mean security measures that are adequate for the policing and enforcement of this chapter, which measures shall include:

(1) Adequately lighted performance areas where alcoholic beverages are sold, served, or consumed or, in the case of civic center arenas or stadiums, performance areas that have segregated sections set apart for the selling, serving, or consuming of alcoholic beverages, which sections are limited to persons twenty-one years of age and above;

(2) Tamper proof measures that identify persons of legal drinking age; and

(3) Provision of a sufficient number of security personnel based on the size or anticipated size of the audience or based on a prior history for the same or a similar event.

*Adequately lighted* means ambient lighting that is adequate for the purposes of observing the operation of or patrons within the premises, but which does not include as a light source lighting that emanates from a screen or theatrical lighting directed toward the staging area.

*Entertainment* means sporting events and live or taped shows or performances, such as plays, motion pictures, concerts, music venues, circuses, and dance routines, performed or conducted by actors, dancers, musicians, disc jockeys, or other performers.

*Licensed dinner entertainment establishment* means a restaurant that is a licensed entertainment establishment.

*Licensed entertainment establishment* means an establishment that sponsors, provides, or has entertainment, which activity may or may not require privilege licensing, and that is licensed to sell alcoholic beverages for on-premises consumption.

*Non-licensed area* means an area, which includes a performance area, that is within the same building as and that is under common ownership, possession, and control with a licensed entertainment establishment, but which area is not licensed to sell alcoholic beverages for on-premises consumption.

*Open-air performance area* means a performance area that is in an outdoor amphitheater, park, or other open space, and which may be covered by a temporary tent or enclosure for protection from the elements.

*Performance area* means that portion of the establishment where entertainment is provided and shall include the staging or screening area and the seating section or other area where patrons view the entertainment. The term shall not include areas or rooms separated from the performance area by a wall or partition which cannot be reached or accessed except through a door or doors.

*Restaurant* means that portion of an establishment:

(1) That is licensed pursuant to this chapter as a restaurant liquor retailer; or

(2) That is licensed pursuant to this chapter to sell beer or table wine for on premises consumption and which meets the definition of a restaurant under the state alcoholic beverage control laws and this chapter.

*Sporting event* means live or taped sporting events which include athletic competitions, team sports, sporting exhibitions, equestrian events, and figure skating.

*Staging area* means that part of a performance area that is used to present or contain the entertainment such as stages, rings, rinks, and band stands.

(c) *Minors prohibited in licensed entertainment establishments.* It shall be unlawful for any licensee, directly or indirectly by the owner, manager, servant, agent, or employee of the same, or for any owner, manager, servant, agent, or employee of the same to admit within a non-licensed area, or a concession or performance area of a licensed entertainment establishment as a patron a person under the legal drinking age.

(d) *Exemptions.* Subject to state and local laws concerning alcoholic beverages and minors, the prohibition in subsection (c) of this section shall not apply:

(1) To the performance area of a licensed dinner entertainment establishment provided:

a. The performance area is adequately lighted at all times that alcoholic beverages are being served or consumed;

b. A full menu of food items shall be available for service and consumption at all times that alcoholic beverages are being served or consumed within the performance area and if food service or consumption is suspended within the performance area by the establishment during a show or performance, then the establishment shall also suspend the service and consumption of alcoholic beverages within the same performance area; and

c. Within the performance area, alcoholic beverages shall be served and consumed only at tables used for dining.

(2) To non-licensed areas if such areas are separated from licensed performance areas by a partition or wall sufficient to control access and the access points are controlled by management.

(3) To concession areas that are outside of or separated from the performance area if:

a. There is a partition or wall separating the concession area from the performance area that is sufficient to control access and access points are controlled by management;

b. The concession area is adequately lighted at all times that alcoholic beverages are being sold, served or consumed thereon; and

c. Alcoholic beverages are not removed or allowed to be removed from the concession area.

(4) To performance areas of licensed entertainment establishments that have adequate security measures in place, and that do not have stadium or row seating in the performance area, except for open-air performance areas.

(5) To performance areas of civic center arenas or stadiums, which includes sports stadiums, that have adequate security measures in place.

(d) *Pre-approval of premises.*

(1) The chief of police, or his designee, may require any entertainment establishment to submit for approval plans evidencing compliance with the provisions of this division which includes plans for security, lighting, access, and identification of persons of legal drinking age. In such event, failure to follow or operate in accordance with the approved plans shall constitute a violation of this section.

(2) An entertainment establishment may request of the chief of police, or his designee, a pre-approval of plans evidencing compliance with the provisions of this section which includes plans for security, lighting, access, and identification of persons of legal drinking age. In such event, failure to follow or operate in accordance with the approved plans shall constitute a violation of this section.

(e) *Preservation of alcoholic beverage laws.* Nothing in this division shall be construed to allow

activity which is contrary to state or local alcoholic beverage control laws which includes without limitation laws regulating minors and laws regulating admittance by persons under 19 years of age to alcoholic beverage lounge licensees.

**Section 2.** The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

**Section 3.** This Ordinance shall become effective upon its adoption and approval.

**ADOPTED** this the 22nd day of September, 2011.

President of the City Council
Of the City of Huntsville, Alabama

**APPROVED** this the 22nd day of September, 2011.

Mayor of the City of
Huntsville, Alabama