

Ordinance No.

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF COMER, GEORGIA, TO REPLACE THE BEER AND WINE REGULATIONS (SECTION 32-201) WITH AN ORDINANCE REGULATING ALCOHOLIC BEVERAGES (CHAPTER 25)

THE COUNCIL OF THE CITY OF COMER HEREBY ORDAINS:

WHEREAS, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the City of Comer to amend its city code, the following action is taken:

SECTION 1. THE CODE OF ORDINANCES OF THE CITY OF COMER, GEORGIA, IS HEREBY AMENDED BY DELETING SECTIONS 32-201, AND BY ADDING SECTIONS 25-01 THROUGH 25-49, TO READ AS FOLLOWS:

Chapter 25

ALCOHOLIC BEVERAGES*

Article 1. In General

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Sec. 25-47 Open bars.
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Sec. 25-49 Wholesale distributors.

* State Law Reference - Georgia Alcoholic Beverage Code, O.C.G.A. § 3-1-1 et seq.

ARTICLE 1. IN GENERAL

Sec. 25-01. Definitions.

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:

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

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

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than that percentage alcohol by volume allowed by Georgia law and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Minor. When used in this Ordinance, minor shall refer to any person or persons under the legal age for consumption or possession of alcoholic beverages as defined in O.C.G.A. § 3-3-23, and any subsequent amendment thereto.

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

Posts, chapters and clubs of nationally chartered veterans and fraternal organizations mean those which in the case of veterans organizations are recognized as representatives of veterans by the Veterans' Administration, and as to fraternal organizations, have charters from Elks, Moose or similar organizations and which have complied with § 501(a) of the United States Internal Revenue Code for tax-exempt status.

Premises means the space or area owned, leased and/or controlled by the licensee and used by him for the purpose of operating under the license; except that in the case of hotels and motels, "premises" shall include only the portion of the property where malt beverages and/or wine are sold. "Premises" is further defined as one physically identifiable place of business consisting of one room, or two or more contiguous rooms operating under the same trade name where malt beverages and/or wine are sold. Any premises outlets which cannot be determined as one identifiable place of business shall require additional licenses regardless of such establishment having the same trade name, ownership or management.

Private club means an organization complying with § 501(a) of the United States Internal Revenue Code for tax-exempt status.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one meal per day shall be served at least five days a week, with the exception of holidays, vacations and periods of redecoration and the serving of such meals shall be the principal business conducted, with the service of malt beverages and wine to be consumed on the premises as only incidental thereto. A restaurant shall provide at least 20 seats for customers.

Retail. As used in this Chapter, the sale for use of consumption and not for resale.

Retail Grocery Business. As used in this Chapter, a person, firm, partnership, corporation or company engaged in the business of selling food at retail for human consumption not on the premises where sold (including businesses that also sell food for consumption on the premises in addition to retail sales for consumption off the premises). Examples include grocery stores, supermarkets, and convenience stores.

Retail License. As used in this Chapter, a license issued for retail sale of alcoholic beverages to be consumed off-premises (also known as a “package license” for “package” sales, and distinguished from the broader definition in Title 3 Chapter 3 of the Code of Georgia, which includes retail sales for consumption on premises, see OCGA § 3-3-21(b)(3)).

Wholesaler or wholesale dealer means any person who is licensed by the State of Georgia to sell alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

Sec. 25-02. License categories.

The following classifications of licenses shall be issued pursuant to this chapter:

- (1) Malt beverage - retail
- (2) Wine - retail
- (3) Malt beverage - consumption on the premises.
- (4) Wine - consumption on the premises.
- (5) wholesale

Sec. 25-03. Violations; reporting and acting on.

(a) Any violation of this chapter that may warrant revocation of a license issued under this chapter shall be reported by any person to the city, which shall have the power in its discretion to suspend the license or permit for a period not to exceed ten days pending a hearing before the city council on the question of whether or not the license or permit shall be revoked for cause, in compliance with section 25-31. Upon receiving substantial evidence of any violation of this chapter that may warrant revocation of a license, the chief of police or any police officer on duty at the time shall have the authority to immediately confiscate the license to sell beer or wine at any location holding a license issued under this chapter pending said hearing before the city council. The arrest of any licensee or of any licensee's employee for sale of alcohol to a minor shall be substantial evidence for confiscation of any license issued under this chapter.

(b) Upon a charge that there has been a violation of this chapter, the city council is hereby authorized in its discretion to order the place of business charged closed, pending a hearing on the charge, and upon prior notice to the license holder.

(c) The chief of police or any police officer on duty at the time shall have the authority to close any location holding a license issued under this chapter for a period not in excess of 24 hours in the event there shall occur on the premises any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, or other occurrence which is contrary to the public health, welfare, safety or morals, when in the judgment of the chief police or the police officer such action is necessary to protect the public health, welfare, safety or morals.

(d) The city council shall have the right to suspend any alcoholic beverage license pending the hearing provided for in section 25-31, where in the judgment of the council, such action is necessary to protect the public health, safety, welfare and morals.

Sec. 25-04. Sales on election days authorized.

Pursuant to O.C.G.A. § 3-3-20, the sale of malt beverages and wine shall be permitted on election days as the same are defined in O.C.G.A. § 21-2-2; provided, however, that it shall nonetheless be unlawful for any person to sell malt beverages and wine within 250 feet of any polling place.

Sec. 25-05. Nudity and sexually explicit conduct on premises where alcoholic beverages are served.

(a) For purposes of this section:

(1) *Alcoholic beverage establishment* shall mean any restaurant, lounge or supper club holding a license under this chapter for the sale of alcoholic beverages for consumption on the premises.

(2) *Substantially nude* shall mean dressed or undressed in a manner so as to plainly expose to view any portion of a male's or female's pubic hair, anus, cleft of the buttocks, vulva, or genitals, or any portion of the female breasts below the top of the areola.

- (b)(1) No person shall appear substantially nude in any alcoholic beverage establishment, and no owner or manager of an alcoholic beverage establishment shall permit any person to appear substantially nude on the licensed premises.
- (2) No owner or manager of an alcoholic beverage establishment shall permit any person to perform acts of, or acts which constitute or simulate:
- a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or any sexual acts which are prohibited by law.
 - b. The touching, caressing or fondling of the breast, buttocks, anus or genitals; provided that random acts of patrons or employees, whose actions do not constitute actions taken pursuant to encouragement or acquiescence of the management of the establishment and are not for the purposes of entertainment, promotion, publicity, or notoriety shall not constitute violations of this section.
 - c. No person shall engage in any of the acts identified in subsection (c)(2) on the premises of an alcoholic beverage establishment.

(c) The restrictions of subsection (c) shall apply to all persons physically present on the licensed premises regardless of whether such persons are categorized as employees, patrons, independent contractors or otherwise.

(d) In addition to prosecution of any person for violation of this section, the city business license of any premises upon which a violation of this section occurs shall be subject to suspension or revocation. Any conviction or plea of guilty or nolo contendere in any court of the city, to a charge of violation of this section shall be admissible in a license suspension or revocation proceeding.

Secs. 25-06 to 25-25. Reserved.

ARTICLE 2. LICENSING*

* State law reference - Governing authority shall set forth ascertainable standards pertaining to the granting, refusal, suspension or revocation of alcoholic beverage permits or licenses, O.C.G.A. § 3-3-2.

Sec. 25-26. Qualifications of applicant; required notifications.

(a) Every applicant for a city alcoholic beverage license shall be at least 25 years of age and shall make application on such forms as prescribed by the city to the city council and in connection therewith shall, under oath, answer all questions, supply all information and furnish all certificates, affidavits, bonds and other supporting data as required thereby. In all cases where the owner of the business is an individual, the application shall be made in his name. Where the owner is a corporation, partnership, or association the application shall be made in the name of an officer, partner or associate who owns a substantial interest in the business or in the name of the principal managing officer or managing agent and the application shall show that the license is for the use of the owner, and the owner shall be named. If the owner of the premises is someone other than the applicant, the name of the owner of the premises shall be listed. The written application for the license shall be a permanent record which the licensee must maintain current as required by subsection (b) of this section. Failure to maintain a current license

application as required by subsection (b) of this section shall be grounds for revocation of the license.

(b) No person shall have, own or enjoy any ownership, interest in, share in the profits from, or otherwise participate in the business of any alcoholic beverages licensee in the city unless a full description of such interest shall have been furnished the city council at the time such interest shall arise. It shall be the duty of the licensee to report to the city council, within five days, any change in any interest in the licensee's business including but not limited to:

- (1) Any division of the profits.
- (2) Any division of net or gross sales for any purpose whatsoever.
- (3) Any change in the payment of rents or leases.
- (4) Any change in the ownership of any lease or building or land used in such business.
- (5) Any change in the ownership of any corporation, partnership, LLC, LLP, or similar business entity that has any interest in the business, or the change of management of the business.

(c) After receipt of such notice, the council shall notify such person within a reasonable time of any objection to the ownership or interest set forth therein, and it shall then be incumbent upon such person to dispose of such interest within 30 days after the mailing of the notice to do so by the council to such person at his address as shown on the notice of interest. If the interest is not disposed of within 30 days after the mailing of the notice by the council, or if no objections are filed within the 30-day period, or if such person fails to notify the council of the transfer of any such interest within 20 days after the acquisition thereof, then the license as provided for in this chapter may be revoked by the council until disposition of the interest has been made or notice given to the council of the transfer.

(d) The report required by this section shall be in the form required by the council and shall be an amendment to the licensee's permanent license application on file with the council and as such shall be under oath and verified as otherwise required of license applications.

(e) Whenever there is any application for an alcoholic beverage license, which application is the initial application, or any application following a suspension or revocation of a previously held alcoholic beverage license, the city shall call for a notice to be published at applicant's expense describing the name of the applicant, the location of the business premises, and giving the time and date of when the application will be considered by the council. This notice must be published by the applicant in a form approved by the City Clerk at least seven days prior to the application being considered by the council. This notice does not pertain to the annual renewal of licenses previously granted by the council. The license applicant shall be required to pay for the cost of publication, and shall provide the city a publisher's affidavit.

Sec. 25-27. Applications; contents and terms.

(a) All applications for licenses to sell alcoholic beverages shall be made in person by the applicant, in writing on forms furnished by the city; signed by the applicant in compliance with

section 25-26 and shall contain but not be restricted to the following statements and information:

- (1) The name, age, address and length of residency of applicant.
- (2) The name, location and description of the premise or place of business which is to be operated under the license.
- (3) A statement of whether the applicant, or any person with an interest in the business entity for which the application is made, has made application at any previous time for any malt beverage or wine license and the disposition of each such application.
- (4) Whether the applicant, or any person with an interest in the business entity for which the application is made, has ever been convicted of a crime other than for traffic violations.
- (5) Whether a previous license issued to the applicant, or any person with an interest in the business entity for which the application is made, has been revoked by any state or subdivision thereof, or by the federal government, or by any county or municipality, and the reason therefor.
- (6) Whether any other person besides the applicant is to be interested directly or indirectly in the profits or losses or both of the proposed business.
- (7) The Georgia State Sales Tax Number of the business making the application for Beer and Wine License.
- (8) The amount of goods, wares, merchandise or other inventory on hand at time of application.
- (9) If a club, a statement that the club has been organized or chartered at least one (1) year, has held regular monthly meetings during the past year, and has at least fifty (50) members.

(b) All new applications for alcoholic beverage licenses shall be accompanied by a check, payable to the city, for the proper amount of the license fee. If the license is refused, the fee shall not be returned to the applicant.

(c) All applications for renewal of alcoholic beverage licenses shall be filed with the city prior to November 15. Payment of license fees for renewal of license may be made at time of application or by December 31 and upon approval of renewal and payment, a license will be issued.

(d) The making of any untrue or misleading statement in the application for a license shall be sufficient cause for the refusal, suspension, revocation, or cancellation of such license, as the city council shall deem proper.

(e) All alcoholic beverage licenses shall expire at midnight on December 31 of the year for which issued.

(f) An applicant for any license under this chapter who makes application at any time after January 1 and before December 31 shall pay the full annual license fee.

(g) No license shall be issued for less than a calendar year, or remainder thereof, and in case of the revocation, suspension, or surrender of such license before the expiration of such calendar year, the holder thereof shall not be entitled to receive any refund.

(h) No beer or wine license shall be issued to any retail business that sells only beer and wine, whether for consumption on premises or for consumption off premises. Only wholesale licensees are permitted to sell alcoholic beverages without also selling other retail items.

(i) Examination of Applicant. The Mayor and Council, or their designated City Officials, shall have the right to examine, or cause to be examined, under oath, any applicant for a license or renewal thereof, and to examine all books and records and other evidence of the applicant and to hear such testimony and obtain such proof of the information provided in the application as they deem necessary to fully evaluate each application.

(j) All applications shall be under oath and shall have an attached cover sheet which shall read:

THIS APPLICATION MUST BE SWORN TO UNDER OATH BEFORE A PERSON AUTHORIZED BY GEORGIA LAW TO ADMINISTER OATHS. ALL APPLICANTS SHOULD READ THE FOLLOWING:

(1) A person to whom a lawful oath or affirmation has been administered or who executes a document knowing it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement.

(2) A person convicted of the offense of false swearing shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not less than one (1) year nor more than five (5) years, or both.

A person commits the offense of subornation of perjury or false swearing when he procures or induces another to commit the offense of perjury or the offense of false swearing and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not less than one nor more than ten (10) years, or both.

A FALSE STATEMENT ON THIS APPLICATION IS GROUNDS FOR DENIAL OR REVOCATION OF A LICENSE GRANTED UPON THIS APPLICATION.

(k) Each applicant shall provide to the City Clerk a sworn statement from all employees who will sell beer and wine which shall read as follows:

State of Georgia
County of Madison

AFFIDAVIT OF EMPLOYEE SELLING BEER OR WINE

IN COMER, GEORGIA

I, _____, do hereby swear or affirm before the undersigned officer duly authorized to take oaths in the State of Georgia, that I am at least eighteen (18) years of age (except where the license holder or applicant is a supermarket, convenience store, brewery or drug store) having been born on _____, 19___. My social security number is _____ and I hereby authorize the Comer Police Department to run criminal history on me through either the U.S. Department of Justice or any state or county agency anywhere in the United States. I have read or had read to me the entire Comer Beer and Wine Ordinance. I have had the opportunity to ask any questions concerning that ordinance. I understand that I cannot sell beer or wine to anyone under twenty-one (21) years of age, or to any person who appears intoxicated or drunk. I further swear and affirm that I have not in the past been convicted of or pled nolo contendere to any violation of alcoholic beverage laws involving sales or purchase of alcohol or providing alcohol to minors and that I do not have charges of violating alcoholic beverage laws or regulations pending against me now.

Name of Employee
Address:

Sworn to and subscribed before me this _____ day of _____, 200__.

Notary Public

- (1) A person to whom a lawful oath or affirmation has been administered or who executes a document knowing it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement.
- (2) A person convicted of the offense of false swearing shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not less than one (1) year nor more than five (5) years, or both.

A person commits the offense of subornation of perjury or false swearing when he procures or induces another to commit the offense of perjury or the offense of false swearing and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not less than one (1) nor more than ten (10) years, or both.

A FALSE STATEMENT ON THIS AFFIDAVIT IS GROUNDS FOR SUSPENSION OR REVOCATION OF THE OWNER'S BEER OR WINE LICENSE GRANTED UPON THIS APPLICATION.

Name of Owner: _____
Name and Address of Business: _____

Sec. 25-28. Renewals, transfers.

(a) The city license issued shall be valid only for the calendar year indicated thereon. A licensee that desires to continue in business during the next or subsequent calendar year must make a renewal application, on such forms as prescribed by the city, for such year on or before November 15 of the preceding year. Payment of license fees for renewal of license may be made at the time of application or by December 31 and upon approval of renewal by the city council and payment, the license will be issued.

(b) No city license may be transferred from one person to another or from one location to another without permission and approval of the council upon payment and written application made. Approvals as to any change shall be at the discretion of the council.

(c) Any licensee desiring to discontinue business at one location and commence business at some other location must make a complete new application for such location.

(d) All licenses issued pursuant to this chapter shall be valid only so long as the licensee is actively engaged in such business, with the exception of holidays, vacations and periods of redecoration, and if the licensee shall cease to be actively engaged in such business, the license shall be invalid and the licensee of the business shall immediately notify the council and return his license thereto.

Sec. 25-29. Personal statements of employees.

The city council may in its discretion require a personal statement of any employee of any licensed establishment for licensing purposes. Each applicant shall provide to the City Clerk a sworn statement from all employees as required in Section 25-27(k). As employees are hired, a copy of this affidavit must be submitted to the City Clerk for each employee before that employee is allowed to sell beer or wine. No employee who has been convicted of or pled nolo contendere to any violation of the State of Georgia alcoholic beverage law, O.C.G.A. Title 3, Chapter 3, shall be permitted to sell beer or wine in Comer, Georgia.

Sec. 25-30. Criteria for approval or denial of application.

Where contrary to the public interest and welfare no license to sell alcoholic beverages shall be issued by the city council to or for, and a license can be revoked by the Comer City Council for:

- (1) Any person who has been convicted under any federal, state or local law of any felony.
- (2) Any person convicted under any federal, state or local law of a misdemeanor, particularly, but not limited to, those involving alcoholic beverages, gambling or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.
- (3) A location within an area where in the judgment of the council the number of alcoholic beverages licenses already granted makes it contrary to the public interest or welfare.
- (4) A location at which the operation of the proposed business would be in violation of the city's zoning rules and regulations.
- (5) A location at which a previous alcoholic beverages license has been revoked or suspended, and where in the judgment of the council the problems which have arisen from the operation of such a license at such location indicate that it is not in

the interest of public health, safety, welfare or morals that the sale of alcoholic beverages be permitted at such location.

- (6) A location at which the granting of the license would constitute a violation of state law or regulation.
- (7) A location within 300 feet of any church, school building, library, public park, or school grounds, the distance to be measured as follows:
 - (a) From the main entrance of the building in which is located the business regulated under this title;
 - (b) To the main entrance of any church, school, or library building or the property line of any school ground or park;
 - (c) Along a straight line which describes the shortest distance between the two points described respectively in (a) and (b) above.
- (8) At a restaurant where sewer disposal does not comply with Section 21-506 of the Code of the City of Comer, as may be amended.
- (9) At a restaurant where the food service rating by the Madison County Health Department is below or at any time drops below 85.

Sec. 25-31. Hearing on denial or revocation.

Before the city council shall deny any application for a license under this chapter, or allow transfer of any license, or shall revoke any existing license, the applicant or licensee, as the case may be, shall be given notice in writing from the city to show cause before the council at a time and place specified therein not less than three days nor more than 15 days from the date of service of the notice, why the application for license or for transfer license should not be denied, or why the license should not be revoked, as the case may be, stating the grounds therefor, and at the appointed time and place the application or licensee shall have an opportunity to show cause, if any exist, why the application should not be denied or the license revoked, after which the council shall take such action as it, in its judgment and discretion, shall deem warranted under the facts.

Sec. 25-32. Scope of privilege.

Notwithstanding anything in this chapter to the contrary, the sale of alcoholic beverages in the city is a privilege, and not a right, and issuance of a license under this chapter shall not create any property rights in the license holder.

Sec. 25-33. Penalty.

(a) The violation of any of the provisions of this chapter by a holder of a license or by his agents or employees shall be unlawful, and shall be punishable as provided below and shall also subject the holder of the license to suspension or revocation of the license as the city council deems proper.

(b) The violation of any of the provisions of this chapter by a holder of any alcoholic beverages license shall be subject to the following punishment:

- (1) First violation: minimum fine of \$500.00 and minimum license suspension of 30 days.
- (2) Second violation: minimum fine of \$1,000.00 and minimum license suspension of 90 days.
- (3) Third violation: minimum fine of \$1,000.00 and permanent license revocation.

(c) The provisions provided in this section are in addition to and not in lieu of other provisions of this chapter to specifically include the provisions of section 25-03.

Sec. 25-34. License fees.

(a) *Malt beverages.*

- (1) The applicant for a malt beverages- retail license shall pay to the clerk of the city, at the time his application is submitted, the sum of \$500.00 as an annual license fee for operation for one year at one location or business where the products will be sold.
- (2) The applicant for a malt beverages-consumption on the premises license shall, in addition to all other fees, pay to the city clerk, at the time his application is submitted, the sum of \$500.00 as an annual license fee for the sale of malt beverages when such sales are by the drink. Malt beverages may be sold in private clubs and posts, chapters and clubs of nationally chartered veterans and fraternal organizations for a fee of \$5.00 per member per year, but no more than \$500.00.

(b) *Wine.*

- (1) The applicant for a wine- retail license shall pay to the clerk of the city, at the time his application is submitted, the sum of \$500.00 as an annual license fee for operation for one year at one location or business where the products will be sold.
- (2) The applicant for a wine-consumption on the premises license shall, in addition to all other fees, pay to the clerk of the city, at the time his application is submitted, the sum of \$500.00 as an annual license fee for the sale of wine. Wine may be sold in private clubs and posts, chapters and clubs of nationally chartered veterans and fraternal organizations for a fee of \$100.00 per year, except where memberships is less than 200 members, and in such event, if a beer license has been secured, no license fee for wine need be paid.

(c) *Wholesale*

(1) *Fee.* The annual wholesale license fee for alcoholic beverage wholesale distributors shall be \$100.00 payable not later than January 1 of each year.

(d) *Duty of licensees.* It shall be the duty of all parties issued a license under this section to conform to all of the requirements of the ordinances of this city and the laws of the state and

failure so to conform shall be grounds for revocation of the license.

Sec. 25-35. Unlawful activities of licensees; grounds for suspension and/or revocation of license.

(a) No holder of a license issued under this chapter in the city nor any agent or employee of the licensee shall do any of the following upon the licensed premises:

- (1) Sell less than the packaged containers as packaged by the wholesaler, distributor, or manufacturer, unless he has a consumption on the premises license.
- (2) Knowingly furnish or cause to be furnished or permit any other person in his employ to furnish to any minor alcoholic beverages of any kind.
- (3) Allow or require a minor in his employment to dispense, serve, sell or take orders for any alcoholic beverages; provided, however, that the provisions of this section shall not prohibit minors who are employed in supermarkets, retail grocery business or convenience stores from selling or handling alcoholic beverages which are sold for consumption off the premises.
- (4) Knowingly sell alcoholic beverages to any person while the person is in an intoxicated condition.
- (5) Sell alcoholic beverages upon the licensed premises on any day or at any time when such sale or consumption is prohibited by law as follows:
 - a. The hours of sale of alcoholic beverages are:
 1. For the sale of alcoholic beverages at retail and not for consumption on premises 6:00 a.m. to 12:00 a.m. Monday through Saturday, except where contrary to state regulations for the sale of alcoholic beverages.
 2. The hours of sale of alcoholic beverages for consumption on the premises shall begin at 12:00 noon and end at 12:00 midnight Monday through Saturday. Businesses, to include restaurants and private clubs, issued an alcoholic beverage license for consumption on the premises shall close and have all patrons out of the premises within 30 minutes after the time specified in this subsection.
 - b. No alcoholic beverages shall be sold on Sunday or Christmas Day.
 - c. Alcoholic beverages may be sold on election days as provided in 25-04.
 - d. The sale of alcoholic beverages at any other time is prohibited.
- (6) Permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practice on the licensed premises. Such misconduct shall be immediately reported to the city police department.

- (7) Sell or offer for sale alcoholic beverages by use of vending machines or at drive-in windows.
- (8) Receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a properly marked conveyance owned and operated by a wholesale dealer with a permit from the city to make such deliveries. Transportation of alcoholic beverages by any other means shall be grounds for revocation of all licenses concerned.
- (9) For consumption on the premises licensees, to serve alcoholic beverages to any person who does not consume food on the premises. The intent of this ordinance is to allow consumption of alcoholic beverages with a meal on the premises.
- (10) Malt beverages and wine for consumption off the premises can only be sold by a retail grocery business and, when sold, must be placed in a sack or wrapped so markings or labels of beer and wine products are not visible to the public.
- (11) No licensee which is authorized for off premises consumption sales only shall permit the consumption of any beer or wine on the premises.
- (12) All beer and wine sold for off premises consumption shall be placed in sacks or wrapped so markings or labels of beer or wine products are not visible to the public.
- (13) It shall be unlawful to manufacture, distribute, sell, or possess for the purpose of commercial distribution or sale, in the city, any beer or wine, without a license from the city for such activity.
- (14) It shall be unlawful to manufacture, distribute, sell or possess for the purpose of commercial distribution or sale, in the city, any alcoholic beverage of any kind, except beer and-wine.
- (15) The city shall provide all licensees with a special sign to post on the premises. No licensee shall post more than one authorized sign nor display any advertising signs either outside or in their windows which advertise brand, product or price relating to beer or wine.
- (16) It shall be unlawful to post any advertising matter concerning alcoholic beverages of any kind on billboards, buildings, trees, posts, or in any other manner within the limits of Comer; and it shall be unlawful to distribute circulars or other advertisements of alcoholic beverage of any kind on the streets or other wise in the city.
- (17) It shall be unlawful to knowingly let, rent, keep or maintain any room, house, building or other place within the city where alcoholic beverages are possessed or sold in violation of this section.
- (18) It shall be unlawful for any employee who has been convicted of or pled nolo contendere to any violation of the State of Georgia alcoholic beverage law, O.C.G.A. Title 3, Chapter 3, to sell beer or wine in Comer, Georgia.
- (19) A consumption on the premises licensee must:

- a. Serve a meal to any person being served alcoholic beverages. If alcoholic beverages are sold in containers of more than one serving, such as pitchers or carafes, the person(s) served from such containers must each consume a meal with the alcoholic beverages.
 - b. Alcoholic beverages must only be served and consumed at the table where food is served and consumed.
 - c. Alcoholic beverages must be served for direct consumption in non-disposable containers such as a glass or a mug.
 - d. No direct, unrestricted access shall be allowed from public areas (such as streets and sidewalks) to areas where alcoholic beverages are served outside. A permanent barrier is required between any public area and areas where alcoholic beverages will be served. Such barrier must be approved by the City Council as part of the license application.
- (20) No open containers of alcoholic beverages are allowed in public areas within the City of Comer.

(b) The following actions by the license holder or his agents or employees shall be grounds for the suspension and/or revocation of an alcoholic beverage license. Whether or not the grounds exist shall be determined by the city council in its sole discretion:

- (1) The violation by the license holder or his agents or employees of any state or federal law or regulation, or any ordinance of the city, other than traffic violations. The determination of whether any such violation has occurred shall be made by the council and an actual conviction in a court for such offense shall not be necessary in order to suspend or revoke the license.
- (2) The failure of the license holder or his agents or employees to report promptly to the Comer Police Department (or Madison County Sheriff's Department if so dispatched by the 911 operator) any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, occurring on the premises.
- (3) Any conduct on the part of the license holder or his agents or employees contrary to the public welfare, safety, health or morals.
- (4) Operating or conducting the business in a manner contrary to the public welfare, safety, health, or morals, or in such a manner as to constitute a nuisance.
- (5) The violation of this chapter or any state law or regulation or municipal ordinance pertaining to alcoholic beverages; including but not limited to the following state law references - sale of alcoholic beverages to intoxicated persons, O.C.G.A. § 3-3-22: furnishing to, purchase of, or possession by persons under 21 years of age of alcoholic beverages; use of false identification; proper identification for sale of alcoholic beverages; dispensing, serving, etc. of alcoholic beverages by persons

under 21 years of age in the course of employment; seller's duty to request proper identification, O.C.G.A. § 3-3-23; breaking of packages or drinking of contents on premises prohibited, O.C.G.A. § 3-3-26; public drunkenness, O.C.G.A. § 16-11-41; furnishing alcoholic beverages to persons under 21 years of age, jurisdiction of municipal courts, O.C.G.A. § 36-32-10; possession of open container of alcoholic beverage while operating vehicle; O.C.G.A. § 40-6-253; driving under the influence of alcohol or drugs. O.C.G.A. § 40-6-391.

- (6) Refusal to provide information required by 25-36, 25-37, and 25-38 below.

Sec. 25-36. Gross sales of merchandise other than alcoholic beverages.

(a) Holders of malt beverages- retail and/or wine- retail licenses are required to maintain gross retail sales of grocery or food merchandise of at least \$12,000.00 monthly, excluding alcoholic beverages. Licenses will be revoked if the amount of gross sales of grocery or food merchandise, excluding alcoholic beverages, falls below \$12,000.00 monthly for four successive months.

(b) Holders of malt beverages- retail and/or wine- retail licenses shall provide evidence by affidavit on or before the 20th day of the month following the sales and by copies of his state sales tax records each month that the gross sale of merchandise other than alcoholic beverages exceed \$12,000.00 for each calendar month. These records shall remain confidential and are not subject to Georgia Open Records law, O.C.G.A. § 50-18-70 et. seq.

Sec. 25-37. Business volume.

(a) All consumption on the premises license holders to include malt beverages- consumption on the premises, and wine-consumption on the premises shall maintain at least 50 percent of their annual gross income from the sale of foods; private clubs and posts, chapters of nationally chartered veteran's and fraternal organizations are excepted. Authorized officials of the city may examine the records of businesses licensed under this chapter at any reasonable time to ascertain that the requirements of this section and other provisions of this chapter are met.

(b) Within 120 days after having been issued a consumption on the premises license, the licensee shall submit to the city a sworn statement from a certified public accountant that the income requirements set forth in subsection (a) have been met for the first 90 days after the applicant received the consumption on the premises license. Thereafter each consumption on the premises license holder shall submit annually at the time of the license renewal to the city a statement from a certified public accountant that the income requirements set forth in subsection (a) of this section have been met. The licensee or his CPA shall retain all documentation supporting the sworn statement and shall allow the Mayor and City Council or their designated representative to inspect and review all such supporting documentation on demand.

Sec. 25-38. Failure to furnish required reports.

Upon the failure of any person selling alcoholic beverages in the city to furnish to the city the any report required by the ordinances of the city or to pay any tax due the city for the sale of the commodities promptly when due, there shall be assessed a penalty of ten percent of the amount of tax due or shown to be due by any such report, in addition to the tax.

Sec. 25-39. Storage of alcoholic beverages.

All alcoholic beverages shall be stored only on the premises for which the license is issued.

Sec. 25-40. Purchase, consumption by minors.

It shall be unlawful for any minor to purchase, drink or possess any alcoholic beverages in the city.

Sec. 25-41. Misrepresentation of age.

It shall be unlawful for any minor falsely to misrepresent his age in any manner whatsoever, in violation of this chapter or other applicable laws, unless expressly authorized to do so by a certified law enforcement official in the course of performing law enforcement duties.

Sec. 25-42. Inspection of premises.

Premises operated under the provisions of this chapter shall be open to inspection by authorized personnel of the city at all times.

Sec. 25-43. Advertising.

All advertising of alcoholic beverages or consumption of alcoholic beverages on the premises is hereby prohibited except as follows:

- (1) Alcoholic beverage (retail and wholesale): Licensees shall not display any signs advertising, directly or indirectly, the sale of alcoholic beverages other than in the principal building for which the license is issued, and such signs displayed within the principal building shall not be displayed within view of the general public from the doors and windows of the principal building. Any other sign placed on or off the licensed premises, within view of the general public, with the intent to bring attention to the fact that alcoholic beverages can be bought at that location shall be in violation of this section. There will also be no alcoholic beverages displayed where they would be visible from the windows.
- (2) Alcoholic beverage consumption on the premises: The licensee shall not display signs advertising, directly or indirectly, the sale of alcoholic beverages other than in the principal building for which the license is issued. Such signs displayed within the principal buildings shall not be displayed within view of the general public from the doors or windows of the principal buildings. Any sign placed on or off the licensed premises, within view of the general public and with the intent to bring attention to the fact that alcoholic beverages can be bought at the location, shall be in violation of this section.

Sec. 25-44. Investigation by police chief.

Upon receipt by the city of any application for an alcoholic beverage license or for the transfer of any license, the chief of police shall investigate and provide a written report to the city clerk, and shall attach thereto the entire police records of every person named in the application.

Sec. 25-45. Fingerprinting.

Every applicant for an alcoholic beverage license or transferee of such license shall be fingerprinted by the police department or the Madison County Sheriff's Department before a license is issued under this chapter, and shall authorize the city to obtain his criminal history report from Georgia Crime Information Center and from any state in which the applicant has lived.

Sec. 25-46. Violations.

Violations of this chapter shall be punished as ordinance violations in Comer Municipal Court.

Sec. 25-47. Open bars.

There shall be no license issued for open bars in the city.

Sec. 25-48. Happy hours.

There shall be no designated hours, whether or not advertised as "happy hour," during which alcoholic beverages shall be sold at volume discount, such as two drinks for the price of one, at any establishment with consumption on the premises licenses.

Sec. 25-49. Wholesale distributors.

(a) *Qualification.* Alcoholic beverage wholesale distributors licenses shall be issued only to those parties who are licensed by the state to sell and distribute at wholesale malt beverages and wine. Application shall be made with the clerk of the city and the applicant shall present evidence to show that it is so licensed by the state to sell and distribute malt beverages and wine at wholesale in the state.

SECTION 2. LIABILITY

1. Neither the approval of any action under the provisions of this ordinance, nor the compliance with provisions of this ordinance, shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Mayor or City Council for damage to any person or property.

SECTION 3. CONFLICTS BETWEEN SPECIFIC AND GENERAL PROVISIONS.

Where there is an apparent conflict in this Ordinance between specific and general provisions, it is the intention hereof that the specific shall control.

SECTION 4. SEVERABILITY.

If any section, provision, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this Ordinance would have been adopted had such invalid portion not been included herein.

SECTION 5. REPEAL OF CONFLICTING PROVISIONS.

All ordinances or parts of ordinances in conflict with this ordinance, and not preserved hereby, are hereby repealed.

SECTION 6. EFFECTIVE DATE

This Ordinance shall become effective immediately after its passage and approval in the manner prescribed by law.

Passed and approved this 18 day of February, 2003, at a meeting of the Mayor and Council of the City of Comer, Georgia.

Attest:
Comer

On File

William E. Burroughs, Mayor, City of

On File

Stephen H Sorrells, City Clerk
[CITY SEAL]

Approved as to Legal Form:

On File

Victor Y. Johnson, City Attorney