

AN ORDINANCE OF THE CITY OF MOLENA, GEORGIA TO PROVIDE FOR THE TAXATION, LICENSING AND REGULATION OF THE SALE AND POURING OF BEER AND WINE BEVERAGES IN RETAIL ESTABLISHMENTS; TO REPEAL CONFLICTING ORDINANCES, AND FOR LIKE PURPOSES.

WHEREAS, The City of Molena, a duly incorporated and lawfully organized city within the State of Georgia, is authorized by the Constitution of the State of Georgia and by the Charter for the City of Molena to tax, license and regulate businesses involving the sale of certain beverages, alcoholic and non-alcoholic;

WHEREAS, The City of Molena desires to provide for the taxation, licensing and regulation for businesses involving the sale and pouring of beer and wine beverages in retail establishments; and

WHEREFORE, The City of Molena, through its specifically set forth powers, including but not limited to those powers referenced above as well as its Police Powers as may be more specified in the Georgia Constitution, other Georgia Statutes and the Charter for the City of Molena, desires to ensure the health, safety and general welfare of the citizens of the City of Molena;

NOW THEREFORE BE IT HEREBY ORDAINED AS FOLLOWS:

SALES AND POURING OF BEER AND WINE BEVERAGES
IN RETAIL ESTABLISHMENTS
ARTICLE 1.
GENERAL

Section 1.1 Applicability of code.

This ordinance is not to be construed as conflicting with any state or federal laws or regulations, nor as authorizing the sale of any alcoholic beverages on which the federal and state taxes have not been paid, nor as authorizing the sale thereof by any person who has not obtained any and all federal and state permits required by the federal and state laws and regulations; nor as authorizing sales at any place or in any manner prohibited by the state laws and regulations.

Section 1.2 License Is A Privilege

General prohibition: No person shall manufacture, distribute, sell or otherwise deal in malt beverages or wine without first obtaining all applicable licenses required by this ordinance, and further;

- A) Malt beverages and wine may be sold for the limited purposes described herein in the City of Molena under license granted by the City Council upon the terms and conditions provided in this ordinance.
- B) All licenses issued pursuant to this ordinance shall be a mere grant of privilege to carry during the term of the license, subject to all terms and conditions imposed by this ordinance and state law.

C) All licenses pursuant to this ordinance shall have printed on the front these words "This license is a mere privilege subject to be revoked and annulled and is subject to any further ordinances that may be enacted."

D) Any holder of a license issued in accord with this ordinance is required to apply for and obtain a malt beverage and wine license from the State of Georgia before any sales commence. Additionally, City licensees are required to abide by all applicable state regulations and laws.

Sections 1.3-1.5 Reserved

ARTICLE II. MALT/BEER AND WINES

Section 2.1. Definitions.

(a) Each and every definitions of words, terms, and phrases set forth in the state alcoholic beverage code, presently contained in Title 3 of the Official Code of Georgia (O.C.G.A. 3-1-1 et seq.) as the same now exists, or as amended, from time to time, hereafter, be, and the same hereby are adopted and incorporated by this reference into this Code.

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

(c) Convicted or conviction means convictions by any court or jury, as well as the entry of a plea of guilty or *nolo contendere*.

Section 2.2-2.5 Reserved.

Section 2.6 EXCISE TAXES

Section 2.6.1 Malt Beverages.

In addition to any excise tax on malt beverages levied by the state, there is hereby imposed and levied upon each wholesale dealer selling malt beverages within the city an excise tax as follows:

(1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15 1/2 gallons and proportionate tax at the same rate of all fractional parts of 15 1/2 gallons;

(2) Where malt beverages are sold in bottle, cans, or other containers, except barrel or bulk containers, a tax of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

Section 2.6.2 Wine.

In addition to any excise tax on wine levied by the state, there is hereby imposed and levied upon each wholesale dealer selling wine within the city an excise tax on the first sale or use of wine by the package computed at the rate of \$0.22 per liter, and a proportionate tax at the same rate on all fractional parts of a liter, which shall be paid to the governing authority on all wine sold in the city. Such tax shall be paid to the city by the wholesaler on all wine sold in the city to retail dealer, whether the retail dealer sells by the package, or for consumption on the premises.

Section 2.7 REPORTS OF SALES; REMITTANCE OF TAXES

Each retail establishment who sells malt/beer and/or wine beverages within the city shall file with the city clerk a report on or before the tenth day of each month, containing the information required by this Section, relating to the prior month, and shall remit with such report, the amount of excise tax due to the city in accordance with this ordinance.

Section 2.7.1 REQUIRED REPORT INFORMATION

The reports as to the sales of malt beverages and wine shall set forth an itemization, by size and type of container, the exact quantities of all malt beverages and wine sold by each such retail establishment within the city during the immediately preceding calendar month.

Section 2.8. EXCISE TAXES ARE IN ADDITION TO OTHER REQUIRED FEES

The excise taxes levied and imposed by the city on malt/beer and/or wine beverages shall be in addition to any license fee, tax, or charge which may now or hereinafter be imposed upon the business of selling such beverages in such a retail establishment within the corporate limits of the city.

Section 2.9 DECALS, STAMPS OR OTHER MARKINGS NOT REQUIRED

No decal, stamp, or other markings shall be required to appear on malt/beer or wine beverage containers to designate that the same is sold, or to be sold, within the corporate limits of the city, nor to designate that the licensed retailer of such beverage maintains his retail business within the corporate limits of the city.

Section 2.10 PENALTY FOR FAILURE TO FILE REPORT OR FILING FALSE
REPORT

The failure to file a report of malt/beer beverage sales, wine sales, or to pay the taxes levied and imposed by this Code, within the time required by this Code, shall constitute a violation of this Code, and the delinquent person or entity shall pay a penalty for such failure in an amount equal to ten

percent (10%) of the total amount of tax due, and shall be liable for a like penalty for each thirty (30) day period, or portion thereof, during which the report or the tax remains delinquent. The filing of a false or fraudulent report shall render the dealer making such false or fraudulent report liable to a penalty equal to ten percent (10%) of the amount of the tax remittance which would have been required under an accurate, truthful, and timely report, and shall also constitute a criminal violation of the Code.

ARTICLE III. SALES AND LICENSES

Section 3.1 TYPES OF LICENSES

Section 3.1.1 Malt Beverages.

Malt Beverage License, Pouring: This license shall authorize the licensee to sell malt beverages for consumption by the purchaser on the premises of the licensee only.

Section 3.1.2

Wine License, Pouring: This license shall authorize the licensee to sell wine for consumption by the purchaser on the premises of the licensee only.

Section 3.2 ANNUAL LICENSE FEES

The annual license fee for the alcoholic beverage licenses described in Section 3.1.1-3.1.2 shall be as follows:

(1) Malt beverage license, pouring - \$500.00

(2) Wine license, pouring- \$500.00

The annual license fee for each such license shall be paid, in full, prior to the issuance of any license, and no portion of the same shall be refundable under any circumstances.

Section 3.3. CONDITIONS OF LICENSES

Each license issued under this Code shall be held by the licensee subject to the terms and conditions of this Code and shall be subject to suspension or revocation in accordance with the terms and provisions of this Code.

Section 3.4 LICENSE LOCATION; SIGN RESTRICTIONS; FOOD REQUIREMENTS; PACKAGES EXCEPTIONS.

(a) It shall be unlawful for any person, firm, or corporation to erect or place, within the public view any signs advertising or giving notice of the fact that either beer or wine is available for sale or consumption, at any location, if the parcel of land leased, owned, or used by the licensee is at its

nearest point, within 300 feet of the nearest point of any parcel of land on which is situated any school, public park, public recreational facility, or the main auditorium or sanctuary of any church.

(b) In order to qualify for a pouring license for malt beverages or wine, the licensed business must derive more than fifty percent (50%) of its gross revenues, exclusive of receipts from non-participatory on-site entertainment, from the sale of food actually prepared on the premises.

(1) The application for a pouring license shall contain a specific statement, under oath, that the licensed business meets the requirements set forth in this subsection (a) and (b). In the event the business has been in operation for less than thirty (30) days, the application shall contain a statement, under oath, that applicant anticipates that the business will be in compliance with this subsection within sixty (60) days of the date of issuance, and that, not later than that the sixtieth (60th) day from the date of the license, the applicant will file (I) a statement with the city, under oath, that the establishments sales are in compliance with this subsection, or, (II) the applicant will surrender its pouring license, and return the license to the city.

(2) Each pouring license shall be issued subject to the condition that the licensed business continually comply with the requirements of this ordinance; in the event the licensee's sales fail to comply with the requirements of this ordinance for two consecutive months, the licensee shall report such noncompliance to the city within ten (10) days following the close of such second month, and shall thereupon surrender its pouring license.

(3) Each license issued for consumption on the premises shall also be subject to the conditions that the licensee must make, and keep for a period of at least two (2) years, true and correct business records reflecting (i) the number, and (ii) the sales price of each beer and wine sale, (iii) the monthly gross receipts of the business, and separately stated, its- (v) gross receipts from non-participatory on-site entertainment, (vi) gross receipts from sale of alcoholic beverages, and (viii) gross receipts from sales of food actually prepared on the premises. The city shall have the right to inspect the books and records of the licensee at any time during business hours to determine whether the licensee's records and sales are in compliance with this subsection. Each licensee shall be under a duty, at the request of the city, to produce its records for such inspection.

(4) The failure of a licensee to meet the requirements of this subsection, or to comply with a request to produce its business records, shall be cause for termination of the license (s).

Section 3.5 POSSESSION OF OPEN CONTAINERS IN LICENSED ESTABLISHMENTS OTHER THAN DINING AREA OF ESTABLISHMENT WITH POURING LICENSE PROHIBITED; SIGNS, EXCEPTIONS.

(a) It shall be unlawful for any person, other than employees who serve beverages, to possess an open container of any alcoholic beverage at any place in a licensed establishment other than within the dining area of an establishment holding a pouring license under this Code.

(b) As a condition of retaining the license issued under this Code, each licensee holding a pouring license shall place a minimum of two (2) signs in the dining area of the business stating "NOTICE-IT IS UNLAWFUL TO POSSESS AN OPEN CONTAINER OF AN ALCOHOLIC BEVERAGE OUTSIDE THE DINING AREA." Each such sign shall be at least twelve (12") inches by twelve (12") inches with lettering at least two (2") inches in height. (c) The prohibitions and requirements set forth in paragraph (a) and (b) shall not apply to any location holding a pouring license on

April 01, 2000, so long as the owner of the licensed business as of said date continues to own such business.

Section 3.6

TIMES WHEN SALES ON PREMISES PROHIBITED.

(a) It shall be unlawful for any person to sell an alcoholic beverage within 300 feet of the election place while the election polls are actually open on the day of any election, and it shall be likewise unlawful to sell an alcoholic beverage within the city anytime on Sunday or Christmas Day, or between the hours of 12:00 AM and 6:00 AM on any day of the week.

(b) It shall be unlawful for any holder of an alcoholic beverage pouring license, or any employee or agent, of such license, to knowingly and intentionally allow or permit any person to consume any alcoholic beverages on the premises of the licensee at any time when the sale of such alcoholic beverage would be unlawful on the premises under the provisions of subsection (a) of this section.

Section 3.7.

LICENSE APPLICATIONS, INFORMATION REQUIRED;
RE-APPLICATION UPON CHANGE OF MANAGEMENT

(a) Each applicant for a license to sell any alcoholic beverage within the city shall be at least twenty-one (21) years of age, shall complete and submit an application therefore, which shall be signed by each of the applicants, or if the applicant is a corporation, the application shall be signed by the person who shall be engaged in the actual day-to-day management of the branch of the corporation at which such license shall be located, and such license, if issued, shall be issued in the name of the manager and the corporation as joint licensees. The contents of such application shall be sworn to on the oath of each person signing the same. The application shall contain the following information about each of the persons required to sign the application:

- (1) Name;
- (2) Age;
- (3) Address, and;
- (4) Telephone number; and shall also include;
- (5) The address of the building from which the permitted alcoholic beverage shall be sold if a license is granted;
- (6) The trade name of the business where the permitted alcoholic beverage will be sold;
- (7) A statement as to whether any applicant has ever been convicted of any felony under any state or federal law;
- (8) A statement as to whether any applicant has ever been convicted of violating any state or federal law regulating the manufacture or sale of any alcoholic beverage.

(b) If a license is issued under this ordinance to a corporation jointly with a manager, and a new manager is assigned to the licensed branch of such business during the license year, or if a license is issued under this ordinance to a partnership in the name of less than all of the partners, and the partners named on the license withdraw from the partnership during the license year, then such new manager of the licensed branch of such corporation or the remaining partners of such partnership shall immediately, apply for a new license under this Code, and upon compliance with the requirements of subsection (a) of this section and the city clerk is authorized to issue a new license in the name of such new manager or in the name of the remaining partners for the remainder of the license year without the payment of a new license therefore.

Section 3.8. FINGERPRINTS REQUIRED.

Each person who is required to sign the application for a license shall, at the time of this filing of such application, submit to the city clerk a complete set of fingerprints in accordance with O.C.G.A. 3-3-2.

Section 3.9. INELIGIBLE PERSON-LICENSES AND BUSINESSES.

(a) There shall not be issued any alcoholic beverage license to any person who has been convicted of any felony under any state or federal law or who has been convicted of violating any state or federal law regulating the manufacture or sale of any type of alcoholic beverage.

Section 3.10. INELIGIBLE EMPLOYEES.

The holder of any alcoholic beverage license issued under this Code shall not allow any person who has been convicted of any felony under state or federal law or who has been convicted of violating any state or federal law regulating the manufacture or sale of malt beverages, wine, or other alcoholic beverages to be employed in the business of such licensee in a capacity which would allow such convicted person to actually engage in the dispensing of any alcoholic beverage, under any license issued under this Code.

Section 3.11. APPLICATION AND PROCEDURE.

Each application for any alcoholic beverage license shall be submitted to the city clerk, who shall transmit a copy thereof to the Chief-of-Police. The Chief shall, on receipt of the same, request a report from the appropriate agency of the state as to the existence of any criminal record relative to each of the applicants whose name appears on such application and shall simultaneously submit the fingerprints of each such applicant to the appropriate state and federal agencies for a determination of any criminal record relative to such fingerprints. If the state agencies respond that computer checking of the names of the applicants reveal no criminal record, then, pending receipt of the report on the fingerprints of the applicants, and if each other requirement for the license applied for has been complied with, the city clerk shall issue, in the name of the applicant, the license(s) applied for, upon payment of the appropriate license fee provided for in this Code, which license shall be a conditional license, pending receipt of a report on the fingerprints of the applicants. If the fingerprint report reflects the absence of any criminal record which would disqualify the applicant for a license, the conditional license shall thereupon become a permanent license. If, however, the fingerprint report reflects a criminal record of any applicant which disqualifies the applicant for such license, the city clerk shall thereupon transmit a copy of the fingerprint report to the applicant and, shall, in writing by certified mail, simultaneously therewith, notify the applicant that the conditional license issued hereunder is, effective on the 15th day after the applicant's receipt of the notice, thereby revoked as a result of the fingerprint report. Existing administrative procedures require the chief to present the application to council for approval.

Section 3.12. TERM OF LICENSE.

Each license issued under the provisions of this Code shall expire on the December 31st following the date of its issuance.

Section 3.12.
GENERALLY

LICENSE SUSPENSION, REVOCATION, AND OR TERMINATION,

(a) Each and every license issued under this Code to a licensee shall be suspended for a period of ninety (90) days from the date of suspension upon the first occurrence of any event described subsections (1), (2) (3), or (4) of this section, and when a license has once been suspended for the occurrence of such event, the subsequent occurrence of any such events shall result in a permanent revocation of each and every license issued to such licensee under this Code:

(1) The commission by any person in whose name such license has been issued of any act which would constitute a violation of any state or federal law regulating the manufacture or sale of any alcoholic beverage, the maximum punishment for which could not, under such law, exceed one year.

(2) The commission by any agent, including husband, wife, or child, or employee of the licensee of any act which would constitute a violation of any state or federal law regulating the manufacture or sale of alcoholic beverage while acting within the scope of such agency or employment, or while in the premises of the business from which alcoholic beverage are sold under the license issued by the city.

(3) The operation of such alcoholic beverage business in such a manner as to constitute a public nuisance.

(4) The violation of any provision of this ordinance.

(b) Each and every license issued under this ordinance shall be permanently revoked in the event that any person in whose name such license is issued is convicted of a felony in any state or federal court, or in the event a license-holder transfers a license to a new location without complying with the requirements of this ordinance, or if it is determined that the application required for such license contains any false information.

Section 3.13. HEARING .

No license issued under this Code shall be either denied, revoked, or suspended without affording the licensee, if requested by the licensee, a hearing before the Mayor and Council on the grounds therefore, at least fifteen (15) days notice of which hearing shall be given, in writing, to the holder of such license, by registered or certified mail addressed to each license holder at the applicant's address shown on the application required for such license, or such new address as has been filed with the city clerk; if the denial, suspension, or revocation is based upon the conviction for a crime, a copy of the judgment of the court shall be included in such notice, and no other information shall be required. IF such denial, revocation, or suspension is not based upon a conviction, then such notice shall also set forth a brief synopsis of the facts alleged against the license holders together with the names and addresses of any witnesses thereto that are known to the Mayor and Council.

Section 3.14. LICENSE NONTRANSFERABLE.

Licenses issued under this Code shall not be transferable by the license holders to any person, or entity, but a new license, shall be issued to a purchaser of the business of the previous licensed holder upon such purchaser's compliance with each of the provisions of this Code relating to the issuance of a new license.

Section 3.15

RELOCATION OF LICENSED ESTABLISHMENT.

The Mayor and Council shall allow a license holder to transfer an alcoholic beverage license to a new location within the city upon written application for such relocation if such new location meets the requirements of this Code. Upon receipt of a written application for relocating a license, the city clerk shall determine whether or not the proposed new location meets the requirements of this Code, and shall immediately thereafter present such application, together with a report as to whether such location meets the requirements of this Code, to the Mayor and Council at the next regular meeting thereof. The Mayor and Council shall act upon such request within 30 days thereafter.

Section 3.16

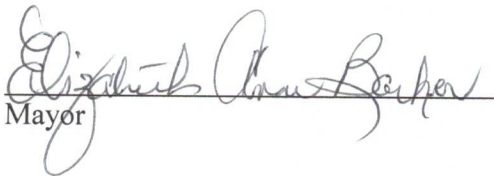
PENALTY FOR VIOLATION

Any person who violates any provisions of this ordinance, and any person who sells, or offers to sell malt beverages or wine within the corporate limits of the city without the appropriate license as provided for in this code, shall, upon conviction, be punished by a fine of \$500.00 and imprisonment of six (6) months.

SECTION 4

Each and every part of each Ordinance in direct conflict with the terms and provisions of this Ordinance be, and the same hereby is, repealed.

SO ORDAINED BY THE MAYOR AND CITY COUNCIL OF MOLENA


Mayor

Councilman

Councilman

Councilman

Councilman

Attested By: City Clerk

FIRST READING

December 14, 2009

SECOND READING AND ADOPTION

January 11, 2010