

ORDINANCE NO. 321

AN ORDINANCE TO AMEND CHAPTER 6 OF CODE OF ORDINANCES OF THE CITY OF HAMPTON, GEORGIA, WHICH PROVIDES FOR ALCOHOLIC BEVERAGES; TO REPEAL ARTICLE II ENTITLED "LICENSING"; TO CREATE A NEW ARTICLE II ENTITLED "ALCOHOL LICENSE REQUIRED"; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

THE COUNCIL OF THE CITY OF HAMPTON HEREBY ORDAINS:

SECTION 1. Article Amended. Chapter 6 of the Code of Ordinances of the City of Hampton, Georgia, entitled "Alcoholic Beverages" is hereby amended by deleting Article II entitled "Licensing" in its entirety and substituting in lieu thereof a new Article II entitled "Alcohol License Required" and Sections 6-20 through 6-29 thereunder which shall read as follows:

Article II. Alcohol License Required.

Sec. 6-20. Definitions.

- (a) The definitions contained in O.C.G.A. §§ 3-4-1, 3-5-1 and 3-6-1 as amended are hereby incorporated by reference.
- (b) "City" means the City of Hampton, Georgia.
- (c) "Licensee" means every seller of alcoholic beverages in the City, whether retail, wholesale, or otherwise, required by this ordinance to possess a valid license.
- (d) "Managing agent" means an individual designated by resolution of a corporation, LLC or other business entity (other than a sole proprietorship) to apply for a license as provided herein and to manage the day to day operations of the premises.

Sec. 6-21. License required; application.

- (a) *License Required.* It shall be unlawful for any person or entity to sell alcoholic beverages in the City of Hampton unless such person or entity is in possession of a valid license from both the State of Georgia and from the city authorizing the sale of alcoholic beverages pursuant to the regulations contained in this chapter and in Title 3 of the Official Code of Georgia Annotated entitled Alcoholic Beverages. Licenses shall not be transferable.
- (b) *Filing.*
 - (1) Application for original and renewal licenses shall be made to the city clerk on the form supplied by the city. All information requested by such form and otherwise required to be provided by this chapter, including the fee or fees provided for herein, must be provided in order for the application to be complete and acceptable by the city. The city will not accept incomplete applications for

consideration. However, the acceptance of an incomplete application by the city clerk shall not prohibit the City Council from denying the application due to said application being incomplete.

(2) All applications for the issuance of new licenses shall be filed with the city clerk at least ten (10) days prior to the next regular meeting of the mayor and council to be considered at that meeting. Failure to timely file the application may result in delayed consideration by the mayor and council.

(2) Licenses shall be valid through December 31 of the year in which they are issued or the year for which they are renewed. Applications for a renewal license shall be provided to the city by November 1 for the following year. All license renewals shall be considered and acted upon by the mayor and council by December 31.

(3) No person holding an expired license not renewed for a succeeding calendar year may sell or serve alcoholic beverages in the succeeding calendar year unless and until the application for license renewal has been tendered and a renewal license has been reissued.

(c) Should any licensee withdraw from, sell or otherwise transfer such licensee's interest in any ongoing business licensed to sell alcoholic beverages, the city clerk shall be notified in writing of such withdrawal, sale or transfer within seven (7) days. Conduct of the licensed business may be continued for a period of no more than 60 days following the sale of a licensee's interest therein, upon application of the purchaser for a new license and with approval of the city clerk; provided the initial licensee is under management contract with the purchaser of the business to supervise and remain responsible for the conduct of such business during the time investigation of the new application is underway; and further provided that no disciplinary proceedings are pending against the initial license holder or the licensed premises concerning established or alleged violations of this chapter.

(d) *Display.* Every person, firm or corporation issued a license pursuant to this chapter shall be required to display the license in the same location as is displayed the occupational tax certificate.

(e) Whenever a licensee is a business entity, other than a sole proprietorship, a new license application shall be required subsequent to any change in more than ten percent (10%) of the ownership of the licensed business entity. Where a licensee is a sole proprietorship, a new license application shall be required subsequent to a change in the ownership of the sole proprietorship.

Sec. 6-22. Misstatement or concealment of fact in application.

All applications for original or renewal licenses shall be tendered under oath, and it shall be unlawful to knowingly make any misstatement or concealment of fact in the application for a license. Any such act shall be cause for revocation, suspension, or denial of a renewal license and shall make the applicant subject to prosecution for perjury under the laws of this state.

Sec. 6-23. Grant or denial of license.

(a) *Supporting information.* The following information shall be furnished with the application for a license under this chapter for consideration by the mayor and council:

- (1) A complete set of fingerprints of applicant, applicant's representative or managing agent.
- (2) If the applicant is a partnership, LLC, or other business entity, other than a sole proprietorship or corporation, applicant must submit a copy of its partnership agreement, operating agreement, articles of organization, certificate of organization, and other organizational documents, and all members of the business entity must meet the conditions precedent to becoming a licensee and must make sworn statements of these qualifications.
- (3) If the applicant is a corporation, applicant must submit a copy of the articles of incorporation, certificate of incorporation, by-laws, and other organizational documents, and the president and secretary of the corporation must meet the conditions precedent to becoming a licensee and must make sworn statements of these qualifications.
- (4) A survey of the premises certified by a registered surveyor showing a scale drawing of the location of the proposed premises and the distance from the proposed premises to the nearest school building, educational building, school grounds, college campus, alcoholic treatment center, housing authority property, church or other place of worship, residence and the nearest five (5) occupied commercial establishments.
- (5) Where applicant is not the owner of the premises, a copy of applicant's lease with the premises owner must be submitted.

(b) *Qualifications for original and renewal license.*

- (1) No original or renewal license shall be granted under this chapter to any applicant who is not a citizen or resident legal alien of the United States.
- (2) Corporations, limited liability companies and other similar business entities shall apply for a license in the name of the business entity in care of a managing agent, and the license shall be issued to the business entity in care of a managing agent who shall in all respects meet the minimum requirements to qualify for the issuance of a license. In the case of business entity applicants whose primary business is the operation of an alcoholic beverage establishment, the majority stockholder must meet the requirements of an applicant under this subsection at the time application is made and at all times during which the license is in effect. Where the applicant is a business entity whose primary business is other than the operation of an alcoholic beverage establishment, a managing agent of such business entity involved or to be involved in the active management of the business to be licensed, must apply for the license and meet the requirements of an applicant under this subsection at the time application is made and at all times during which the license is in effect. Partnerships shall apply for a license in the name of one of the partners, and the license shall be issued in the name of the applicant partner. If the applicant is a partner in a partnership, the requirements of this chapter shall apply to all partners at the time of the application and at all times during which the license is in effect.

(3) Tender of an application for an alcohol license shall serve as an express authorization to the city to conduct an investigation into the background of the applicant and all others authorized in this Article.

(4) No original or renewal license shall be issued to any person, partnership or business entity organized for pecuniary gain where any individual having an interest either as owner, partner, manager, managing agent, or stockholder, directly or indirectly, beneficial or absolute, shall have been convicted of or shall have entered a plea of guilty or nolo contendere to, within five (5) years immediately prior to the filing of said application, any felony, or any violation of this chapter, or any crime involving moral turpitude, or any federal or state law related to liquor, malt beverages or wine, or driving under the influence (DUI) of alcohol or drugs.

(5) No original or renewal license shall be issued to any person, partnership or business entity where any such entity, individual having an interest as owner, partner, manager, managing agent, or stockholder, directly or indirectly, beneficial or absolute, shall have had an alcoholic beverage license denied, revoked or suspended due to due cause by any governmental entity. The restrictions of this subsection as to stockholders shall apply only to stockholders of privately owned corporations and to stockholders of publicly owned corporations who hold in excess of five percent (5%) of outstanding stock.

(6) Any person, firm or business entity who or which owns property leased to an applicant, which lease provides for payment based upon the level of alcoholic beverage derived income, shall be considered a co-applicant and must meet all qualifications contained herein.

(7) At the time of filing an original or renewal application for a license under this chapter, all applicants shall be given a copy of this chapter and shall sign a statement acknowledging receipt hereof. Nothing in this section shall be interpreted to make specific knowledge of this or any other chapter of the City Code a condition precedent to enforcement or amendment.

(c) At the time of license renewal, applicants must meet all qualifications of applicants for original licenses. In addition, suspension, revocation, or other loss of qualifications during the term of a license shall be grounds for denial of renewal.

(d) *Qualification of premises.* All licenses are limited to the site identified in the license application, and no application will be approved unless the premises used in conjunction with a license issued under this chapter shall meet the following qualifications, evidence of which qualifications shall be provided with the application:

(1) The premises upon which sale of alcoholic beverages will be conducted must be located in an area zoned to a commercial classification.

(2) The premises cannot, at the time of application, be the subject of an ordinance violation enforcement investigation.

(3) The front entrance of the premises must be clearly visible from a public street.

(e) *Council action.* At the time of consideration of the application for the issuance or renewal of a license provided herein, the mayor and council shall determine whether or not the applicant and applicant's premises meet all of the qualifications of this chapter. If the applicant or applicant's

premises do not meet all of the qualifications stated in this chapter, the application shall be denied by the mayor and council.

(f) *Representation at meeting.* At the time that a new or renewal license is considered by the mayor and council, the applicant, or at least one general partner of the partnership, member or manager of the LLC, or officer of the corporation, or the managing agent shall be present to answer any questions that may be submitted to them by the mayor and council. Failure to attend the meeting may be grounds for denial of the application.

(g) *Reason for denial.* If the application for a license is denied, the mayor shall issue a written statement to the applicant within ten (10) days of the decision, which statement shall set forth the reason or reasons for denial.

(h) *Appeal.* If the applicant desires a hearing on the matter of denial of an original or renewal license, the applicant shall notify the mayor and council in writing within ten (10) days of receipt of the notice of denial. The mayor and council shall set a date for a hearing on the matter within 60 days of receipt of a proper notice of appeal from the applicant and notify the applicant of the date in writing at least ten (10) days prior to the date of the hearing. At the hearing, applicant will have the right to present evidence and cross-examine opposing witnesses. After the hearing, the mayor and council shall either uphold, modify, or reverse the denial.

Section 6-24. Grounds for license revocation or suspension.

(a) *Grounds.* Any violations of the provisions of this chapter or Title 3 of the Official Code of Georgia Annotated shall be grounds for revocation or suspension for a definite period of the right to sell alcoholic beverages.

(b) *Reason for revocation or suspension.* If the Chief of Police determines that grounds for revocation or suspension exist, he shall immediately notify the City Manager and the City Clerk, together with his recommendation regarding the terms of revocation or suspension. The City Clerk shall issue a written statement to the licensee within ten (10) days of the city's intent to revoke or suspend and shall set forth the reason(s) for revocation or suspension.

(c) *Appeal.* If the licensee desires a hearing on the matter of revocation or suspension, he shall notify the mayor and council in writing within ten (10) days of receipt of the Notice of Intent to revoke or suspend. A Notice of Appeal shall stay the revocation or suspension until the hearing is held. If the licensee fails to appeal within ten (10) days, then the memorandum of the Chief of Police shall take effect. The mayor and council shall set a date for a hearing on the matter within thirty (30) days of receipt of a proper Notice of Appeal from the licensee and notify the licensee of the date in writing at least ten (10) days prior to the date of hearing. At the hearing, licensee will have the right to present evidence and cross examine opposing witnesses. After the hearing, the mayor and council shall either uphold, reverse or modify the revocation or suspension.

Sec. 6-25. Annual license fees.

(a) Separate licenses are required for package sale of wine and for package sale of malt beverages. The annual license fee for package sale of wine shall be \$250.00. The annual license fee for package sale of malt beverages shall be \$1,000.00.

(b) Separate licenses are required for sale by the drink of wine, sale by the drink of malt beverages, and sale by the drink of distilled spirits. The annual license fee for sale by the drink of distilled spirits shall be \$3,000.00. The annual license fee for sale by the drink of beer and wine shall be \$1,000.00.

Sec. 6-26. Payment of license fees.

License fees required under this chapter shall be paid as follows:

(1) New license: For applications received on or after September 1, fifty percent (50%) of the applicable fee shall be required.

(2) License renewals: Fees shall be tendered to the city clerk by November 1 of the year prior to the renewal year, along with the application for renewal.

Sec. 6-27. License fee charged to wholesale dealer of malt beverages with principal place of business outside the city.

The license fee for wholesale dealers of malt beverages with their principal place of business located outside the City of Hampton shall be the maximum fee allowed by Section 3-5-43 of the Official Code of Georgia Annotated.

Secs. 6-28 through 6-29. Reserved.

SECTION 2. This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

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

B. It is hereby declared to be the intention of the City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other Section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Ordinance.

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

SECTION 4. Repeal of Conflicting Provision. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective ten (10) days after its adoption by the Mayor and City Council of the City of Hampton. This Ordinance shall apply proactively from the Effective Date, and there shall be no retroactive application of the provisions herein.

SO ORDAINED this 10 day of January, 2009.

CITY OF HAMPTON, GEORGIA


R. W. COLEY, MAYOR

Attest:


Kim Drinkall, City Clerk

(Seal)

FIRST READING: 12-16-08

SECOND READING
ADOPTION: 1-6-09