

**City of Folkston
Beer, Wine, and Malt Beverage Ordinance**

**AN ORDINANCE TO PROVIDE FOR THE REGULATION, LICENSING, AND TAXING OF
THE SALE AND DISTRIBUTION OF BEER, WINE, AND MALT BEVERAGES; TO
PROVIDE FOR THE APPLICATION FOR AND THE ISSUING OF LICENSES AND
COLLECTION OF TAXES; TO PROVIDE FOR PENALTIES FOR VIOLATION, AND FOR
OTHER PURPOSES**

THE COUNSEL OF THE CITY OF FOLKSTON HERBY ORDAINS:

1. SHORT TITLE

This Ordinance shall be known and may be cited as “CITY OF FOLKSTON BEVERAGE ORDINANCE.”

2. DEFINITIONS

As used in this Ordinance:

- (a) Alcohol Beverage means and includes all beer, malt beverage, or wine as defined in this section.
- (b) City Clerk means the City Clerk of the City of Folkston, Georgia.
- (c) Council means the City Council of Folkston, Georgia.
- (d) City means the City of Folkston, Georgia.
- (e) 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 6% alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term “malt beverage” does not include sake, known as Japanese rice wine.
- (f) Wine means any alcoholic beverage containing not more than 21% alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. Wine 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 “wine” 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.

- (g) Election means any general election, primary election, run-off election, special election, or referendum within the City Limits of Folkston, Georgia.
- (h) Calendar Year means the period of the time from the date of issuance of a license to the date of December 31 of the year of issuance of said license.
- (i) Wholesale Dealer or Wholesaler means any person, firm, partnership, or corporation engaged in distribution or selling malted beverages or wine to a retail beer and/or wine dealer, and not directly to the consumers.
- (j) Grocery related inventory means inventory items for which the State of Georgia has exempted sales and use tax for off-premises human consumption or use of eligible foods and beverages (excluding malt beverages and wine), because such inventory meets the definition of “eligible food and beverages” (excluding malt beverages and wine) as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 USCA 2012(g), as such Act existed on January 1, 1996, except that eligible food and beverages shall not include seeds or plants to grow food and shall not include food or drink dispensed by or through vending machines or related operations.
- (k) Restaurant means a place where meals are sold to the public.

3. LICENSE REQUIRED

No person, firm, or corporation, shall offer for sale or sell any alcoholic beverage within the City Limits of Folkston, Georgia without first obtaining the appropriate license herein required.

4. APPLICATION

- (a) Each applicant shall apply to the City Clerk for a license by written application on forms approved by the Council (Attached). All questions and information requested on the application form shall be filled in and subscribe to by all applicants under oath.
- (b) All applications must be filed at least thirty (30) days prior to the date considered by the council.
- (c) After investigation, as provided in Section 7, all applications for such licenses shall be presented to the Council for approval, and if approved, the licenses shall be issued by the City Clerk upon the payment of the required fee.
- (d) No licenses shall be granted to any person who is less than 21 years of age.

CITY OF FOLKSTON BEVERAGE ORDINANCE

- (e) If the owner of the business is an individual, the application shall be made by such individual. An individual applicant must be the person who will own and manage the premises (business) where the sales of malt beverages and/or wine will occur.
- (f) If the owner of the business for which a license is sought is a partnership or corporation, the application shall be made by one of the partners or an officer of the corporation.
- (g) In the event that a firm, partnership, or corporation owns or operates more than one place of business in the City, all applications for licenses for each place of business made pursuant to this chapter shall be made by the same person.
- (h) No licenses shall be granted to any person who is serving as an elected official or City Clerk of the City of Folkston, Georgia, nor shall any license be granted to any business in which the above holds interest.
- (i) At the time any application for a license hereunder is filed, and as a prerequisite to the issuance of any license hereunder, the applicant shall have a complete set of his or her fingerprints made by the Chief of the Police Department of the City of Folkston, or his designee, which shall be forwarded to the Georgia Bureau of Investigations who shall search the files of the Georgia Crime Information Center for a period of two (2) years immediately preceding the date of such application for any instance of criminal activity, and the Georgia Bureau of Investigation shall submit such fingerprints to the federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification records; said record, if any, shall be obtained and returned to the governing authority submitting such fingerprints. In the event the license is to be issued to a firm or corporation, fingerprints shall be made as set forth above for all persons who will serve in a supervisory and/or managerial position with respect to the sale of malt beverages and/or wine. In the event that the firm or corporation changes the person or persons in such supervisory and/or managerial positions during any year, and designate such functions to a person or persons who has not previously been responsible for such function (hereinafter referred to as “new person”), then such firm or corporation shall notify the City Clerk, in writing, of the change in such supervisory and/or

CITY OF FOLKSTON BEVERAGE ORDINANCE

managerial personnel, giving the name, address of the new person, the effective date of the change, and shall furnish the Clerk with the fingerprints of the new person.

The notification and furnishing of the fingerprints shall be within five (5) regular business days to the City Hall. Should the fingerprints or investigation of the new person reveal that he or she is objectionable; the City Clerk shall notify the licensee immediately. Upon the receipt of said notice, the new person shall not serve in such capacity with licensee until authorized by the City Council. Licensee may appeal such objections to the City Council within three (3) days of the receipt of said notice, by delivering written notice of the appeal with the City Clerk. As soon as possible, the City Council will hear evidence on said appeal but the new person shall not serve in such capacity until and unless authorized by the City Council.

- (j) No person shall be granted a license unless it shall appear to the satisfaction of the Council that such person is of good moral character and the business which he represents enjoys a good reputation; and in no event shall any such license be granted to any person who has been convicted or plead guilty or entered a plea of nolo contendere to any felony or any misdemeanor involving alcoholic beverages or drugs within a period of five (5) years immediately prior to the filing of the application.
- (k) If an applicant is refused a license for cause as provided for in this ordinance, no application for the same applicant will be accepted for one (1) year from the date of filing said application.
- (l) If a license is revoked for cause as provided for in this Ordinance, no application for the same license will be accepted for one (1) year from date of said revocation.

5. APPLICATION FEE

Every application, excluding renewals, shall be accompanied by a non-refundable application fee in the amount of One Hundred Dollars (\$100.00). Said fee shall be paid by cash, cashier's check, or money order made payable to the City of Folkston.

6. INVESTIGATIONS; RECOMMENDATIONS

The application shall be sworn to and directed to the City Clerk who shall inspect the application. The City Clerk or the designee of the City Clerk shall cause the character and reputation of the applicant and suitability of the location of the establishment for which the

CITY OF FOLKSTON BEVERAGE ORDINANCE

license is sought to be fully investigated. After all of the foregoing requirements have been fulfilled, applications for original licenses shall be presented to the Council.

7. CONSIDERATION OF LICENSE; AND DENIAL OF LICENSE

- (a) All applications presented shall be noted as to the date and exact time of filing and, after filing, such applications shall be presented and considered by the Council in the order of their filing, provided thirty (30) days have elapsed after the date of filing and all necessary investigation has been completed.
- (b) In determining whether or not any license applied for hereunder shall be granted, in addition to all the other provisions of this Ordinance, in the Public interest and welfare, the following, by way of inclusion but not limitation, will be considered:
 - (1) The applicant's reputation, character, mental, and physical capacity to conduct business;
 - (2) If applicant is a previous holder of a license to sell any alcoholic beverage, whether or not he has violated any law, regulation, or ordinance relating to such business;
 - (3) If applicant is a previous holder of a license to sell any alcoholic beverage, the manner in which he conducted the business thereunder as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation, or ordinance relating to such business;
 - (4) Whether the person has previously had an alcoholic beverage license suspended or revoked;
 - (5) Whether or not the proposed location is primarily a residential neighborhood or business neighborhood;
 - ~~(6)~~ The proximity of the proposed location to churches, schools, and dwelling houses, and under no circumstances, shall a license be granted when the building from which a malted beverage or wine is to be sold is 125 feet or closer to a school building, educational

CITY OF FOLKSTON BEVERAGE ORDINANCE

building, school grounds, college campus, or church building. For purposes of this ordinance, distance shall be measured as follows:

- A. From the property line of the tract on which is located the business of the applicant;
- B. To the property line of the tract on which is located the school building, educational building, school grounds, college campus, or church buildings; and
- C. Along a straight line which describes the shortest distance between the two property lines.

(7) Whether or not the issuance of such a license in such proposed location would tend to diminish the property values of the adjoining lands.

- (c) No License Shall be granted to any existing building or establishment having a history or reputation for prostitution or other offensive practices: violent activities, gambling, illegal dealing in alcoholic beverages or drugs, or other violations of the law. The term “history or reputation” is meant to include the 12 months preceding the filing of said application and provided said business is now owned, operated, managed or in any way connected to the person operating the establishment during the time such offenses occurred.
- (d) No license shall be granted for the sale of malt beverage or wine from a building occupied as a residential dwelling.
- (e) Retail establishments engaged solely in the sale of malt beverages and/or wine shall be prohibited in the City of Folkston, Georgia. A retail establishment may obtain a license for the sale of malt beverages and wine for consumption off premises, provided the applicant or licensee has and maintains a grocery related business in combination with the sale of malt beverages and/or wine with a grocery related inventory, exclusive of malt beverages and wine, of the wholesale value of not less than **\$20,000.00**. Any applicant or licensee may, at the discretion of the Council, or upon reasonable demand by any law enforcement officer, be required to produce and exhibit such wholesale receipts supporting the value of the inventory.

CITY OF FOLKSTON BEVERAGE ORDINANCE

- (f.) A retail establishment may obtain a license for the sale of malt beverages and wine for consumption on premises provided the applicant or licensee operates a restaurant with annual sales of food and beverages other than the retail sale of beer and wine in the amount of \$100,000.00. The license for on premises consumption shall be limited to sales and consumption on the premises of such restaurant. In determining annual sales for a restaurant, the amount charged by such restaurant to be considered as annual sales of food and beverages shall be the amount usually charged by other restaurants for a similar menu item in the normal course of business.

For those applicant restaurants which have yet to be open to the public for one year, then such applicant shall deliver to the City pro forma projections of annual sales of food and beverages other than the retail sales of beer and wine, and a menu showing food and beverages offered for sale to the public, and the retail prices for such food and beverages. If the income projections for the sale of food and beverages other than the retail sale of beer and wine exceed \$100,000.00, then such applicant may obtain a license for on premises consumption. At the anniversary date of issuance of the license, such applicant, upon seeking renewal of the license, shall meet the requirements listed in the paragraph immediately preceding this paragraph. If such applicant is awarded an on premises license, then such applicant shall use the menu delivered to the City for the first year of operation. If applicant fails to use such menu, then such license shall be automatically revoked.

In the enforcement of this ordinance, the City shall be entitled, upon request, to the federal and state income tax returns of applicant to substantiate annual sales. Failure to provide such income tax returns shall be grounds for not issuing the license or non-renewal of the license.

- (g) A business primarily engaged in the business of operating a golf course may obtain a license for the sale of malt beverages and wine for consumption on premises, provided the applicant or licensee operates a golf course with annual sales other than the retail sale of beer and wine in the amount of \$100,000.00. The license for on

CITY OF FOLKSTON BEVERAGE ORDINANCE

premises consumption shall be limited to sales and consumption on the premises of such golf course, including, but not limited to the golf course club house.

- (h) All decisions approving, denying, suspending, or revoking permits or licenses shall be in writing, with the reasons therefore stated and shall be mailed or delivered to the applicant.
- (i) Any applicant aggrieved by the decision of the governing authority regarding a permit or license shall be afforded a hearing before the Council with an opportunity to present evidence and cross-examine opposing witnesses, if such aggrieved person files a notice of appeal with the City Clerk within thirty (30) days after the date of the decision which is appealed.

8. ANNUAL LICENSE FEES

(a) The following annual license fees shall apply for the sale of alcoholic beverages:

- (1) Licenses for the retail sale of malt beverages and/or wine for off-premise consumption shall require an annual license fee of **\$1,000.**
- (2) Licenses for the sale and distribution of malt beverages and/or wine wholesale dealers shall require an annual license fee of **\$0.00**
- (3) Licenses for the retail sale of malt beverages and/or wine for on-premises consumption shall require an annual license fee of **\$500.00.**

- (b) All other forms of the sale of alcoholic beverages is prohibited.
- (c) When a license has been approved and granted, the fee for same shall be paid to the City of Folkston, Georgia by cash, cashier's check, or money order in the full amount of the license fee.
- (d) No licensee shall sell or offer for sale malt beverages or wine by the use of vending machines.

CITY OF FOLKSTON BEVERAGE ORDINANCE

9. LICENSE PERIOD; REFUNDS

All licenses shall be issued for a calendar year. In case of the revocation or surrender of a license before the expiration of such calendar year, the holder thereof shall not be entitled to receive a refund whatsoever.

10. RENEWAL; DENIAL

All licenses granted hereunder shall expire on December 31 of each year and shall be renewed at the option of the Council.

11. EXCISE TAXES

- (a) There is an excise tax imposed, in addition to the excise taxes levied by the state, on malt beverages as follows:
- (1) Where malt beverages, commonly known as tap or draft beer, are sold in a barrel or bulk container, a tax of **\$6.00** on each container sold containing not more than 15 ½ gallons and a proportionate tax at the same rate on all fractional parts of 15 ½ gallons;
 - (2) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, a tax of **\$0.05** per 12 ounces and proportionate tax at the same rate on all fractional parts of 12 ounces.
- (b) There is an excise tax imposed, in addition to the excise taxes levied by the state, on the first sale or use of wine by the package at the rate of **\$0.22** per liter, and a proportionate tax at the same rate on all fractional parts of a liter.
- (c) The payment of taxes and filing of returns or providing of information as outlined by this ordinance shall be made to the City Clerk.
- (d) Said tax shall be paid to the City by each wholesale dealer on all malt beverages and wine sold within the City Limits of the City, no later than the 10th day of each month, based upon the units of beer and wine sold during the previous calendar month by said wholesalers to retailers in said City.
- (e) The wholesale dealer shall keep true and correct records of all sales accompanying the monthly report to the city and said report shall show the exact quantities of malt beverages and/or wine, by size and type of container, and the amount of excise tax collected.

CITY OF FOLKSTON BEVERAGE ORDINANCE

- (f) The Council shall have the right to audit, and to require production of records from each wholesaler supplying retailers in the City Limits of the City, and also from each retailer so supplied.
- (g) Failure to make a timely report and remittance of aforesaid taxes shall render a wholesale dealer liable for a penalty equal to fifty (50%) percent of the total amount due, in addition to the amount due.
- (h) It shall be unlawful for any person to sell at retail or otherwise within the City Limits of the City, any malt beverages or wine, on which the tax required in this ordinance has not been paid to the wholesaler or distributor or to the City of Folkston, Georgia.

12. SALE OF BUSINESS

In the event that an individual, corporation, firm, or partnership sells the business at which a license issued hereunder authorizes the sale of malt beverages and/or wine, such license or licenses shall automatically terminate.

13. TRANSFERS

No license granted hereunder shall be transferable from one person to another. "Person" as used in this paragraph means a natural person, partnership, firm, corporation, or any other form of doing business. Additionally, no license shall be transferred from one location to another.

14. SUSPENSION OR REVOCATION

The following, by way of inclusion but not limitation, shall constitute grounds for suspension and/or revocation by the Council of a license issued under this ordinance:

- (a) Any untrue or misleading information contained or material omissions in the application for a license shall be cause for the denial thereof, and, if any license has been granted under such circumstances, same shall be subject to revocation.
- (b) Should any licensee be convicted or plead guilty or plead nolo contendere to any felony, such license shall be subject to revocation and cancellation by the Council.
- (c) The Council shall have the full power and authority to revoke, refuse to renew, suspend, or place on probation any license to sell malt beverages and wine for violation of any state or federal laws that control the sale or use of alcoholic beverages.

CITY OF FOLKSTON BEVERAGE ORDINANCE

- (d) When a licensee, agent, or employee of the licensee is judged to have violated this Ordinance, said licensee's license shall be suspended for a minimum of thirty (30) days.
- (e) Whenever the state shall revoke, suspend or probate any license to sell any alcoholic beverages at retail, the city license to deal in such product shall thereupon be automatically revoked, suspended, or probated accordingly without any action by the Folkston City Council or any municipal officer.

15. DISPLAY OF LICENSE

The City license shall at all times be posted in a conspicuous place within the building, and if said license is not so posted, said business shall not be authorized to sell alcoholic beverages until same shall be posted.

16. ADVERTISING SIGNS

Licensees at their places of business shall not display outside signs or signs in their windows which advertise either brand, product, or price relating to malt beverages or wine.

17. HOURS, DAYS & CONDITIONS OF SALE

- (a) No retail dealers shall engage in the sale of malt beverages or wine except between the hours of 6:00 o'clock a.m. and 12:00 o'clock midnight on weekdays and Saturdays; and shall not permit the sale of malt beverages or wine on Sundays, Christmas Day or any other day on which state law prohibits the sale of malt beverages and wine. No retail dealers shall engage in the sale of malt beverages or wine on any City, County, State and/or National Election Day. The term election day means that period of time beginning with the opening of the polls (7am) and ending with closing of the polls (7pm).
- (b) The business hours of wholesale dealers shall be the same hours and days as retail dealers are allowed to engage in the sale of malt beverages and wine by the terms of Section 17, Paragraph (a), above.

18. SALE TO MINORS, INCOMPETENTS, AND INEBRIATES

- (a) No malt beverages or wine shall be sold to a minor, as defined under the applicable provisions of Georgia law.

CITY OF FOLKSTON BEVERAGE ORDINANCE

- (b) No malt beverages or wine shall be sold to any intoxicated person, nor shall any intoxicated person be allowed to remain upon the premises of any place of business selling malt beverages or wine.
- (c) No employees of any business selling malt beverages or wine shall work in said place of business while intoxicated and no employees shall drink malt beverages or wine while working and employed in such business.
- (d) No malt beverages or wine shall be sold to any person who is mentally incompetent.
- (e) No retail licensee of the City shall deliver malt beverages or wine other than at the retail licensee's place of business.
- (f) All licensed retailers shall store all malt beverages and wine in their possession only on the premises for which the license was issued.
- (g) Malt beverages shall be received at or delivered to the premises of the retail licensee by no other means than by a conveyance owned and operated by a wholesale dealer with a permit from the City of Folkston to make deliveries in said city.
- (h) Any violation of the provisions of this ordinance shall be grounds for immediate revocation of a license by the Council.

19. DISPLAY OF PRICE

Retailers shall indicate plainly by tags or labels on the bottles or containers or on the shelf immediately below where the containers are placed, or on an exposed sign prominently placed, the price of all malt beverages or wine exposed or offered for sale.

20. PENALTY FOR VIOLATION

- (a) Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 60 days, or both, and in addition may be liable to pay all costs and expenses involved in such case. Each day a violation continues shall be considered a separate offense.
- (b) In addition, thereto and totally separately and distinct therefrom, any violation of any of the provisions of this Ordinance of failure to comply with any of its requirements shall be grounds for immediate suspension or revocation of any and all licenses,

CITY OF FOLKSTON BEVERAGE ORDINANCE

regardless of the number of locations involved, and regardless of whether or not the holder of the license knew or contributed to such violation. It is the intent of this subsection, without limiting the generality of the foregoing, to grant to the Council the right to suspend or revoke any or all licenses held by a licensee when any violation of this Ordinance occurs at any place of business where alcoholic beverages are sold pursuant to a license issued hereunder.

- (c) Any violation of the general statutory law of Georgia pertaining to alcoholic beverages shall be considered a violation of this Ordinance.

21. VIOLATIONS; PROCEDURE

Any violation of this Ordinance that may warrant revocation of a retail license or wholesale license shall be reported by any person to the City Clerk, who shall have the power in her discretion to suspend the license for a period not to exceed ten (10) days pending a hearing before the City Council on the question of whether or not the license shall be revoked for cause. Prior to such hearing before the City Council, the licensed person shall be given three (3) days notice of the time and place of such hearing, and at such hearing shall have every opportunity to present evidence to the City Council which will refute the alleged violation, which will show that there is no cause for revocation. The City Council shall hear all evidence relative to the violation and shall then render a decision as provided in this Ordinance.

22. EFFECTIVE DATE

All terms and provisions of this Ordinance shall be of full force and effect as of September 1, 1993.

23. SEVERABILITY

In the event any section, subsection, or portion of this ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect or invalidate the other sections, subsections, or portions of this ordinance unless it clearly appears that such other parts held to be invalid or unconstitutional, it being the intent in adopting this ordinance that each section, subsection, or portion of this ordinance be enacted separately and independently of each other.

CITY OF FOLKSTON BEVERAGE ORDINANCE

24. REPEALER

All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed

25. AMENDMENT

This Ordinance is subject to amendment by the Council at any time.

Effective Date: September 1, 1993

Amended: January 1, 2002

Amended: September 1, 2003

Amended: January 14, 2019