

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF STONE MOUNTAIN, GEORGIA, CHAPTER 3, ALCOHOLIC BEVERAGES, ARTICLE I, SECTION 3-2, DEFINITIONS, TO REVISE THE DEFINITION OF BREWPUBS; TO CREATE A DEFINITION FOR MICROBREWERY; TO PROVIDE FOR THE OPERATION OF MICROBREWERIES IN ZONED AREAS OF THE CITY AS APPLICABLE; TO PROVIDE PREREQUISIT FOR THE ISSUANCE OF INITIAL PERMIT OR LICENSE TO SELL ALCOHOL; TO OFFER CONSISTENCY WITH STATE LAW IN PROVIDING DEFINITION FOR DISTANCE REGULATIONS RELEVANT TO THE SALE OF ALCOHOL; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, the State of Georgia has recently provided for the sale of beer and malt beverages for consumption on premises and consumption off premises by local breweries in accordance with Chapter 3 of Title 5 of the Official Code of Georgia; and

WHEREAS, the State of Georgia has adopted legislation imposing reasonable restrictions on the quantities of beer and malt beverages produced by local breweries for both on and off premise consumption as those breweries are economic engines and tourism attractions in their respective locals; and

WHEREAS, Chapter 3 of the City of Stone Mountain Code of Ordinances regulates and defines the types of establishments which may engage in the manufacture, distribution, and sale of alcoholic beverages; and

WHEREAS, in accordance with the provisions prescribed in Chapter 3 of Title 5 of the Official Code of Georgia for “brewpubs”, the City revises its definition and prescriptive provisions for “brewpubs”; and

WHEREAS, Section 3-2 of the City of Stone Mountain Code of Ordinances does not provide a definition of the term “microbrewery”;

NOW, THEREFORE, The Council of the City of Stone Mountain hereby ordains the following:

**PART I**

The Council of the City of Stone Mountain hereby ordains that the provisions of Chapter 3, Article I, § 3-2 (Definitions) of *The Code of the City of Stone Mountain, Georgia* shall be deleted in its entirety and a new Section 3-2 shall be inserted in lieu thereof, which new section shall read as follows:

Sec. 3-2. Definitions.

As used in this chapter the following terms shall have the meanings ascribed to them:

*Alcoholic*: Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

*Alcoholic beverage*: All alcoholic, distilled spirits, beer, spirituous liquors, malt beverage, wine, or fortified wine as defined in this section.

*Brew pub:* Any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and ~~solely in draft form~~ packaged sales for consumption off the premises. As used in this chapter, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

*Brewer:* A manufacturer of malt beverages.

Close corporation: A domestic corporation that does not:

- (1) Have more than five (5) stockholders;
- (2) Have a corporation as a shareholder; or
- (3) Have more than one (1) class of stock.

*Distilled spirits* means any alcoholic beverage obtained by distillation or containing more than twenty-four (24) percent alcohol by volume.

*Family* includes any person related to the holder of a license within the first degree of consanguinity or affinity as computed according to civil law.

*Food caterer* shall mean any person who prepares food for consumption off the premises.

*Fortified wine* means any alcoholic beverage containing not more than twenty-four (24) 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, brandy.

*Hotel* means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential. To meet the definition of "hotel" under this chapter the facility must have fifty (50) or more rooms used for sleeping accommodations of such guests and one (1) or more public dining rooms, with an adequate and sanitary kitchen and a seating capacity of at least twenty-five (25) persons, where meals are regularly served to such guests. As used in this section, "seating" shall mean that no more than twenty-five (25) percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two (2) individuals. All sleeping accommodations and dining rooms must be contained in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant in their premises, and the holder of such franchise shall be eligible for a license under the "hotel" classification. At least fifty (50) percent of the receipts of the dining room or rooms shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring in the dining room, including the services of all independent

contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called in the dining room from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 3-74. Receipts for room rentals shall not be included in the calculations.

**Individual:** A natural person not a corporation or a partnership.

**Interest in license:** An individual is deemed to have an interest in a license if:

- (1) He is the owner of the license.
- (2) He is the co-owner of the license.
- (3) He is a partner in any partnership that owns an interest in a license.
- (4) He is a stockholder holding more than five (5) percent of the stock in any corporation and/or is a stockholder in any corporation that has fewer than twenty-five (25) stockholders, which owns an interest in a license.
- (5) He shares in any income or corpus of any trust fund having any interest in a license to sell at retail.

**Licensee:** The licensee for all businesses shall meet the following requirements:

- (1) The licensee shall be at least twenty-one (21) years of age.
- (2) If the business is to be operated by an individual, the licensee shall be that individual.
- (3) If the business is to be operated by a partnership, the licensee shall be an individual who is a partner; or, if all partners are non-individuals, then the licensee shall be an individual who is an officer of any corporation which is a partner, or, an individual who is an officer, manager or agent of any unincorporated entity which is a partner. (4) If the business is to be operated by a corporation, the licensee shall be an officer of the corporation. (5) If the licensee is a resident of DeKalb, Gwinnett, Fulton, Cobb, Rockdale, or Clayton County and a manager of the business who is on the premises on a regular basis, the licensee may also be the license representative of the business. If not, a license representative shall be named in accordance with this chapter.

**License representative:** If a license representative is required, the license representative shall be a resident of DeKalb, Gwinnett, Fulton, Cobb, Rockdale, or Clayton County and a manager of the business who is on the premises on a regular basis.

**Lounge/bar** means a separate room connected with, a part of and adjacent to a restaurant or a room located in hotels as defined herein, and which serves no food.

*Malt beverages* 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 fourteen (14) percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Manufacturer: Any maker, producer, or bottler of an alcoholic beverage. The term also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; and
- (2) In the case of any malt beverages, any brewer; and
- (3) In the case of wine, any vintner.

Meal, regular meal means a meal which is prepared on the premises according to the order of the patron or customer given to a waiter or waitress at the table, booth or counter area where the customer is seated and served by the waiter or waitress at said table, booth or counter area.

Microbrewery means an establishment in which not more than 10,000 barrels of beer or malt beverages are manufactured or brewed on the licensed premises in a calendar year and in which such manufactured or brewed beer or malt beverages may be sold for consumption on the premises and consumption off the premises, subject to the limitations presented in OCGA§ 3-5-24.1. As used in this definition, the term “barrel” shall be defined as set forth in OCGA 3-5.1.

Minor: Any person under the age of twenty-one (21) years.

Package: A bottle, can, keg, barrel, or other original consumer container.

Person: Any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit.

Premises/outlet: A definite enclosed area or other outside area with controlled ingress and egress wherein spirituous liquors, alcoholic beverages, malt beverages, or wine is sold and consumed, or sold therein by the package to be consumed elsewhere.

Private club means a corporation or association organized and existing under the laws of the state, actively in operation within the city prior to the application for a license hereunder, having at least fifty (50) members regularly paying dues, for at least three (3) years prior to application for license, organized and operated exclusively for pleasure, recreation and other non-profitable purpose, no part of the net earnings of which inures to the benefit of any shareholder or member, and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable sanitary kitchen and dining room seating of at least twenty-five (25) persons and equipment and maintaining and using a sufficient number of servants and employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any

profits from the sale of distilled spirits, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body, out of the general revenue of the club. As used in this section, "seating" shall mean that no more than twenty-five (25) percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two (2) individuals. For the purpose of this subsection, tips that are added to the bills under club regulations shall not be considered as profits hereunder. In addition, at least fifty (50) percent of the receipts from the operation of the kitchen and dining room and serving of meals shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 3-74. A private club organized or operated primarily for the selling or serving of alcoholic beverages by the drink shall not be licensed under this chapter, nor permitted to sell or serve such beverages at all. All distance requirements as set forth in this chapter shall apply.

*Private residence* means a house, dwelling or structure wherein not less than one (1), nor more than two (2) families reside and shall not include a mobile home court, an apartment house having facilities for housing more than two (2) families, nor a boarding or rooming house where there are five (5) or more boarders or roomers. Any building occupied as a residence located within an area zoned for business shall not be construed as a private residence.

*Restaurant* means any public place kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served, but not including short order or quick or fast food shops, such place being provided with adequate and sanitary kitchen and dining room seating of at least twenty-five (25) persons, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. Meals shall be served during the normal business hours when the establishment is open to the public and the serving of such meals shall be the principal business conducted, with the serving of distilled spirits, malt beverages and wines to be consumed on the premises as only incidental thereto. As used in this section, "seating" shall mean that no more than twenty-five (25) percent of such seating shall be at a common table or counter area or shall be other than individual tables or booths designed for seating of at least two (2) individuals. As used in this section, "principal business" shall mean that at least fifty (50) percent of the receipts of such business shall come from the sale of food. To be included in the tabulation of receipts for the purpose of this calculation, are all receipts of all persons laboring on the premises, including the services of all independent contractors, performers, servers, entertainers, or other non-employee personnel not to include, however, persons who are called to the premises from other licensed businesses to perform services, repairs or construction on equipment or building premises. For purposes of this section, the calculations of receipts for alcoholic beverages shall be made pursuant to the scheduling of pricing and the regulations contained therein as required by section 3-74.

*Retail consumption dealer:* Any person who sells alcoholic beverages for consumption on the premises at retail.

*Retail package dealer:* Any person who sells malt beverages and/or wine in unbroken packages for consumption off the premises at retail. Such sales must be in connection with sales of other products.

*Sales by the drink* means any person who sells, distilled spirits, malt beverages and/or wine for consumption on the premises at retail only to consumers and not for resale.

*Wholesaler or wholesale dealer*: Any person who sells alcoholic beverages to other wholesale dealers, to retail package dealers, or to retail consumption dealers.

*Wine* means any alcoholic beverage containing not more than twenty-four (24) 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, vermouths, special natural wines, rectified wines, like products and combinations of such beverages. 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 the Code section.

## PART II

The Council of the City of Stone Mountain hereby ordains that the provisions of Chapter 3, Article II, LICENSING, of *The Code of the City of Stone Mountain, Georgia* shall be amended as follows:

1. Delete Section 3-5(d) of Section 3.5 – Consumption prohibited – Open Containers

and,

2. Add new Section 3-5(d) of Section 3.5 – Consumption prohibited – Open Containers

Except as provided in Section 3-47 of this Chapter, it shall be unlawful for any person to consume any alcoholic beverages on premises licensed for the sale of alcoholic beverages by the package. It shall be unlawful for any package licensee to open or break the package of any alcoholic beverages for a purchaser or to permit the consumption of alcoholic beverages on the premises except as provided herein Section 3-47 of this Chapter.

and,

3. Add to Section 3-21 – License required to sell alcoholic beverages.

(a)(9) Microbreweries pursuant to Section 3-47.

and,

4. Add Section 3-47 – **Brewpubs** and Microbreweries.

A. The city clerk may issue license to eating establishments in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and packaged sales for consumption off the premises. As used in this chapter, the term "eating establishment"

means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

- B. The city clerk may issue license to establishments in which not more than 10,000 barrels of beer or malt beverages are manufactured or brewed on the licensed premises in a calendar year and in which such manufactured or brewed beer or malt beverages may be sold for consumption on the premises and consumption off the premises, subject to the limitations presented in OCGA§ 3-5-24.1. For the purposes of this code section and as defined in Chapter 3 of *The Code of the City of Stone Mountain*, such establishments shall be licensed as microbreweries. As The term “barrel”, for the purposes of this code section, shall be defined as set forth in OCGA 3-5.1.

### PART III

The Council of the City of Stone Mountain hereby ordains that the provisions of Chapter 3, Article II, LICENSING, § 3-23 (Supporting documents to be filed with application) of *The Code of the City of Stone Mountain, Georgia* shall be deleted in its entirety and a new Section 3-23 shall be inserted in lieu thereof, which new section shall read as follows:

Sec. 3-23. - Supporting documents to be filed with application.

Those applying for a license shall submit in support of the application for license the following documents;

- (a) A certificate from a Georgia-registered land surveyor showing a scale drawing of the location of the proposed premises and the ~~shortest straight line distance~~ most direct route of travel on the ground from the closest point of the licensed premises to the nearest property line of any residence, church building, alcoholic treatment center building, school building, educational building, school, college building, college campus, or other establishments engaged in the sale of alcoholic beverages located within a radius of six hundred (600) feet of the premises.
- (b) The affidavit of each person whose name appears on an application for a license, pursuant to section 3-22 of this ordinance, swearing that said person has not, within three (3) years prior to the date of the application, been convicted of nor entered a plea of guilty or nolo contendere to any felony, misdemeanor, or other charge relating to the sale, manufacture, distribution, taxability, possession or use of alcoholic beverages or illegal drugs including the offense of driving a motor vehicle under the influence of alcohol or drugs; has not entered a guilty plea or been convicted of a felony or a misdemeanor of a crime opposed to decency and morality.
- (c) A copy of a deed showing the applicant to be the owner of the premises for which the license is sought or a copy of a lease showing any interest the owner of the premises has in the premises for which the license is sought.

- (d) As a prerequisite to the issuance of any such initial permit or license only, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the governing authority submitting the fingerprints.
- (d) As a prerequisite to the issuance of any renewal of permit or license, a certificate of the chief of police of the city certifying that each person, named in an application pursuant to section 3-22 of this chapter, has been investigated and found not to have been convicted of nor to have entered a plea of nolo contendere to any felony, misdemeanor or other charge relating to the sale, manufacture, distribution, taxability, possession or use of alcoholic beverages or illegal drugs within five (5) years prior to the date of the application for license; has not entered a guilty plea or been convicted of a felony or a misdemeanor of a crime opposed to decency and morality. For those applicants, who, within the last five-year period, have resided or do reside in a state other than Georgia, the applicant must furnish a certified copy of a driver history and criminal background history from the state or states in which he/she has resided or resides to the chief of police of the city.
- (e) If the same person is serving as the licensee and the license representative, he/she shall submit an affidavit certifying that he/she is at least twenty-one (21) years of age, a resident of DeKalb, Gwinnett, Fulton, Cobb, Rockdale, or Clayton County and a manager of the business.
- (f) If the licensee is not the license representative, an affidavit from the license representative certifying that he/she is at least twenty-one (21) years of age, a resident of DeKalb, Gwinnett, Fulton, Cobb, Rockdale, or Clayton County and a manager of the business.

#### PART IV

The Council of the City of Stone Mountain hereby ordains that the provisions of Chapter 3, Article III, REGULATION OF PACKAGE SALES, § 3-50 (Sale of package distilled spirits, malt beverages or foreign and domestic conducted in conjunction with other business) of *The Code of the City of Stone Mountain, Georgia* shall be deleted in its entirety and a new Section 3-50 shall be inserted in lieu thereof, which new section shall read as follows:

Except as provided in Section 3-47 of this Chapter, no person shall be allowed to sell at retail packaged malt beverages or foreign and domestic wines unless the same is sold in conjunction with some other kind of business.

#### PART V

Ordinance 2018-03

Page 8 of 9



It is hereby declared to be the intention of the Mayor and City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

PART VI

This ordinance was proposed by Council Member \_\_\_\_\_ with a motion to adopt. Thereafter, the motion was seconded by Council Member \_\_\_\_\_. \_\_\_\_\_ Council Members voted in favor of the motion and \_\_\_\_\_ Council Members voted against the motion.

\_\_\_\_\_  
Mayor Patricia Wheeler

\_\_\_\_\_  
Rhonda Blackmon, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney Joe Fowler

\_\_\_\_\_  
First Read

\_\_\_\_\_  
Second Read