

ORDINANCE NUMBER 2012-1059

AN ORDINANCE AMENDING ORDINANCE NUMBER 2010-956 TO REGULATE THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES WITHIN THE CITY LIMITS OF THE CITY OF BOAZ, ALABAMA

ARTICLE I. IN GENERAL

Section -1. Short title.

This ordinance shall be known and may be cited as the Boaz Alcoholic Beverage Ordinance and shall amend the Sections, terms, conditions, regulations and paragraphs set forth in Ordinance Number 2010-956 to read as herein contained.

Section -2. Purpose.

This ordinance is enacted for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, to a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values, and to the prevention of undesirable persons from engaging in or having any interest in the sale or distribution of alcoholic beverages. This ordinance shall be construed as an exercise by the city of the police power of the state delegated to the city, in the regulation of traffic in alcoholic beverages within the city as provided by State of Alabama Code.

Section -3. Definitions.

Whenever used in this ordinance, the definitions set forth in Code of Alabama, Section 28-3-1 et seq. and in the Alcoholic Beverage Licensing Code (Code of Alabama 1975, section 28-3A-1 et seq.) and the Alabama Table Wine Act (Code of Alabama 1975, Section 28-7-1 et seq.) are hereby adopted by reference, and made a part hereof as if fully set forth herein. In addition thereto, the following terms, unless the context clearly indicates otherwise, shall have the meanings herein specifically ascribed to them:

Alcoholic beverages: Any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half (½) of one (1) percent or more of alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.

Association: A partnership, limited partnership, limited liability company (LLC), or any form of unincorporated enterprise.

Bartender/server: An employee of a retail alcoholic beverage licensee who is directly involved with the opening, mixing, dispensing, serving, or final sale of alcoholic beverages to a customer of the licensed establishment.

Beer, or malt or brewed beverages: Except as otherwise provided in this subdivision, any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one percent or more of alcohol by volume and not in excess of thirteen and nine-tenths percent by volume, by whatever name the same may be called.

Board: The Alabama Alcoholic Beverage Control Board.

Brewpub: Also known as a “microbrewery”, means an eating and drinking establishment which includes the brewing of beer, ale, or malt beverages as an accessory use to a full service restaurant that has been issued a food service certificate by the Marshall or Etowah County Health Departments, depending upon the location of the establishment. Which such establishment shall also comply with the requirements of Section 28-4A-1 et seq., Code of Alabama, 1975, known as the Alabama Brewpub Act.

Business Owner: A person or persons issued a privilege license by the city to conduct routine business.

Carton: The package or container or containers in which alcoholic beverages are originally packaged for shipment to market by the manufacturer or its designated representatives or the importer.

Child development facility: Any child development program or club that promotes extended educational services that is funded partially or completely by federal, state, or local government revenue. (i.e. Head Start Programs, Boys and Girls Club, etc....)

Church: Church shall mean an entire house or structure set apart primarily for use for purposes of public worship, and whose sanctuary is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure is kept for that use and not put to any other use inconsistent therewith.

City: The City of Boaz, Alabama.

City alcohol license fee: A fee charged by the city to a person or persons that has been granted approval by the Alabama Alcoholic Beverage Control Board for the privilege of selling alcoholic beverages within the city limits as herein enumerated and defined.

Container: The single bottle, can, keg, bag, box or other receptacle, in which alcoholic beverages are originally packaged for the market by the manufacturer or importer, and from which the alcoholic beverage is consumed by or dispensed to the public.

Convenience store: Establishment that sells convenience items, snacks, grocery items, gasoline, and/or other motor fuels. A convenience store shall not be considered a package store if no more than twenty-five (25) percent of the floor space, excluding coolers and dry storage area, is dedicated to the public display of alcoholic beverages.

Committee/City of Boaz Alcohol License Review Committee: The city clerk/treasurer, or designated representative; the chief of police, or designated representative; the fire chief, or designated representative; the mayor or designated representative and three (3) members to be appointed by the city council.

Country Club/golf course: A club, public or private, with a minimum of nine (9) holes, operated to provide golf club facilities including the sale of food and alcoholic beverages either in a club building or on the golf course with no minimum meal per day requirements.

Draft or keg beer: Beer or malt or brewed beverages drawn or available to be drawn from a cask, keg or barrel made of metal or plastic and intended to be drawn for sale and dispensed in open containers for consumption on the premises where it is sold or stored.

Distributor: Any person transporting alcoholic beverages in the city for such person's own retail use or for delivery to a retailer whether or not the same is owned by such person.

Engaged in business: A person shall be deemed engaged in business within the corporate limits of the city if that person has a fixed place of business within the corporate limits, or if, pursuant to agreement of sale, expressed or implied, that person delivers any alcoholic beverage, beer or wine within the corporate limits, or if that person performs, within the corporate limits, any act authorized to be done only by the holder of any license issued by the board.

Fixed place of business: Any place where any alcoholic beverage, wine or beer is kept or stored for sale or delivery.

Grocery store: A retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales of alcoholic beverages do not exceed ten (10) percent of its total gross sales and whose floor space is at least three thousand five hundred (3,500) square feet.

Hotel: A building or buildings held out to the public for housing accommodations of travelers or transients, and shall include motel, but shall not include a rooming house or boarding house.

License: A retail alcoholic beverage license or any other license issued by the Alabama Alcohol Beverage Control Board requiring consent and approval of the city council with the

exception of licenses issued by the Alabama Alcoholic Beverage Control Board for the sale of beer.

Licensee: Any person licensed by the city council for the privilege of engaging in a business involved in the sale of alcohol.

Liquor: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverages, or combination of liquors and mixed liquor, a part of which is spirituous, fermented, vinous or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half ($\frac{1}{2}$) of one (1) percent or more alcohol by volume, except beer and table wine.

Manager: An employee of a retail alcoholic beverage licensee who is given the responsibility and authority by the licensee to direct the operation of the licensed establishment, either solely or in conjunction with other similarly designated employees, by directing the activities of other employees of the licensed establishment. Such direction could include, but not be limited to, such responsibilities as assignment of employee tasks, scheduling of employee hours, evaluation of employee performance, and employee hiring or discipline.

Meal: A diversified selection of food some of which is not capable of being consumed in the absence of at least some articles of tableware and which cannot be conveniently consumed while one is standing or walking about.

Minor: Any person under twenty-one (21) years of age, provided, however in the event section 28-1-5 et seq. of the Code of Alabama 1975, shall be repealed or otherwise shall be no longer in effect, thereafter the provisions of section 26-1-1 et seq. of the Code of Alabama 1975, shall govern.

Opened container: A container containing alcoholic beverages, which has been opened or unsealed subsequent to filling and sealing by the manufacturer or importer or a container into which an alcoholic beverage has been poured or dispensed.

Package liquor sales for off-premises consumption: A package liquor store (Class II lounge-liquor license).

Person: A natural person, association of natural persons, partnership, corporation or other legal entity. Whenever used in a provision prescribing a fine or imprisonment, the term "person" shall mean the partners, members, directors or officers of any partnership, association, corporation or other legal entity.

Person in charge (PIC): A person or persons, whether owner, partner, officer, or employee of the alcoholic beverage licensee, who is designated by the licensee as a responsible party for the licensee in ensuring compliance with the law and regulations of the Code of Alabama, Alabama Alcoholic Beverage Control Board, and the ordinances of The City of Boaz as apply to the operation of a business having retail sales of alcoholic beverages.

Privilege license: A privilege license issued by the city to a person or persons to conduct routine business.

Public place: Any place or gathering which the public generally attends or is admitted to either by invitation, common consent or right, or by payment of an admission or other charge, and without limiting the foregoing, shall include any streets, alleys, sidewalks, public easements, or right-of-ways, parking lots designed for use by the general public, public buildings, buildings which are open to the public including but not limited to school buildings or grounds, parks and libraries, places where school related and recreational games or contests are held, any theater, auditorium, show, skating rink, dance hall or other place of amusement or any club, provided that such term shall not mean or include premises which have been duly licensed under the ordinances of the city and the laws of the state for sale or consumption of such beverages and provided that no private gathering is included within the meaning of public place with respect to the owners or occupants of such premises or place or to any persons specifically invited therein; provided, that such term shall not mean or include premises which have been duly licensed by the city for sale thereon of such beverages.

Restaurant, Class I: A reputable place licensed as a restaurant, operated by a responsible person of good reputation, in which a diversified selection of food, refreshments and alcoholic beverages are offered for sale for consumption within the building in which the establishment is located, and which meets the following additional requirements:

- (1) A dining space containing one thousand (1,000) square feet or more on one (1) floor in one (1) room shall have a mandatory Class 1 designation.
- (2) The dining room shall be equipped with tables and chairs accommodating at least fifty (50) persons at one time and adequately air conditioned and heated as appropriate.
- (3) All spaces of a Class I restaurant must comply with the adopted building code occupancy requirements.
- (4) A kitchen separate and apart from said dining area, but adjoining the same, in which food is prepared for consumption by the public and which the food or meals served in said dining area are prepared.
- (5) At least two (2) meals per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods for redecorating.
- (6) Such place shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
- (7) The serving of food or meals shall constitute the principal business of such establishment, with the serving of liquor, malt or brewed beverages, wines or other alcoholic beverages being only an incidental part of the business. During any ninety-day

period, the gross receipts from the serving of meals and food shall constitute at least sixty (60) percent of the total gross receipts of the business. The licensee of such establishment shall maintain separate cash register receipts, one (1) for food and one (1) for liquor, malt or brewed beverages, wine or other alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three (3) years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the city clerk/treasurer, or duly authorized representative, may request.

Restaurant, Class II: A reputable place licensed as a restaurant, operated by a responsible person of good reputation, in which a diversified selection of food, refreshments and alcoholic beverages are offered for sale for consumption within the building in which the establishment is located, and which meets the following requirements:

- (1) A dining space of less than one thousand (1,000) square feet on one (1) floor in one (1) room.
- (2) Said dining room shall be equipped with tables and chairs accommodating a number of persons meeting with all the adopted building code occupancy requirements.
- (3) The dining space shall be adequately air conditioned and heated as appropriate.
- (4) A kitchen separate and apart from said dining area, but adjoining the same, in which food is prepared for consumption by the public and in which the food or meals served in said dining area are prepared.
- (5) At least one (1) meal per day shall be served for each day open.
- (6) Such place shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
- (7) The serving of food or meals shall constitute the principal business of such establishments, with the serving of liquor, malted or brewed beverages, wines or other alcoholic beverages being only an incidental part of the business. During any ninety-day period, the gross receipts from the serving of meals and food shall constitute at least sixty (60) percent of the total gross receipts of the business. The licensee of such establishment shall maintain separate cash register receipts, one (1) for food and one (1) for liquor, malt or brewed beverages, wine or other alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three (3) years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the city clerk/treasurer or duly authorized representative, may request. Examples, without limitation, of a Class II restaurant are as follows:

- a. A place of business meeting all other required criteria which may not be open for all meals of each day;
- b. A place of business meeting all other required criteria which may not be open five (5) days a week;
- c. Delicatessen, dinner theaters, cafe's, eateries, bistros and similar small establishments;
- d. A place of business meeting all other required criteria but also presenting a minimum of nine (9) hole golf course, public or private, who may also sell food and alcoholic beverages on the golf course, with the following exceptions: 1) no minimum meal per day requirement, 2) food sales in any ninety-day period must equal twenty (20) percent of gross revenue of food and beverage operation.

School: A state accredited public or private elementary, intermediate, middle, junior high or senior high school.

Special Events: An event licensed authorizing a responsible organization or a person of good reputation a permit not to exceed 7 days and upon such terms and conditions as the Boaz Alcohol License Review Committee shall prescribe and approved by the Alabama Alcoholic Beverage Control Board to sell alcoholic beverages, table wine, and/or beer.

Table wine: Any wine containing not more than fourteen and nine-tenths (14.9) percent alcohol by volume. Table wine is not liquor, spirituous or vinous.

Unopened container: A container containing alcoholic beverages, which has not been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

Wholesaler: Any person licensed by the board to engage in the sale and distribution of table wine and beer, or either of them, within this state, at wholesale only, to be sold by export or to retail licensees or other wholesale licensees or others within this state lawfully authorized to sell table wine and beer, or either of them, for the purpose of resale only.

Wine: All beverages made from the fermentation of fruits, berries, or grapes, with or without added spirits, and produced in accordance with the laws and regulations of the United States, containing not more than twenty-four (24) percent alcohol by volume, and shall include all sparkling wines, carbonated wines, special natural wines, rectified wines, vermouths, vinous beverages, vinous liquors, and like products, including restored or unrestored pure condensed juice.

Section -4. Location of premises near church or school.

(a) Subject to exceptions contained in this section, no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the building in which the premises are located is less than two hundred (200) feet from any building in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school and child development facility. The aforesaid distance restrictions shall not apply in the following enumerated cases:

(1) On Main Street between Mann Avenue and Bartlett Avenue no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the building in which the premises are located is less than twenty five (25) feet from any building in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school and child development facility.

(2) Where the licensed premises are separated from the church or school by a street or highway having four (4) or more traffic lanes and the minimum distance between the licensed premises and the church or school building is at least one hundred (100) feet.

(3) Where the church or school was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of twelve (12) months, the above restrictions do not apply.

(4) Where the city licensed premise is a grocery store as defined herein.

(5) In the B-2 zoned area described as being bounded on the West by Lackey Street, on the North by Mill Avenue aka Alabama Highway 168, on the South by Billy Dyar Boulevard and on the East by Lucinda Street and as Lucinda Street projects South from Mill Ave to the Northeast corner of lot 1 in Block C of the R. L. McClesky Annex to Boaz, thence South about 335 feet to a branch, creek or ditch; Thence along said branch, creek or ditch in a southwesterly direction to Billy Dyar Boulevard, no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the building in which the premises are located is less than twenty five (25) feet from any building in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school and child development facility.

(6) In any case where the sale of alcoholic beverages would not be allowed because of distance restrictions on buildings being located nearer than the required distance from other buildings in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school or child development facility, the effected church, public or private elementary, intermediate, middle, junior high, or high school or child development facility may waive said restriction in writing by a duly authorized representative or school board.

(b) When measuring from a church or school, the closest exterior wall of the closest building in the church or a school complex wherein an essential function or activity of the church or school is carried on shall constitute the beginning point for measurement. When measuring from city licensed premises, the closest point on the exterior wall of the building occupied by the licensee shall be used for measurement purposes if the building is occupied solely by the licensee; otherwise, such measurement shall be made from the closest point of the licensee's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points on the licensed establishments to the aforementioned defined points on a church or school.

In instances where the council has delegated the authority to make such a determination to an agent, any person aggrieved by the decision of the agent may appeal the agent's decision to the council. Such an appeal must be filed in writing within ten (10) days of the date of the agent's decision and must specify the details of the reason for the appeal. The council shall hold a public hearing on such appeal at its next regularly scheduled meeting, which is at least fourteen (14) days after the appeal is received by the clerk. The aggrieved party shall have the right to address the council and present any relevant evidence and testimony at said hearing. The decision of the council shall be final.

(c) (1) *Sale in B-1. Neighborhood Commercial District.* Any business that is located in a B-1 zone and meets the requirements of that zone after November 6, 2012 and is a neighborhood retail market, grocery store, convenience store or restaurant shall be allowed on-premises sale or off-premises sale of alcoholic beverages provided that business meets the requirements and restrictions in this section.

(2) *Sale in B-2. Community Commercial District, B-3. General Business District and B-4. Central Business District.* Any business that is located in either a B-2, B-3, or B-4 Zone and meets the requirements of that zone after November 6, 2012 shall be allowed on-premises sale or off-premises sale of alcoholic beverages provided that business meets the requirements and restrictions in this section.

Section -5. Maintenance of order; report of violation; certain conduct prohibited.

(a) It shall be the duty of each licensee and of each manager or supervisor at any time charged with the management and supervision of any retail liquor, retail table wine or retail malt or brewed licensed premises, while the same are open to the public, to maintain order upon the premises and to exclude from the premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses or engages in offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned. It shall be the duty of each officer, licensee, manager, or person-in-charge of any retail liquor, retail table wine or retail malt or brewed beverage licensed premises within the city, immediately to make an appropriate report to the police department of the city of each incident involving assault, harassment, disorderly conduct, riot, loitering or any affray, occurring on the licensed premises while said premises are

open for business. It shall further be the duty of said person to make a written report of each of said incidents to the police department of the city and to the local field office of the alcoholic beverage control board within thirty-six (36) hours thereof.

(b) No on-premises licensee shall conduct or allow to be conducted on the licensed premises any form of lewd or indecent entertainment, including but not limited to, male or female strippers, mud (or similar) wrestling, topless or bottomless dancers or waitresses, lewd or indecent dancing, wet "T" shirt contests, or any other sensual or erotic contests, or activities or any kind.

(c) It shall be unlawful for any licensee to make or allow to be made, any noise or sounds of such volume or such nature as to cause annoyance to the residents of the city or to disturb the peace by the making of unnecessary noise.

Section -6. Offenses in public.

(a) It shall be unlawful for any person to drink, sell, serve, dispense or give away, or attempt to drink, sell, serve or give away, any liquor, wine or malt or brewed beverages, while upon any street, alley, sidewalk, public easement, right-of-ways, parking lots designed for use by the general public or in any public building or upon any public property, or while in any other public place in the city. As used in this section, the term "public place" shall mean and include any place or gathering which the public generally attends or is admitted to, either by invitation, common consent or right or by the payment of an admission or other charge, and, without limiting the generality of the foregoing, shall include public parks, city hall, library, school buildings, auditoriums, any store or place of amusement and any high school athletic contest; provided, that such term shall not mean or include premises which have been duly licensed by the city as provided by the Code of Alabama, 1975 or this ordinance.

(b) It shall be unlawful for a business licensed by the city (whether or not the business is licensed to sell or furnish alcohol) to allow patrons, customers, invitees or guest to bring alcoholic beverages onto the licensed premises.

(c) It shall be unlawful for patrons, customers, invitees or guests to bring alcoholic beverages onto premises licensed to do business by the city, whether or not the business is licensed to sell or furnish alcohol.

Section -7. Minors; drunkards, insane persons—Offenses by seller or agent.

(a) It shall be unlawful for any person or for any employee, servant or agent of any person to sell, or offer for sale, any liquor, wine or beer to any person visibly intoxicated, or to any insane person, to any minor, to any habitual drunkard or person of known intemperate habits.

(b) It shall be unlawful for any person to serve to a minor or allow a minor to be served any liquor, beer, or wine in any place where such beverages are sold.

(c) It shall be unlawful for any person who operates any business of selling liquor, beer or wine to allow any liquor, beer or wine to be sold to any minor, or to be consumed by any minor, on the premises where such liquor, beer or wine is sold.

Section -8. Same-Offenses generally.

It shall be unlawful to do or perform any of the acts or things designated as follows:

(1) For any minor person, directly or indirectly, to purchase any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to purchase any of said beverages.

(2) For any minor person to possess or to consume any malt or brewed beverages, any wine or liquor, or any alcohol or intoxicating beverage, or to attempt to purchase any of said beverages.

(3) For any person to sell, furnish, give to or purchase for any minor person any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to sell, furnish, give to or purchase for any minor person any of said beverages.

(4) For any person to hire, employ or allow any person less than twenty-one (21) years of age to serve or dispense alcoholic beverages of any kind. However, this prohibition does not apply when the only license held by the licensee is an off-premises beer license or an off-premises table wine license or combination thereof, and provided there is an adult in attendance at all times. Provided further that persons who are nineteen (19) years of age or older and working as a waiter, waitress, or server may serve alcoholic beverages during normal dining hours in a restaurant which holds an Alcoholic Beverage Control Board restaurant retail license. An employer who employs a person between the age of 19 and 21 to serve alcoholic beverages as provided in the preceding sentence shall be a licensee of the board who has been annually certified as a responsible vendor under the Alabama Responsible Vendor Act as provided in Chapter 10 (commencing with section 28-10-1) of title 28, Code of Alabama, 1975, as amended.

(5) For any minor person, directly or indirectly, to falsely represent that such person is not a minor or is not under twenty-one (21) years of age, by means of which false representation such person buys, receives or otherwise obtains, or attempts to buy, receive or otherwise obtain any malt or brewed beverages, any wine or liquor or any alcoholic or intoxicating beverages.

(6) For any person, directly or indirectly, to falsely represent that a minor person is not a minor or is not twenty-one (21) years of age, by means of which false representation such person aids or abets or attempts to aid or abet, such minor person to buy, receive or

otherwise obtain any malt or brewed beverage, any wine or liquor or any alcoholic or intoxicating beverages.

Section -9. False representation.

It shall be considered a false representation that a minor person is not a minor or is not under twenty-one (21) years of age, if the purchaser fails to disclose that the person making the purchase, obtaining or securing such malt or brewed beverages, or such wine or liquors, or such alcoholic or intoxicating beverages, is a minor person or has not reached the age of twenty-one (21) years.

Section -10. Authorized hours.

(a) Except as otherwise provided herein, it shall be unlawful for any person to buy, give away, sell or serve for consumption on the premises, or drink or consume any alcoholic beverages in any café, lunchroom, restaurant, hotel, dining room, lounge or other public place between the hours of 12:00 a.m. (Midnight) and 7:00 a.m. of any day of the week except Sunday.

(b) It shall be unlawful for any person, except where authorized by local act or general act of local application, to buy, give away, sell, or serve for consumption on the premises, or drink or consume any alcoholic beverage in any café, lunchroom, restaurant, hotel, dining room, lounge, or other public place after the hour of 2:00 a.m. on Sunday and before the hour of 7:00 a.m. on the following Monday.

(c) It shall be unlawful for any on-premises licensee to sell, trade, purchase, barter, or give away any alcoholic beverage between the hours of 2:00 a.m. of any Sunday and 7:00 a.m. of the following Monday and between the hours of 12:00 a.m. (Midnight) and 7:00 a.m. of any other day.

Section -11. Regulation of conduct in clubs, etc.

It shall be unlawful for any person, club, firm or corporation or the officers, members, agents, servants or persons in charge thereof at any club or at any other place to which the public generally resorts or is admitted, which is a liquor, wine or beer licensed place, or any combination thereof, to permit, allow, conduct or condone any of the following:

- (1) Topless or bottomless waitresses, waiters, dancers, servers, performers, or cashier or any lewd or indecent conduct.
- (2) Acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

- (3) Acts, or simulated acts, of caressing or fondling of the breasts, buttocks, anus or genitals.
- (4) Acts involving the displaying of the anus, vulva or genitals.
- (5) Permitting any patron, customer or member to touch, caress or fondle the breasts, buttocks, anus or genitals, or any part of the body or clothing of a performer or entertainer.
- (6) Permitting the showing of films, still pictures, electronic reproductions or other visual reproductions depicting:
 - a. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Any person being touched, caressed or fondled on the breasts, buttocks, anus or genitals.
 - c. Scenes wherein a person displays the vulva or the anus or the genitals.
 - d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above in this section.
- (7) Any employee including but not limited to, waiter, waitress, dancer, entertainer, performer or model employed upon the licensed premises to sit at tables with the customers or members and guests while so employed and during the time that said establishment is open for business.
- (8) Any person at the time employed or engaged on the licensed premises as an entertainer or performer, to also serve as a waiter or waitress while so employed.
- (9) The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the darkened area surrounding the nipple, or the depiction of covered male genitals in a lewd or indecent manner by any waiter, waitress, dancer, entertainer, employee, model or customer.

Section -12. Records; reports.

It shall be the duty of each person subject to the license tax imposed by this chapter to keep full and complete records of all purchases, sales and deliveries of alcoholic beverages, from which records can be readily obtained information as to the correct amount of license tax due the city. As a part of such records, each wholesaler shall keep an individual ledger or card account

for each of his customers, and said ledger or card account shall show the correct name and address of each person to whom any alcoholic beverages are delivered, together with the dates thereof and the number of cases sold or delivered, and each wholesaler shall also keep, as evidence of the foregoing, a receipted delivery ticket signed by each purchaser or by his authorized agent. Each retailer shall keep an individual ledger or card record showing the correct name and address of each person from whom he purchased alcoholic beverages, a delivery ticket showing each such purchase, the date thereof and the number of cases purchased. The aforesaid records shall be kept posted currently and shall be preserved for not less than three (3) years succeeding said calendar year. All of such records shall be open for inspection and audit at the licensed premises within the city during such regular business hours as the city clerk/treasurer, or duly authorized representative, may request. Failure to keep any of the records required by this section, or elsewhere in this chapter, or by any amendment thereto, or refusal to make the same available to the city clerk/treasurer, or duly authorized representative, shall constitute grounds for revocation of any license issued under this chapter. In addition thereto, an annual report, under oath, shall be filed with the city clerk, or duly authorized representative, in January of each year, showing the purchases of the entire year next preceding.

Section -13. Packaging of beverages.

Retail licensees for off-premise sale of individual or packages of six (6) or less alcoholic beverages must place each container thereof in a bag, box or other similar opaque covering prior to the customer's leaving the licensee building used for alcoholic beverage sales.

Section - 14. Advertisement of Alcoholic Beverages

1. It shall be unlawful for any person to display any sign, whether electronic, painted or otherwise, outside of any place of business advertising any alcoholic beverage as enumerated and defined in this Ordinance or as defined in the Code of Alabama, 1975.

2. Billboards advertising any alcoholic beverage are prohibited except for special event advertising as approved by the city council.

Section - 15. Brewpub Regulation

All Brewpub licensees must comply with the requirements of the Alabama Brewpub Act as set forth in Section 28-4A-1 et seq., of the Code of Alabama, 1975, as amended.

Section - 16. Delivery vehicles.

A manufacturer or wholesaler shall deliver any alcoholic beverages in vehicles bearing the required information on each side of the vehicle as required by the board. (Title 28-3A.25-13)

Section - 17. Open containers.

Except as otherwise authorized in specified or designated areas for special events where a Special Events Retail License for on premises consumption has been issued, It shall be unlawful for any person to or allow another person to:

(1) Possess, consume or otherwise use any open container containing alcoholic beverages while upon or along any public place, street, road or highway in the city or while in any automobile or other motor vehicle on or along any public street, road or highway in the city except in the trunk or luggage compartment of a motor vehicle, or while in any other public place in the city.

(2) Possess or use any alcoholic beverages at any public park, municipal playground, municipal recreation facility, municipal building, school playground, and school stadium or school recreational facility.

(3) Possess alcoholic beverages in an open glass, bottle, cup, can, keg, bag or other receptacle not its original container while upon or along any public street, road or highway in the city or while on any automobile or other motor vehicle on or along any public street, road or highway in the city, or while in any other public place in the city.

(4) The above notwithstanding this section shall not apply to any person that has in his or her possession alcoholic beverages in an open container in the passenger area of a motor vehicle of any kind on a public highway or right-of-way of a public highway as defined by Act. No. 2000-670 duly adopted by the Alabama Legislature. State law shall govern in such situations.

Section - 18. Discrimination prohibited.

It shall be unlawful for any alcoholic beverage licensee of the city to discriminate against any person with respect to the sale of any food, beverage, product, cover charge, or admission charge based upon race, color, creed, or sex. It is specifically provided that no alcoholic beverage licensee shall have or permit any entertainment, show, or presentation on the licensed premises to which any person is excluded based upon race, color, creed, or sex. This section shall apply to the licensee, manager, to any person in charge of any licensed premises, and to any employee of the licensee authorizing, permitting, or committing any violation hereof.

Section - 19. Distribution of taxes received from the sale of alcoholic beverages.

One hundred (100%) percent of the revenue generated as a result of taxes imposed on the sale of alcoholic beverages, in the City shall be used for general fund purposes, provided however, such funds shall be held in a separate account by the City Clerk for accountability

purposes for the first year of revenue receipts beginning January 1, 2013. Thereafter, such funds may be allocated in a manner to be determined by the Boaz City Council.

ARTICLE II. LICENSE

Section - 20. Applicability when council approval required.

In those instances where the consent and approval of the City Council is required for an alcoholic beverage license, other than where specified by statute, the application provisions of this ordinance shall apply.

Section - 21. Required; transfer, suspension; display.

(a) It shall be unlawful for any person to have in such person's possession any alcoholic beverages, within the city, for the purpose of sale, or to sell, or keep for sale, or offer for sale, any alcoholic beverages, without having first procured from the city a privilege license and the board a liquor license therefore. Licenses issued under this chapter may not be assigned or transferred. The city is hereby authorized to allow the address for the privileged licensed premises to be changed from one place to another within the city, as the city may determine appropriate; but shall not allow the transaction of business at a place for which the license could not originally have been issued lawfully.

(b) In the event of a change of ownership of a licensed establishment, the current licensee shall be required to file a written statement with the city clerk/treasurer indicating this occurrence prior to either completing the sale of the licensed business, or relinquishing management or financial control of the business operation, whichever occurs first; and additionally, the party to whom the licensed establishment is to be sold must file with the city a completed application for a city license within twenty (20) days of notification to the city of the intent to sell, transfer, or assign the establishment. Upon request of the city clerk/treasurer, or designated representative, any applicant may be requested to produce records of the business or the transaction surrounding the sale of the business to determine the parties involved or the effective date of the transaction. These records include, but are not limited to, lease agreements, land sale agreements, bank statements, stock transfers, minutes of corporate board meetings, and/or purchase invoices. Any failure to produce the requested records, or a determination by the city that the transaction is not in compliance with the requirements specified herein will result in an immediate forfeiture of the city license upon notification of this determination and an opportunity for a public hearing by the city council.

(c) Licenses issued by the city shall be deemed to expire, terminate, or otherwise be void when there is a substantial change in ownership in a licensed establishment, or when a licensed establishment is leased, rented, or abandoned, or when possession is otherwise surrendered to another party or parties. Provided, however, that an applicant for a new license at a currently

licensed establishment may be allowed to operate the establishment for a period not to exceed thirty (30) days if said applicant is in compliance with subsection (b) of this section. In such case, the original licensee shall continue to be responsible for the conduct, operation and city tax liabilities of the establishment until such time as a license is issued by the city in the new licensee's name.

(d) Upon the death of an individual licensee, sale of the licensed establishment, or temporary closing of the licensed establishment for a period in excess of thirty (30) days, the city license to sell alcoholic beverages shall be immediately returned to the city clerk/treasurer, or designated representative, to be held pending the reopening of the business. In the event the temporary closing is due to any renovation, remodeling, or repair to the licensed premises, the licensee shall provide written evidence of compliance with applicable building, fire, and health codes to the city clerk/treasurer, or designated representative, prior to the release of the license.

(e) For the purposes of this section, and to assist in defining a substantial change in ownership, the sale or transfer of twenty-five (25) percent or more of a corporation's stock shall constitute a substantial change in ownership of the licensee.

(f) The city shall have the right to revoke any privilege license issued by the city for any violation of this chapter or the Alabama Alcoholic Beverage Control Board rules and regulations, after notice and opportunity for a hearing before the city council.

(g) Every privilege license issued by the city to conduct normal and routine business and the license issued by the board shall be conspicuously and constantly exposed under a transparent substance in an area visible to the general public on the licensed premises.

Section - 22. City of Boaz Alcohol License Review Committee.

(a) There is hereby created for the purpose of assisting and advising the city council in the review of applications for city licenses, and inquiry and recommendation concerning complaints or disciplinary action of a city licensee, a committee to be known and designated as the Alcohol License Review Committee to be composed as follows: The city clerk/treasurer, or designated representative; the chief of police, or designated representative; the fire chief, or designated representative; the mayor, or designated representative and three members to be appointed by the city council and who shall serve on such committee for the term of the City Council. The city clerk/treasurer, or designated representative, shall act as liaison to the city council on behalf of the committee. The committee shall hold meetings as are necessary to consider appeals by applicants for alcohol licenses, resolve matters of public concern, or make inquiry into the compliance of a current city licensee with this ordinance and other provisions of this ordinance.

(b) The committee shall review the information contained within the application for an alcoholic beverage license and shall submit a written recommendation to the city council concerning the approval or disapproval of the application before the applicant is submitted to the

board. Such written recommendation shall be given to the city council within forty five (45) days from the time the application for an alcoholic beverage license is received by the City Clerk. If the committee fails to make a recommendation within such allowed time frame, the City Council may act upon its own recommendation.

(c) The committee shall investigate complaints, or initiate its own inquiry, into conditions which may violate provisions of this ordinance concerning the operation of any establishment licensed by the city to conduct routine business in the selling of alcoholic beverages as allowed by state law.

(d) The committee shall have the authority to require the licensee to produce records for its review as related to the operation, ownership, or management of the licensed establishment. The committee shall promulgate procedures for documenting and investigating complaints concerning the operation of an alcoholic beverage establishment as well as establishing a method of documenting violations of this chapter by a licensee or its employees.

(e) The committee shall not hinder the police department's ability to enforce criminal violations or city ordinances.

(f) The review committee shall operate under bylaws created and approved by the city council.

Section - 23. Application for lounge, club, restaurant, etc., license; deposit.

Each applicant seeking the consent and approval of the city council for a lounge retail liquor license, a club retail liquor license, a restaurant retail liquor license or other license issued by the Alabama Alcoholic Beverage Control Board shall make application to the city council as required in this chapter. Said application shall be upon an appropriate form supplied by the city clerk, or duly authorized representative, and shall be signed and verified by oath or affirmation by the licensee, if a natural person, or in the case of a partnership, association or unincorporated enterprise, by a partner, limited liability company (LLC) or managing member thereof, or in the case of a corporation, by an executive officer thereof. The applicant shall deposit with the city clerk the required application fee that includes the background check with the Alabama Bureau of Investigation and the amount of publication costs to be incurred hereunder upon filing the application.

Section - 24. Application for retail liquor license.

Application for retail liquor license shall be made in accordance with city procedures.

Section - 25. Review of applications.

(a) The application shall be submitted to the Alcohol License Review Committee for review and recommendation as required by section 22.

(b) In the event of approval by the city council, the city clerk/treasurer, or designated representative, shall be responsible for ensuring that written approvals of the police, building, fire and health, and city clerk/treasurer, or designated representative, are included as a part of the application indicating the satisfactory compliance with the applicable requirements for each respective department.

(c) Subsequent to the city council approval and the applicant's compliance with subsection (b) of this section, the city clerk/treasurer, or designated representative, is hereby authorized to indicate, and communicate in writing, the city's approval for the issuance of a license for the applicant to the state Alcoholic Beverage Control Board. The method for the communication of this approval by the city shall be determined based on the most current mechanism indicated as acceptable by the Alcoholic Beverage Control Board field office supervisor responsible for Marshall County or Etowah County, dependent upon where the applicant's business shall be located.

Section - 26. Public notice.

Upon receipt of an application, together with the results of the investigation and recommendations made thereon, the city clerk/treasurer shall cause notice to be published one time in a newspaper of general circulation published in the city, or, if there be none, in a newspaper published in the county, or if there be neither, by posting such notice at the city hall and at four other locations in the city, stating that the application will be considered at the next regular meeting of the city council, which notice must be published as aforesaid at least six (6) days in advance of the next regular meeting of the city council, and further stating the time and place that same is to be considered and that at such time and place all interested persons may appear at said meeting and be heard for or against the application. Such publication shall be at the applicant's expense.

All applicants seeking consent and approval for a city license shall certify to the city that notice of the application stating the day and time it is to be heard and considered at said public hearing by the city council has been circulated to residents, real property owners and businesses within five hundred (500) feet of the property sought to be licensed by leaving a copy of said notice at each such residence or business with some person over eighteen (18) years of age at such residence or at each business by having mailed such notice to each such residence, real property owner, and/or business at least one (1) week before the public meeting at which it is expected to be heard and considered by the city council.

Section - 27. Consideration of application.

In rendering a decision on each application for a license under this chapter, the city council shall consider, among others, the following factors:

- (1) The effects upon residents, real property owners and businesses within five hundred (500) feet of the property for which a license is sought.
- (2) The character and reputation of the applicant, each partner, member, officer, member of board of directors, landlord, bartender and manager.
- (3) The criminal court records of the applicant, each partner member, officer, and member of the board of directors, landlord, bartender and manager.
- (4) The location of the premises for which a liquor license whose place is sought and the number of establishments presently holding liquor licenses whose place or places of business are within five hundred (500) feet of the property for which a liquor license is sought.
- (5) The compliance by applicant, each partner, member, officer, member of the board of directors, landlord and manager with the laws of the state and ordinances of the city.
- (6) The recommendation of the City of Boaz Alcohol License Review Committee. Any recommendation factor must be grounded in the protection of the health, safety, and public welfare of the community.

Section - 28. Filing fee.

There is hereby required, as a filing fee to cover the costs of processing and investigating each application filed with the city for a city license of any kind or class under this ordinance, the sum of three hundred dollars (\$300.00), and the city clerk or duly authorized representative shall not accept any application for any such license not accompanied by said payment to the city along with the payment of the publication costs, as required in this ordinance. The city shall retain the filing fee to cover the expenses of processing and investigating said application, whether or not said application results in approval or denial, provided however, that the filing fee for a special events license application shall be seventy-five dollars (\$75.00).

Section - 29. City alcohol license fees.

(a) Each person licensed by the board, who shall engage in the alcoholic beverage, liquor, beer or wine business within the corporate limits, prior to engaging in such business shall

pay to the city, for the privilege of so engaging in business, an annual privilege business license fee and further license fees as established below.

(1) *Beer wholesaler license.* Each person licensed as a beer wholesaler under section 28-3A-1 et seq. of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state beer license by the State of Alabama. (Two hundred seventy-five dollars (\$275.00) section 28-3A-21 of the 1975 Code of Alabama). In addition, each licensee will remit to the city clerk/treasurer, on forms provided by such clerk, each month, the privilege or excise tax levied on the sales of beer by the "Uniform Beer Tax Act," Acts 1982, No. 82-344. Wholesale beer dealers and distributors will not sell to any retail outlet that does not have a current city license.

(2) *Wine wholesaler license.* Each person licensed by the board as a wine wholesaler under section 28-3A-1 et seq., Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state wine license by the State of Alabama. (Two hundred seventy-five dollars (\$275.00) section 28-3A-21 of the 1975 Code of Alabama). In addition, each licensee will remit to the city clerk/treasurer, on forms provided by such clerk/treasurer, each month, the privilege or excise tax levied on the sales of table wine by the "Alabama Table Wine Act," Acts 1980, No. 80-382. Wholesale wine dealers will not sell to any retail outlet that is not properly licensed by the city.

(3) *Beer and wine wholesale license.* Each person licensed as a beer and wine wholesaler under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state wine and beer license by the State of Alabama. (Three hundred seventy-five dollars (\$375.00) section 28-3A-21 of the 1975 Code of Alabama). In addition, each licensee will remit to the city clerk/treasurer, on forms provided by such clerk/treasurer, each month, the privilege or excise tax levied on the sales of beer by the "Uniform Beer Tax Act," Acts 1982, No. 82-344. In addition, each licensee will remit to the city clerk, on forms provided by such clerk, each month, the privilege or excise tax levied on the sales of table wine by the "Alabama Table Wine Act." Wholesale beer and wine dealers will not sell to any retail outlet that is not properly licensed by the city.

(4) *Warehouse license.* Each person licensed by the board to receive, store or warehouse alcoholic beverages within the state for transshipment inside and outside the state shall pay to the city an annual license fee of five hundred dollars (\$500.00).

(5) *Club retail liquor license.* Each person licensed by the board to operate a club, Class I or II, under section 28-3A-1 et seq. of the Code of Alabama 1975, shall pay to the city an annual license fee of one thousand five hundred dollars (\$1,500.00) if a Class I club, and two thousand dollars (\$2,000.00) for a Class II club. In addition, to said stated license fee, each person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate calendar month, for the privilege of having engaged in such business, an additional license tax of ten (10%) percent of gross receipts of such

business derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(6) *Lounge retail liquor license.* Each person licensed by the board to operate a retail lounge under section 28-3A-1 et seq., and especially as set forth under section 28-3A-11, of the Code of Alabama 1975, shall pay to the city an annual license fee of five thousand dollars (\$5,000.00). In addition to said stated license fee, each person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate calendar month, for the privilege of having engaged in such business, an additional license tax of ten (10) percent of gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month. Notwithstanding the foregoing, each person licensed by the board to operate a retail lounge as set forth in section 28-3A-11 of the Code of Alabama, 1975, which retail lounge is located in a hotel having fifty (50) or more rooms shall pay to the city an annual license fee of one thousand five hundred dollars (\$1,500.00) plus an additional license tax of ten (10%) percent of gross receipts as set forth above.

(7) *Retail liquor for off-premises consumption. (package store)* Each person licensed by the board to sell liquor, table wine, and beer at retail for off-premises consumption under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of three thousand dollars (\$3,000.00). In addition to said stated license fee, each person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate calendar month, for the privilege of having engaged in such business, an additional license tax of ten (10%) percent of gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(8) *Restaurant Class I retail liquor license.* Each person licensed by the board to sell alcoholic beverages in connection with the operation of a restaurant under section 28-3A-1 et seq., of the Code of Alabama, 1975, shall pay to the city an annual privilege license fee of one thousand five hundred dollars (\$1,500.00). In addition to the stated license fee, each such person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of ten (10) percent of the monthly gross receipts of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(9) *Restaurant Class II retail liquor license.* Each person licensed by the board to sell alcoholic beverages in connection with the operation of a restaurant Class II shall pay to the city an annual privilege license fee of seven hundred fifty (\$750.00) dollars. In addition to the stated license fee, each such person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of ten (10) percent of the monthly gross receipts of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(10) *Retail table wine license for off-premises consumption.* Each person licensed by the board to sell table wine for off-premises consumption under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state wine license by the State of Alabama. (Seventy-five dollars (\$75.00) section 28-3A-21 of the 1975 Code of Alabama.)

(11) *Retail table wine license for on-premises and off-premises consumption.* Each person licensed by the board to sell table wine at retail for on-premises and off-premises consumption under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state wine license by the State of Alabama, unless such person shall have paid for an on-premises liquor license. (Seventy-five dollars (\$75.00) section 28-3A-21 of the 1975 Code of Alabama.)

(12) *Retail beer for on-premises and off-premises consumption.* Each person licensed by the board to sell beer for on-premises and off-premises consumption under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state beer license by the State of Alabama. (Seventy-five dollars (\$75.00) section 28-3A-21 of the 1975 Code of Alabama.)

(13) *Retail beer for off-premises consumption.* Each person licensed by the board to sell beer for off-premises consumption under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of fifty (50) percent of the amount charged for state beer license by the State of Alabama. (Seventy-five dollars (\$75.00) section 28-3A-21 of the 1975 Code of Alabama.)

(14) *Special retail liquor license for on-premise consumption.* Each person who has obtained a special retail liquor license from the board under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city a license fee of two hundred fifty dollars (\$250.00) when the period of use is thirty (30) days or less. Such person shall pay to the city a license fee of three hundred fifty dollars (\$350.00) when the period of use is more than thirty (30) days. In addition to said stated license fee, each such person shall pay to the city fifty (50) percent of the amount charged for state wine license by the State of Alabama. In addition to the stated license fee, each such person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of ten (10%) percent of the monthly gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(15) *Special events retail license for on-premise consumption.* Each person or organization who has obtained a special events retail liquor license from the board under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city a license fee of two hundred dollars (\$200.00). No such license shall be issued for a period in excess of seven (7) days. Such alcoholic beverages as are authorized by the board may be sold.

All applications for special event licenses shall be filed with the city clerk/treasurer at least one hundred twenty (120) days in advance of the event for which a license is sought. In addition to the stated license fee, each such person or organization shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of ten (10%) percent of the gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such special event license period.

The following, shall apply to applicants for a special event retail liquor license:

1. Submit the required filing fee.
2. Receive affirmative recommendation to the city council by the City of Boaz Alcohol Review Committee.
3. Receive approval from the city council; and
4. Pay the required license fee.
5. Each applicant/organization shall not be allowed to apply for more than five (5) special event licenses in any one (1) calendar year.
6. No sale of alcohol shall be allowed to be sold during a special event on any Sunday after 2:00 a.m.
7. Shall be required to purchase the alcoholic beverages from a wholesale licensee of the board.
8. Must define the location and area of sale and consumption of all alcoholic beverages and must confine such consumption to the specific designated area.

(16) *Manufacturer license.* Each person who has obtained a manufacturer license from the board under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of three hundred fifty dollars (\$350.00).

(17) *Importer license.* Each person who has obtained an importer license from the board under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of three hundred fifty dollars (\$350.00).

(18) *Liquor wholesale license.* Each person who has obtained a liquor wholesale license from the board under section 28-3A-1 et seq., of the Code of Alabama 1975, shall pay to the city an annual license fee of seven hundred fifty dollars (\$750.00).

(19) *Brewpub License.* Each person licensed by the board to brew and sell beer in connection with the operation of a brewpub under section 28-4A-1 et seq., of the Code of Alabama, 1975, shall comply with the requirements for a Restaurant Class I licensee and shall pay to the city an annual privilege license fee of one thousand five hundred dollars (\$1,500.00). In addition to the stated license fee, each such person shall pay to the city, on or before the fifteenth day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of ten (10) percent of the monthly gross receipts of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

(a) The term "gross receipts," as used in subsection (a) above, shall not include any so-called "additional license tax" levied by the city under the provisions of this section that are based solely on gross sales and that are directly passed on by the licensee/seller to the consumer/purchaser.

(b) The stated annual license fee levied by the schedule under the foregoing provisions shall be due January 1 of each year and shall be delinquent after January 31 of the year for which such license is due, and a penalty of ten (10) percent of the license amount shall be collected during February through March; twenty (20) percent during April through June; thirty (30) percent during July through September; and forty (40) percent during October through December. In addition, such person must pay a two hundred dollar (\$200.00) citation fee. There shall be no prorating of any license fee because of having operated only a part of a calendar year, except as required under state law, nor shall any rebate be allowed upon revocation, suspension, abandonment or surrender of such license before the expiration thereof. All additional license taxes levied by said schedule shall be due the fifteenth day of the calendar month specified in each levy and shall be delinquent if not reported and paid by such date.

(c) Every person subject to this article may take a discount in an amount equal to two (2) percent of all taxes paid to the city under the provisions of this article, provided the reports are made and the taxes paid before the same become delinquent hereunder. If reports are not filed within the time herein provided and the taxes not paid on the dates herein provided for, such person shall pay to the city the full amount of tax together with interest at the rate of three (3) percent per month, or fraction thereof, from the date the payment of such tax became delinquent; a penalty of fifteen (15%) percent of the amount of the tax; and a citation fee of one dollar and fifty cents (\$1.50); which interest, penalty, and citation fee must be paid by such person.

Section - 30. Additional Requirement for Lounge Retail Liquor Licensees.

Every person (licensee) granted a Lounge Retail Liquor License shall, in addition to the requirements of Section 29(a)(6) hereof, be subject to the following requirements:

a. Such establishment shall be operated by a responsible person of good reputation, and shall, in addition to the sale of alcoholic beverages, including beer and wine, offer a diversified

selection of food and refreshments for sale for consumption within the building in which the establishment is located, and which meets the following requirements:

- (1) A dining space on one (1) floor in one (1) room.
- (2) Said dining room shall be equipped with tables and chairs accommodating a number of persons meeting with all the adopted building code occupancy requirements.
- (3) The dining space shall be adequately air conditioned and heated as appropriate.
- (4) A kitchen separate and apart from said dining area, but adjoining the same, in which food is prepared for consumption by the public and in which the food or meals served in said dining area are prepared.
- (5) At least one (1) meal per day shall be served for each day open.
- (6) Such place shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
- (7) The serving of food or meals shall constitute a significant portion of the business of such establishments, with the serving of liquor, malted or brewed beverages, wines or other alcoholic beverages also may be a significant part of the business. However, during any ninety-day period, the gross receipts from the serving of meals and food shall constitute at least forty (40) percent of the total gross receipts of the business. The licensee of such establishment shall maintain separate cash register receipts, one (1) for food and one (1) for liquor, malt or brewed beverages, wine or other alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three (3) years. All such records shall be available for inspection and audit at the licensee's premises within the city during regular business hours as the city clerk/treasurer or duly authorized representative, may request.
- (8) a. Notwithstanding any other provision contained in this ordinance, and except for such establishments located within a hotel containing 50 rooms or more, no such establishment, facility or property shall be authorized for on-premises sale of alcoholic beverages where the building in which the establishment or premises are located is less than five hundred (500) feet from any building in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school or child development facility.

b. Notwithstanding any other provision contained in this ordinance, for such establishments located within a hotel containing 50 rooms or more, no such establishment, facility or property shall be authorized for on-premises sale of alcoholic beverages where the building in which the establishment or premises are located is less than two hundred (200) feet from any building in which there is a church, or a public or private elementary, intermediate, middle or junior high, high school or child development facility.

Section - 31. Alcohol License Tax Bond.

1. It shall be the duty of each person subject to a license fee, privilege tax, or excise tax imposed by this ordinance to deliver to the city a bond conditioned to promptly pay to said city all such amounts as are required to be paid to said city under the terms of this ordinance, or any amendment hereto, and any other amount which may become due to the city for any licensee fee, privilege tax, or excise tax becoming due after the date of the bond. The amount of the bond shall be five thousand dollars (\$5,000.00) for each location of the person's business that is engaging in activity with respect to which a license or excise tax under this ordinance is imposed. Such a bond must remain in place continuously during the entire period that the person is subject to a license fee, privilege tax, or excise tax imposed by this ordinance.

2. Each such bond shall be guaranteed by a minimum of two Sureties, if the sureties are individuals or entities not in the business of issuing indemnity bonds. Such Sureties not licensed to issue indemnity bonds shall be approved by the Boaz Alcohol License Review Committee. If the Surety is a company licensed to issue indemnity bonds, only one such surety will be required.

3. With respect to those instances where the consent and approval of the city council is required with respect to the issuance of an alcoholic beverage license, such consent and approval will not be granted where the bond described in this section has not been delivered to the City Clerk-Treasurer, or the Clerk-Treasurer's designated representative. Moreover, where such a bond is required by this section, no privilege license shall be granted, renewed, maintained, or allowed to be transferred where the City Clerk-Treasurer, or his authorized representative, has not received or does not hold a valid and binding bond as required by this section.

Said bond shall be posted in substantially the same manner and form as shown below:

CITY OF BOAZ

ALCOHOL ORDINANCE TAX OR FEE BOND

That _____, hereinafter called Principal, and _____ and _____, as Surety or Sureties, are held and firmly bound unto the City of Boaz, Alabama, a municipal corporation, in the sum of Five Thousand (\$5,000.00) Dollars, for the

payment of which well and truly to be made we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing is such, however, that WHEREAS, as one of the conditions precedent to the consent and approval of the City Council with respect to the issuance of an alcoholic beverage license, or to the granting, renewal, maintenance, transfer or allowance of a privilege license, the Principal is required to deliver to the City of Boaz, Alabama, a bond conditioned to promptly pay to said City all such amounts as are required to be paid to said City under the terms of Ordinance No. 2012-1059, or any amendment thereto, and any other amount which may become due to the City of Boaz, Alabama for any license fee, privilege tax, or excise tax imposed by said ordinance and becoming due after the date of the bond.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal shall faithfully comply with all the laws and ordinances of the City of Boaz now in force, or that may hereafter be adopted, and will promptly pay to said City of Boaz, Alabama all such amounts as may become due as required under the terms of the above license, then this obligation is to become null and void; otherwise to remain in full force and effect.

If the Surety shall so elect, this bond may be cancelled by providing notice through certified mail to the City Clerk-Treasurer of the City of Boaz, or his designated representative. This notice shall provide for 30 days' notice to the City of Boaz and this bond shall be deemed cancelled at the expiration of said 30 days; the Surety remaining liable, however, subject to all the terms, conditions, and provisions of this bond, for any acts covered by this bond which may have been committed by the Principal up to the date of such cancellation.

IN WITNESS WHEREOF, the said Principal and the said Surety have hereunto set their hands and seals at Boaz, Alabama on this the _____ day of _____, 20____.

Principal (SEAL)

Surety (SEAL)

BY: _____
Title

BY: _____
Title

Section - 32 through 40. Reserved.

Section -41. Reports of business done and tax due.

The person liable for any license tax or other tax imposed by this chapter shall file with the city clerk/treasurer or duly authorized representative, on or before the final date on which the tax may be paid without a penalty, such report or reports in such form as the city clerk/treasurer or duly authorized representative, may prescribe, evidencing the amount of business done and

the amount of license tax or other tax due thereon, together with full payment for any tax liability. Any failure to comply with this section shall be declared unlawful and be punishable as such.

Section -42. Alabama Responsible Vendor Act.

Section 28-10-1 through 28-10-8, Code of Alabama (1975) are hereby adopted by reference, and made a part hereof as if fully set forth herein.

(1) Each business requesting to sell alcoholic beverages within the city must obtain business certification through the Alabama Responsible Vendor Program within thirty (30) days of license approval by the board.

(2) Upon a business becoming de-certified from the Alabama Responsible Vendor Program, the city privilege license shall be suspended or revoked for a time no more than one (1) year.

ARTICLE III. VIOLATIONS; PUNISHMENTS

Section -43. Violations declared misdemeanor.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, unless otherwise provided herein, shall, upon conviction or adjudication of guilt, be punished in accordance with the provisions of the Code of Alabama, 1975, as amended and any other ordinances of the City of Boaz, Alabama.

Section -44. Application of municipal code and ordinances.

Ordinance No. 2006-889, or any amendments, revisions or substitutions therefore, of the ordinances of the City of Boaz, Alabama, shall apply in all respects to any violations of this ordinance.

Section -45. Severability.

The provisions of this ordinance are severable so that if any provision hereof is declared unconstitutional, void, or invalid by a court of competent jurisdiction, all other provisions hereof shall not be affected by such declaration and shall remain in full force and effect as though the unconstitutional, void or invalid provision had not been included in the ordinance as originally adopted.

Section -46. Conflicts with state statutes.

This ordinance shall be deemed cumulative with and supplemental to any and all statutes of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes of the State of Alabama. Any provision hereof in conflict with any provision of any state statute shall be construed so as to be in harmony with the same where possible and otherwise to be subordinate to and superseded by the provisions of such state statute.

Section -47. Effective date.

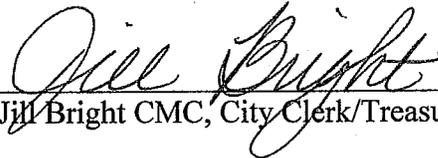
This ordinance shall become effective immediately after posting and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BOAZ,
ALABAMA ON THE 17th DAY OF DECEMBER, 2012.**

ATTEST:



Tim Walker, Mayor



Jill Bright CMC, City Clerk/Treasurer