

ORDINANCE NUMBER 2011 - 09

**AN ORDINANCE REGULATING
THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES
WITHIN THE CITY OF CULLMAN, ALABAMA,
PROVIDING LICENSING PROCEDURES AND
ESTABLISHING PUNISHMENT FOR VIOLATIONS**

BE IT ORDAINED by the City Council of the City of Cullman, on this the 11th day of January, 2011, as follows:

- Sec. 4-31 Short Title
- Sec. 4-32 Purpose
- Sec. 4-33 Definitions
- Sec. 4-34 Zoning
- Sec. 4-35 Location of On-Premises Sales near Church, School, or Licensed Day
Care
- Sec. 4-36 Additional Regulations Concerning the Sale of Retail Liquor for On-
Premises and Off-Premises Consumption
- Sec. 4-37 Requirements of Financial Responsibility by Licensees

- Sec. 4-38 Through 4-50 - Reserved

- Sec. 4-51 Maintenance of Order; Report of Violation
- Sec. 4-52 Offenses in Public
- Sec. 4-53 Sales to Visibly Intoxicated Persons
- Sec. 4-54 Misrepresentation of Age of Minor
- Sec. 4-55 Authorized Hours
- Sec. 4-56 Same Offenses - Generally
- Sec. 4-57 Regulation of Conduct in Clubs, Etc.
- Sec. 4-58 Records' Reports
- Sec. 4-59 Advertising
- Sec. 4-60 Signage

- Sec. 4-61 Through 4-70 - Reserved

- Sec. 4-71 - Packaging of Beverages
- Sec. 4-72 Open Containers
- Sec. 4-73 Delivery Vehicles

	Sec. 4-74	Discrimination Prohibited
	Sec. 4-75	Alcohol Review Committee (A.R.C.) Created; Powers and
Procedures		
	Sec. 4-76	Alcohol License Tax Bond
	Sec. 4-77	Applicability When Council Approval Required
	Sec. 4-78 Through Sec. 4-90 Reserved	
	Sec. 4-91	Required; Transfer; Suspension; Display
	Sec. 4-92	Application for Lounge, Club, Restaurant, Etc., License
Deposit		
	Sec. 4-93	Application for Retail Liquor License
	Sec. 4-94	Review of Application
	Sec. 4-95	Public Notice
	Sec. 4-96	Consideration of Application
	Sec. 4-97	Filing Fee
	Sec. 4-98	City Alcohol License Fees.
	Sec. 4-99	Reports of Business Done and Tax Due.
	Sec. 4-100	Alabama Responsible Vendor Act
	Sec. 4-101	Appeals and Waivers
	Sections 4-102 Through 4-110	
	Sec. 4-111	Violations Declared Misdemeanor
	Sec. 4-112	Application of Municipal Code and Ordinances
	Sec. 4-113	Severability
	Sec. 4-114	Punishments
	Sec. 4-115	Conflicts
	Sec. 4-116 Through 4-149 Reserved	
	Sec. 4-150	Effective Date

Sec 4-31. Short Title

This ordinance shall be known and may be cited as the “Cullman Alcoholic Beverage Ordinance”.

Sec. 4-32. 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 alcoholic beverages. This Ordinance shall be construed as an exercise by the City of the police power of the State delegate to the City in the regulation of traffic in alcoholic beverages within the City as provided by State of Alabama Code.

Sec. 4-33. Definitions

Whenever used in this Ordinance, the definitions set forth in the Alcoholic Beverage Licencing Code (Code of Alabama 1975, section 28-3A-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 shall have the meanings herein specifically ascribed to them:

Adult: A person twenty-one years of age or older.

Alcohol 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.

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 Wholesale License: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman which allows the wholesale storage and dispensing of only beer.

Beer and Wine Wholesale License: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman which allows the wholesale storage and dispensing of only beer and wine.

Brew Pub: Also known as a “microbrewery,” means an eating and drinking establishment which includes the brewing of beer, ale, or malt beverage as an accessory use to a full-service restaurant that has been issued a food service certificate by the Cullman County Health Department. The amount of beverage produced on the premises cannot be less than 240 barrels or exceed 2,400 barrels in any calendar year. No more than 30 percent of the product brewed may be sold off-premises in either bottles or kegs. A loading and unloading area must then be provided for. A full-service restaurant as defined in Sec. 4-33 herein must occupy at least 51% of the gross floor area of the brew pub and restaurant combined.

Board: means the Alabama Beverage Control Board.

Business License: A license issued by the City of Cullman allowing the holder to conduct routine business within the City’s limits.

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

Carton: Packaging of single serving containers in groups of a four or six-unit container and the package, container, or containers in which alcoholic beverages are originally packaged for shipment to market by the manufacturer, its designated representative, or the importer.

Case Lot: Packaging of containers in 6, 12, 18, or 24 containers such as beer, wine, wine coolers, liquor or 12 ounces or less of malt liquor.

Child Development Facility: Any child development program that promotes extended educational services that is funded partially or completely by Federal, State or local government revenue (i.e., head start programs, Boys & Girls Club, etc.). The definition of “licensed child development facility” shall also include any type of group daycare programs, for children or adults, including nursery schools for children under minimum age for education in public schools, parent

cooperative nursery schools, playgroups for preschool children, after school care for school children, and programs which provide organized learning and educational experiences, provided such establishments are licensed by the State and conducted in accordance with State requirements. For the purpose of this definition, the following shall also apply to daycare center, nursery schools, or preschools:

1. “Babysitting care” means a dwelling which provides occasional custodial care to children for periods of less than 24 hour who do not reside within the residence of the person providing the care. Babysitting care is not necessarily provided in exchange for compensation.

2. “Home based daycare” means a licensed daycare that regularly provides daycare for not more than 12 children or adults in the provider’s home in the family living quarters for periods of less than 24 hours.

3. “Mini daycare center” means a place, other than the home of the provider, which provides regular custodial care for one to 12 children for periods of less than 24 hours.

4. “Daycare center” means a place, other than the home of the provider, which provides regular custodial care for 12 or more children for periods of less than 24 hours.

5. “Preschool/nursery school” means a place, other than the home of the provider, which provides regular custodial care and/or organized learning and educational experiences for children.

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.

Club I: A non-profit corporation or association organized or formed in good faith by authority of law which must have at least 150 paid-up members. It must be the owner, lessee, or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature or the like, but not for pecuniary gain (non-profit), and the property as well as the advantages of which belong to all the members and which maintains an establishment provided with

special space and accommodations where, in consideration of payment, food, with or without lodging, is habitually served. The club shall hold regular meetings, continue its business through officers regularly elected, admit members by written application, investigation and ballot and charge and collect dues from elected members and/or a club fitting the above definition whose main purpose is not the sale or consumption of food and/or alcohol that would exist without the sale of alcohol.

Club II: A corporation or association organized or formed in good faith by authority of law which must have at least 100 paid-up members. It must be the owner, lessee, or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature or the like. The club shall hold regular meetings, continue its business through officers regularly elected, admit members by written application, investigation and ballot and charge and collect dues from elected members.

City Alcohol License Fee: A fee charged by the City of Cullman to a person or persons that have been granted approval by the Alabama Alcoholic Beverage Control Board and the City of Cullman Alcohol License Review Committee for the privilege of selling alcoholic beverages within the City limits of Cullman as herein enumerated and defined.

Committee, a.k.a. the City of Cullman's Alcohol Review Committee (A.R.C.): The City Clerk/Treasurer or designated representative as approved by the City Council; the Chief of Police or designated representative as approved by the City Council; the Fire Chief or designated representative as approved by the City Council; the Mayor or designated representative, and three other members to be appointed by the City Council.

Container: The single bottle, can, keg, bag, 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 such as but not limited to snacks, grocery items, gasoline, and/or other motor fuels. A convenience store shall not be considered a package store if no more than 25% of the floor space excluding coolers and dry storage area, is dedicated to the public display of alcoholic beverages and the total square footage of the premises is less than 10,000 square feet.

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

Dry County: A county in which alcoholic beverages may not be legally sold.

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

Factory Lots: Group packaging in a carton or cases or 12 ounces or less of malt liquor originating at the factory or its designated representative or importer.

Fixed Place of Business: A permanent structure 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 does not exceed 10% of its total gross sales and whose floor space is at least ten thousand (10,000) square feet.

Kitchen: A designated area within a premises which is used for the cooking and preparation of meals. The area must be fully staffed and open the same hours as the business and issued a food service certificate by the Cullman County Health Department.

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

Licensing Board: means the Committee/City of Cullman's Alcohol Review Committee (A.R.C.) as defined herein above.

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

Liquor Store: An establishment from which a portion of its sales are comprised of liquor sold in unopened containers and/or a store operated by the ABC Board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

Liquor Wholesale License: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman issued to wholesale alcohol beverage warehouses to sell liquors other than beer and wine only to the Alcohol Beverage Control Board.

Lounge I: An establishment which sales retail liquor to the public for off-premises consumption, to a package store or to an ABC store.

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.

Merchandise Store With Incidental Table Wine Sales: means an establishment principally operated for the sale of apparel, home decor, art, jewelry, antiques, or specialty gift merchandise, and that also offers the sale of a diversified selection of both domestic and imported table wine but not beer or liquor, in unopened containers for off-site consumption. Such establishments may apply for a license for retail table wine for off-premises consumption. The sale of alcoholic beverages shall be no more than 10% of its gross annual sales and no more than 15% of the public floor space may be dedicated to the public display of alcoholic beverages.

In addition, the owner of a merchandise store with incidental table wine sales may apply with the City for an on-premises wine license for the purpose of offering up to two wine tastings per month of their product. With respect to these tastings, no alcohol shall be served free of charge. In such case, the establishment may also apply for a retail table wine license for on-premises consumption.

Minor: A person who is under the age of twenty-one years of age.

Opened Container: shall mean a container containing alcoholic beverages which has been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

Package: The bag, box, or plastic holder of group single or multiple serving containers.

Package Store: An establishment from which 99% of its sales are comprised of liquor sold in unopened containers and/or a store operated by the ABC Board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

Person: A natural person, association of natural person, 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 an 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 Cullman as apply to the operation of a business having retail sales of alcoholic beverages.

Private Event: An event for specific people or groups usually attended by invitation and not open to the general public.

Privilege License: A privilege license issued by the City of Cullman 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 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 and issued a food service certificate by the Cullman County Health Department, 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 where refreshments and alcoholic beverages are offered for sale for consumption within the building in which the establishment is located that meets the following additional requirements:

1. A dining space containing 1,000 square feet or more on one floor in one room shall have a mandatory Class I designation.
2. The dining room shall be equipped with tables and chairs accommodating at least 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, fire and life safety codes.
4. A fully equipped and operational kitchen separate and apart from the dining area in which meals are prepared for consumption by the public and served in said dining area adjoining the kitchen area that is open and fully staffed during the same hours as any portion of the establishment that has been issued a food service certificate by the Cullman County Health Department.
5. The licensee shall maintain and operate the kitchen and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable business hours. Exceptions shall be made where there is a known and provable shortage or temporary unavailable supply of a food item.
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 90 day period, the gross receipts from the serving of meals and food shall constitute at least 60% of the total gross receipts of the business. The licensee of such establishment shall maintain a daily cash register summary differentiating the receipts for the sale of food and 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 A.R.C., any elected official, or a duly authorized representative may request.

Restaurant, Class II: A reputable place licensed as a restaurant and issued a food service certificate by the Cullman County Health Department, 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 that meets the following requirements:

1. A dining space of less than 1,000 square feet on one floor in one 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, fire and life safety codes.

3. The dining space shall be adequately air conditioned and heated as appropriate.

4. A fully equipped and operational kitchen separate and apart from the dining area in which meals are prepared for consumption by the public and served in said dining area which adjoins the kitchen area that is open and fully staffed during the same hours as any portion of the establishment.

5. The licensee shall maintain and operate the kitchen and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable business hours. Exceptions shall be made where there is a

known and provable shortage or temporary unavailable supply of a food item.

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 90 day period, the gross receipts from the serving of meals and food shall constitute at least 60% of the total gross receipts of the business. The licensee of such establishment shall maintain a daily cash register summary differentiating the receipts for the sale of food and 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 A.R.C., any elected official, or a 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, café's, eateries, bistros, and similar small establishments.

D. A place of business meeting all other required criteria but also presenting a minimum of nine hole golf course, public or private, who may also sell food and alcoholic beverages on the golf course, with the following exceptions:

i. No minimum meal per day requirement; and
ii. Food sales must be available during hours of operation.

Retail Beer License for On-Premises: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman which allows the retail sale of only beer for on-premises consumption.

Retail Beer License for Off-Premises Consumption: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman which allows the retail sale of only beer for off-premises consumption.

Retail Liquor License for Off-Premises Consumption: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman to Lounge I, package stores, and ABC stores which allow the retail sale of liquor for off-premises consumption.

Retail Table Wine License for Off-Premises Consumption: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman to wine stores which allows the retail sale of table wine for off-premises consumption.

Retail Table Wine License for On-Premises Consumption: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman to restaurants or special event licensed activities or specialty beverage stores which allows the retail sale of table wine for on-premises consumption.

Restaurant Retail Liquor License: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman to Class I or Class II restaurants to sell alcohol for on-premises consumption.

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 for a permit not to exceed 7 days and upon such terms and conditions as the ARC shall prescribe and approved by the ABC Board to sell alcoholic beverages, table wine, and/or beer.

Specialty Beverage Store: An establishment principally operated for the sale of a diversified selection of both domestic and imported beer and/or wine, but not liquor, in unopened containers for off-site consumption. Such establishments may also apply for a retail table wine for off-premises consumption, and retail beer license for off-premises consumption.

In addition, the owner of a specialty beverage store may apply with the City for an on-premises beer and wine license for the purpose of offering up to no more than two wine/beer tastings per month for their product. With respect to these

tastings, alcohol shall be served free of charge.

1. Wine Tastings:

A. All participants in any wine tastings shall be of legal drinking age;

B. Table wine tastings shall be of a structured nature and not exceed a period of two continuous hours.

C. All table wine shall be dispensed from original containers prepared by the manufacturer with labels visible to the consumer. Individual samples furnished to a consumer shall contain no more than two ounces of the table wine.

D. Table wine tastings may be conducted by table wine wholesalers on the licensed premises. The wholesaler shall be permitted to conduct wine tastings utilizing its own personnel with the assistance from retail personnel if desired. At all tastings, the wholesale or retail licensee shall provide for purposes of the promotion, a person with a sufficient knowledge of the product(s) involved to conduct said tastings.

E. All costs of a wine tasting, including the cost of the wine, shall be borne by the licensee on whose premises the wine tasting is held.

In such cases, the establishment may also apply for a retail table wine license for on-premises consumption and a retail beer license for on-premises consumption.

2. Beer Tastings

A. All participants in any beer tastings shall be of legal drinking age.

B. All beer shall be dispensed from original containers prepared by the manufacturer with labels visible to the consumer. Individual samples furnished to a consumer shall contain no more than two ounces of the beer.

C. Beer tastings may be conducted by beer wholesalers on the licensed premises. The wholesaler shall be permitted to conduct beer tastings utilizing its own personnel with the assistance from retail personnel if desired. At all tastings, the wholesale or retail licensee shall provide for purposes of the

promotion, a person with a sufficient knowledge of the product(s) involved to conduct said tastings.

D. Beer tastings shall be limited to products which have not been available or have not been widely distributed within the State of Alabama for a period of more than one year immediately preceding the date of the beer tasting.

E. All costs of a beer tasting, including the cost of the beer, shall be borne by the licensee on whose premises the beer tasting is held.

Special Events Retail License for On-Premises Consumption: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman issued to vendors or sponsors of an event which shall take place for a period of less than 30 days which allows retail alcohol for on-premises consumption.

Specialty Wine and Beer Establishment: An establishment principally operated for the sale of a diversified selection of domestic beer, imported beer, domestic wine, and imported wine. Where otherwise permitted by the Alabama Beverage Control Board, such establishments must apply for and hold the following licenses:

1. Retail table wine license for off-premises consumption;
2. Retail beer license for off-premises consumption;
3. Retail table wine license for on-premises consumption; and
4. Retail beer license for on-premises consumption.

All sales for off-premises consumption must be in sealed, unopened containers.

A specialty wine and beer establishment must also offer incidental food service including the sale of food for on-premises consumption and the sale of containerized, gourmet foods for off-premises consumption, but not in such a manner that the establishment will constitute a Class I or Class II Restaurant.

A specialty wine and beer establishment may offer up to two tasting events per month of their product.

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

Warehouse/Warehousing: A premises used for the storage of alcoholic beverages whether beer, wine, or liquor licensed by the State Alcohol Beverage Control Board/City of Cullman for wholesale dispensing.

Warehouse License: An alcohol license issued by the State Alcohol Beverage Control Board/City of Cullman which allows to warehouse wine for the wholesale distribution.

Sec. 4-34. Zoning

The specific alcoholic beverage business shall only be located in the following zones under the conditions as set out in this Ordinance and the Zoning Ordinance of the City of Cullman:

AG-1 (Agriculture 1):

1. Special Events

B-1 (Business District):

1. Those types of businesses as enumerated and allowed in CBD subject to distance separation requirements as enumerated in Sec. 4-35.
2. Special Events

B-2 (Business District):

1. Those types of businesses as enumerated and allowed in CBD
2. ABC Stores
3. Retail liquor sales for off-premises consumption
4. Club I
5. Special Events

B-3 (Business District):

1. Warehouses
2. Special Events
3. Those types of businesses as enumerated and allowed in CBD subject to distance separation requirements as enumerated in Sec. 4-35.

CBD (Central Business District):

1. Class I Restaurant

2. Class II Restaurant
3. Convenience Store licensed to sell beer and table wine for off-premises consumption
4. Grocery Stores licensed to sell beer and/or table wine for off-premises consumption
5. Specialty Beverage Store with respect to beer and/or table wine
6. Merchandise Store with incidental table wine sales
7. Specialty wine and beer establishments
8. Person holding a special event retail license for on-premises consumption during license permit only
9. Clubs established before the passage of this Ordinance
10. Special Events

E-1 (Entertainment District)

1. Club II
2. Special Events

M-1 (Manufacturing District):

1. None

M-1P (Manufacturing District):

1. Warehouses
2. Distribution facilities

M-2 (Manufacturing District):

1. None

R-1 (Residential District):

1. None except Club I established before the passage of this Ordinance

R-2 (Residential District):

1. None except Club I established before the passage of this Ordinance

R-3 (Residential District):

1. None except Club I established before the passage of this Ordinance

R-4 (Residential District):

1. None except Club I established before the passage of this Ordinance

Sec. 4-35. Location of On-Premises Sales near Church, School, or Licensed Day Care

1. When measuring from a church, school, or licensed child development facility, the closest exterior wall of the closest building in the church, school, or child development facility complex wherein an essential function or activity of the church, school, or licensed child development facility is carried on shall constitute the beginning point for measurement. When measuring from the facility or property, the closest point on the exterior wall of the building occupied by the person seeking to sell alcoholic beverages shall be used for measurement purposes if the building is occupied solely by that person; otherwise, such measurement shall be made from the closest point of the person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points.

2. On-Premises Sales:

A. In addition to all other regulations and restrictions, no facility or property located in CBD, B-1, B-3, E-1 and B-2 shall be authorized for on-premises sale of alcoholic beverages except for the following:

- i. Class I Restaurants licensed to sell alcoholic beverages for on-premises consumption;
- ii. Class II Restaurant licensed to sell alcoholic beverages for on-premises consumption;
- iii. Specialty wine and beer establishment; and
- iv. Persons holding a special events retail license for on-premises consumption.

B. In addition to all other regulations and restrictions, no club in a residential zone or in a planned development district not already established before the passage of this Ordinance shall be authorized for on-premises sale of alcoholic

beverages unless the same has been recommended as a conditional use by the City of Cullman Planning Commission as may be required by the City of Cullman Zoning Ordinance and adopted by the City Council.

C. In addition to all other regulations and restrictions, and subject to exceptions contained in this section, no building shall be authorized for on-premises sale of alcoholic beverages where the facility or property is less than 250 feet from any church, public or private elementary, intermediate, middle, junior high, or high school, or licensed child development facility. The aforesaid distance restriction in this subsection shall not apply in the following enumerated cases:

i. Where the building is located in the CBD zoning district and the closest exterior wall of the building on the lot frontage is not less than 50 feet from the church, school, or licensed child development facility.

ii. Where the church, school, or licensed child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months; or

iii. Where the establishment upon the facility or property is a grocery store as defined herein.

3. OFF-PREMISES SALES

A. In addition to all other regulations and restrictions, no facility or property located in E-1, B-1, B-3, and B-2 (with the exception of Alabama Beverage Control stores and retail liquor sales for off-remises consumption), shall be authorized for off-premises sale of alcoholic beverages except for the following:

i. Convenience stores licensed to sell beer and/or table wine for off-premises consumption;

ii. Grocery stores licensed to sell beer and/or table wine for off-premises consumption;

iii. Specialty beverage stores with respect to beer and/or table wine;

iv. Merchandise store with incidental table wine sales;

- v. Specialty wine and beer establishment; and
- vi. Persons holding a special events retail license for on-premises consumption.

B. In addition to all other regulations and restrictions and subject to the exceptions contained in this Subsection, no facility or property shall be authorized for off-premises sales of alcoholic beverages when the facility or property is less than 500 feet from any church, public or private elementary, intermediate, middle, junior high or high school, or licensed child development facility. The aforesaid distance restriction in this Subsection shall apply in CBD, B-1, B-2 except Alcohol Beverage Control stores and retail liquor sales for off-premises consumption, but shall not apply in the following enumerated cases:

i. Where the facility or property is located in CBD zoning district and the facade on the lot frontage of the facility or property is not less than 50 feet from the church, school, or licensed child development facility.

ii. Where (i) the facility or property is separated from the church, school, or licensed child development facility by a street or highway having four or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four of the traffic lanes that separate the licensed premises from the church, school, or licensed child development facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes a turning lane, service land, and/or hazard lane, and (iii) the minimum distance between the licensed premises and the church, school, or licensed child development facility building is at least 500 feet;

iii. Where the church, school, or licensed child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months; or

iv. Where the establishment upon the facility or property is a grocery store as defined herein.

SEC. 4-36: ADDITIONAL REGULATIONS CONCERNING THE SALE OF RETAIL LIQUOR FOR ON-PREMISES AND OFF-PREMISES CONSUMPTION

1. Sale of retail liquor for off-premises consumption.

A. In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the same is situated in any zoning district other than a B-2 and E-1 zone. The sale of retail liquor for off-premises consumption shall only be permitted in a B-2 and E-1 zone subject to such other rules and regulations as prescribed by law, such as conditional use regulations prescribed by the City's zoning ordinance.

B. In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the facility or property is less than 1,500 feet from another liquor store or other facility or property that (i) has previously been authorized for the sale of retail liquor for off-premises consumption, and (ii) is currently licensed for the sale of retail liquor for off-premises consumption. When measuring from these facilities or properties, the closest point on the exterior wall of the buildings occupied by the persons selling or seeking to sell alcoholic beverages shall be used for measurement purposes. If a building is not solely occupied by that person, then the measurement shall be made from the closest point of that person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points and set out in Section 4-35.A. A state liquor store (i.e., a store operated by the Alabama Alcoholic Beverage Control Board which offers the retail sale of liquors for off-premises consumption) shall not be construed as "another facility or property" pursuant to this subsection.

C. In addition to all other regulations and restrictions and subject to exceptions contained in this subsection, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the building in which the premises are located is less than 1,500 feet from any church, public or private elementary, intermediate, middle, junior high, or high school or licensed child development facility. The method of measurement shall be the same method as found in Section 4-35.A. The aforesaid distance restriction in this subsection shall not apply where (i) the premises is separated from the church, school, licensed child development facility, childcare, or child boarding facility, by a street or highway having four or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four of the traffic lanes that separate the premises from the church, school, licensed child development facility, childcare, or child boarding facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes

a turning lane, service land, and/or hazard land, and (iii) the minimum distance between the premises and the church, school, licensed child development facility, childcare, or child boarding facility building is at least 250 feet. The aforesaid distance restriction in this subsection shall also not apply where the facility or property is a grocery store as defined herein or where the church, school, licensed child development facility, childcare, or child boarding facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months.

2. Sale of Retail Liquor for On-premises Consumption.

A. In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the same is situated in any zoning district other than an E-1 zone. The sale of retail liquor for on-premises consumption shall only be permitted in an E-1 zone subject to such other rules and regulations as prescribed by law, such as conditional use regulations prescribed by the City zoning ordinance. This subsection shall not apply to Class I or Class II restaurants, hotels, or clubs.

B. In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the facility or property is less than 1,500 feet from another facility or property that (i) has previously been authorized for the sale of retail liquor for on-premises consumption, and (ii) is currently licensed for the sale of retail liquor for on-premises consumption. When measuring from these facilities or properties, the closest point on the exterior wall of the buildings occupied by the persons selling or seeking to sell alcoholic beverages shall be used for measurement purposes. If a building is not solely occupied by that person, then the measurement shall be made from the closest point of that person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points and set out in Section 4-35.A. This subsection shall not apply to Class I restaurants, Class II restaurants, hotels, or clubs.

C. In addition to all other regulations and restrictions, and subject to exceptions contained in this subsection, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the building in which the premises are located is less than 1,500 feet from any church, public or private elementary, intermediate, middle, junior, or high school, or licensed child development facility. The method of measurement shall be the same

method as found in Section 4.35.A. The aforesaid distance restriction in this subsection shall not apply where (i) the premises is separated from the church, school, or licensed child development facility by a street or highway having four (4) or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four of the traffic lanes that separate the premises from the church, school, or licensed child development facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the premises and the church, school, or licensed child development facility building is at least 250 feet. The aforesaid distance restrictions in this subsection shall also not apply where the church, school, or licensed child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months. This subsection shall not apply to Class I restaurants, Class II restaurants, or hotels.

Sec. 4-37. Requirements of Financial Responsibility by Licensees

1. All retail licensees of the City of Cullman shall comply with the following conditions of requirements of Financial Responsibility:

A. Prior to the issuance of any retail alcoholic beverage license after January 1, 2011, or renewal of existing alcoholic beverage license after January 1, 2011, each applicant must provide the City of Cullman with sufficient information that it has liquor liability (dram shop) insurance coverage in the amount of at least \$300,000.00. This information may be shown as follows:

i. A coverage sheet from a reputable insurance company showing that the applicant has liquor liability (dram shop) insurance of at least \$300,000.00 for each incident and that coverage is valid from January 1st to December 31st.

2. No application for a new retail license or the renewal of an existing retail license shall be approved unless the application shows affirmatively that the requirements contained herein are met. Failure to comply with the requirements contained herein shall be cause for suspension or revocation of the license.

3. A retail licensee shall notify the City of Cullman at any time that its net worth falls below \$300,000.00 or that its liquor liability insurance is canceled. In either of such events, the licensee must comply with the requirements of this

Financial Responsibility regulation within 15 days or alternatively, the said licensee shall be suspended or revoked. Any licensee which has been suspended for failure to abide by this regulation shall not be reinstated until compliance with Section 1 is met.

Sec. 4-51. Maintenance of Order; Report of Violation

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 drinking 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, 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 assault, assault and battery or 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 36 hours thereof.

Sec. 4-52. Offenses in Public

1. 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, libraries, school buildings, auditoriums, any store or place of amusement and any 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.

2. It shall be unlawful for a business licensed by the City of Cullman (whether or not the business is licensed to sell or serve alcohol) to allow patrons, customers, invitees, or guests to bring alcoholic beverages onto the licensed premises.

3. It shall be unlawful for patrons, customers, invitees, or guests to bring alcoholic beverages onto a premises licensed to do business by the City of Cullman whether or not the business is licensed to sell or furnish alcohol.

Sec. 4-53. Sales to Visibly Intoxicated Persons

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.

Sec 4-54. Misrepresentation of Age of Minor

It shall be unlawful for any person, directly or indirectly, to falsely represent that a minor person is not a minor or is not under 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.

Sec 4-55. Authorized Hours

It shall be unlawful for any person, whether a liquor, wine, or beer licensee to sell, offer for sale, or to serve, dispense, or offer for reward, or to offer to serve or dispense for reward any liquor, wine, or beer, or to allow the consumption of any alcoholic beverages on the licensed premises or restaurants except during the following hours:

Monday from 8:00 a.m until 11:00 p.m.

Tuesday from 8:00 a.m. until 11:00 p.m.

Wednesday from 8:00 a.m. until 11:00 p.m.

Thursday from 8:00 a.m. until 11:00 p.m.

Friday from 8:00 a.m. until 12:00 p.m. midnight

Saturday from 8:00 a.m. until 12:00 p.m. midnight

However, it shall not be unlawful from New Year's Eve until 2:00 a.m. on New Years Day (January 1st) of any year.

Sec. 4-56. 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, liquor, or any alcoholic 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 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 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 that there is an adult over the age of 21 in attendance at all times. However, a person who is 19 years of age or older and working as a waiter, waitress, or server may serve alcoholic beverages as provided in the preceding sentence if said person is 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 he or she is not a minor or is not under 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 under 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.

7. It shall be a violation of this Ordinance for any vendor to sell for off-premises consumption (i) alcoholic beverages in containers and packaging different from the container and packaging as purchased from the wholesaler, or (ii) beer, wine cooler or any other alcoholic beverage dispersed in single consumption containers except in packaging and units as provided by the wholesaler, i.e., 4-pack, 6-pack, 12-pack, 18-pack case, etc., (iii) alcoholic beverages of less than case size not in a bag or box of opaque covering prior to the customer leaving the licensed building used for alcoholic beverage sales.

8. It shall be unlawful to sell a container of any pre-mixed or pre-packaged beverages containing alcohol and any other stimulants such as caffeine.

Sec. 4-57. 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 breasts 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.

Sec. 4-58. 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 to the City. As a part of such records, each wholesaler shall keep an individual ledger or card account for each record, 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 or she 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 with the City during such regular business hours as the A.R.C., any elected official, or a duly authorized representative, may request. Failure to keep any of the records required by this section or elsewhere in this Ordinance or by any amendment thereto, or refusal to make the same available to the A.R.C., any elected official, or a duly authorized representative, shall constitute grounds for revocation of any license issued for revocation of any license issued under this article. In addition thereto, in January of each year, each person who is obligated to pay a privilege or excise tax to the City based on the gross receipts of the business (pursuant to Section 6-79) shall file an annual report, made under oath, showing the gross receipts of the business for each month during the prior calendar year.

Sec. 4-59. Advertising

No sign of any kind advertising table wine shall be displayed outside any retail place of business. Radio, television, newspaper, magazine, billboard, and commercial vehicles used for transportation of table wine may be used to advertise table wine in accordance with the Rules and Regulations issued by the Alabama Beverage Control Board. No other advertising of table wine shall be permitted except in accordance with the Rules and Regulations issued by the Alabama Beverage Control Board, provided, however, that there shall be no advertising of table wine on billboards located in “dry” counties as defined.

Sec. 4.60. Signage

It shall be unlawful for any person, business, or premises selling beer, wine and/or

alcohol for on-premises and/or off-premises consumption to display any sign (electronic, painted, or otherwise) containing the English name, brand name, or any phonetic spelling or misspelling of an English name for any alcoholic beverage as enumerated and defined in this Ordinance (including any type of illustration or image depicting an alcoholic beverage) outside anyplace of business or in any window or door visible from the outside of the business. For the purposes of this Ordinance, any sign attached directly to any part of a window or its surroundings (including windows integrated into doors) or any sign placed within 36 inches of the window with its content visible from the outside will be considered to be in the window. Furthermore, this Section shall be read in conjunction with the sign regulation Ordinance No.: 2011-06. Any inconsistency with any prior Ordinance which is in conflict with the terms and conditions of this Section or contrary to its intent shall be superseded by this Section to the extent of the conflict.

Sec. 4-71. 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.

Sec. 4-72. Open Containers

1. It shall be unlawful for any person to or allow another person to:

A. 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 case of transporting in the trunk or luggage compartment of a motor vehicle, or while in any other public place in the City.

B. Possess or use any alcoholic beverages at any public park, municipal playground, municipal recreation facility, school playground, school stadium, or school recreational facility excluding licensed facilities except as specifically authorized by the City Council.

C. Possess alcoholic beverages in an open glass, bottle, cup, can, keg, bag, or other receptacle not in its original container upon or along any public 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 or while in any other public place in the City.

D. 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. 200-670 duly adopted by the Alabama Legislature. State law shall govern in such situations.

Sec. 4-73. 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 Alabama Beverage Control Board. (Title 28-3A.25-13)

Sec. 4-74. 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.

Sec. 4-75. Alcohol Review Committee (A.R.C.) Created; Powers and Procedures

1. 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 City of Cullman's Alcohol Review Committee (A.R.C.) to be composed as follows:

- A. City Clerk/Treasurer or designated representative approved by the Council;
- B. Chief of Police or designated representative approved by the Council;

- C. Fire Chief or designated representative approved by the Council;
- D. City Mayor or designated representative; and
- E. Three other members to be appointed by the City Council.

The City Clerk/Treasurer or designated representative shall act as liaison to the City Council on behalf of the A.R.C. The A.R.C. 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 Chapter.

2. The A.R.C. 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 Alcohol Beverage Control Board.

3. The A.R.C. shall investigate complaints or initiate its own inquiries 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.

4. The A.R.C. 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 A.R.C. 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 Ordinance by a licensee or its employees.

5. The A.R.C. shall operate under bylaws created and approved by the City Council.

Sec. 4-76. 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 article 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 article, 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 \$10,000.00 for each location of the person's business that is engaging in activity with respect to which a license or excise tax under this article 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 article.

2. 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 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 the 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 follows:

STATE OF ALABAMA
CITY OF CULLMAN

ALCOHOL ORDINANCE TAX OR FEE BOND

That _____ hereinafter called Principal and _____ as Surety are held and firmly bound unto the City of Cullman, Alabama, a municipal corporation, in the sum of \$ _____ 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, firm 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 Cullman, 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.:2011-09 or any amendment thereto, and any other amount which may become due to the City of Cullman, 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 Cullman now in force, or that may hereafter be adopted and will promptly pay to said City of Cullman, 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 Cullman or the designated representative. This notice shall provide for 30 days' notice to the City of Cullman 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 Cullman, Alabama, on this the ____ day of _____, 20_____.

Principal

Surety

*By: _____
Its: _____*

*By: _____
Its: _____*

Sec. 4-77. 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 Chapter shall apply.

Sec. 4-91. Required; Transfer; Suspension; Display

1. 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 to keep for sale, or to 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 to new ownership. 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.

2. 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 complete application for a City license within 20 days of notification to the City of the intent to sell, transfer, or assign the establishment. Upon request of the A.R.C., any elected official, or a duly authorized 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.

3. 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 30 days if said applicant is in compliance with subparagraph (2) 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.

4. 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 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.

5. 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 or person shall constitute a substantial change in ownership of the licensee.

6. 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's rules and regulations after written notice posted at the licensee's premises and an

opportunity for a hearing before the City Council.

7. Every privilege license issued by the City to conduct normal and routine business and 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.

8. Each business that changes its name shall provide to the City Clerk/Treasurer the new information within 30 days of the name change.

Sec. 4-92. 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 Section. 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.

Sec. 4-93. Application for Retail Liquor License

Application for retail liquor license shall be made in accordance with the City of Cullman Procedures.

Sec. 4-94. Consideration of Application

In rendering a decision on each application for a license under this article, the City Council shall consider, among others, the following factors:

1. The effects upon residents, real property owners and businesses within 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 the board of directors, landlord, bartender and manager.

3. The criminal court records of the applicant, each partner, member, officer, 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 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 for the City.

6. The recommendation of the City of Cullman Alcohol License Review Committee. Any recommendation factor must be grounded in the protection of the safety, and public welfare of the community.

Sec. 4-95. Review of Application

1. The application shall be submitted to the City Clerk/Treasurer or designated representative as required by Section 4-92.

2. 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.

3. Subsequent to the City Council approval and the applicant's compliance with Subsection 2 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 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 Cullman County.

Sec. 4-96. Public Notice

1. 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 and published 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.

2. 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 50 feet of the property sought to be licensed by leaving a copy of said notice with each such resident or business or with some person over 18 years of age at the home of such resident or at each business by having mailed to such resident, real property owner, and/or business at least 7 days before the public meeting at which it is expected to be heard and considered by the City Council.

Sec. 4-97. 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, the sum of \$200.00 and the City Clerk or duly authorized representative shall not accept any applicatoin 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 said non-refundable 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 non-refundable filing fee for a special events license application shall be \$200.00.

Sec. 4-98. City Alcohol License Fees

1. 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 busines license fee and further license fees as established below:

A. **Beer Wholesale License.** Each person licensed as a beer wholesaler

under §28-3A-1 et seq., Code of Alabama 1975, shall pay to the City an annual license fee of 50% of the amount charged for State beer license by the State of Alabama. In addition, each licensee will remit monthly to the City Clerk/Treasurer on forms provided by such clerk, the privilege or excise tax levied on the sale 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. ¹

B. Wine Wholesale License. Each person licensed by the Board as a wine wholesaler under §28-3A-1 et seq., Code of Alabama 1975, shall pay to the City an annual license fee of 50% of the amount charged for state wine license by the State of Alabama. In addition, each licensee will remit monthly to the City Clerk/Treasurer on forms provided by such City Clerk/Treasurer, 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.²

C. Beer and Wine Wholesale License. Each person licensed as a beer and wine wholesaler under §28-3A-1 et seq., Code of Alabama, 1975, shall pay to the City an annual license fee of fifty percent (50%) of the amount charged for State wine and beer license by the State of Alabama. In addition, each licensee will remit monthly to the City Clerk/Treasurer on forms provided by such City Clerk/Treasurer, the privilege or excise tax levied on the sales of beer by the "Uniform Beer Tax Act", Acts 1972, No. 82-344. In addition, each licensee will remit monthly to the City Clerk/Treasurer on forms provided by such City Clerk/Treasurer, 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.³

D. 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 \$500.00.⁴

E. Club Retail Liquor License. Each person licensed by the board to operate a club, class I or II, §28-3A-1, et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$1,800.00 if a Class I Club and the sum of \$1,800.00 if a Class II Club. In addition to said license fee, each person shall pay to the City on or before the 15th 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 12% of

1State Code 090 Established

2State Code 100 Established

3State Code 110 Established

4State Code 120 Established

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.⁵

F. **Lounge Retail Liquor License.** Each person licensed by the Board to operate a retail lounge under §28-3A-1 et seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$5,000.00. In addition to said stated license fee, each person shall

pay to the City on or before the 15th 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 12% 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

G. **Retail Liquor for Off-Premises Consumption.** Each person licensed by the Board to operate a retail lounge under §28-3A-1 et seq., Code of Alabama, 1975, shall pay to the City an annual

license fee of \$3,000.00. In addition to said stated license fee, each person shall pay to the City, on or before the 15th 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 12% 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.⁷

H. **Restaurant Retail Liquor License.** Each person licensed by the Board to sell alcoholic beverages in connection with the operation of a restaurant under §28-3A-1, et seq., Code of Alabama, 1975, shall pay to the City an annual privilege license fee of \$1,500.00. In addition to the stated license fee, each such person shall pay to the City, on or before the 15th 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 12% of the monthly gross receipts of such business derived from the sale and/or including.⁸

I. **Retail Table Wine License for Off-Premises Consumption.** Each person licensed by the Board to sell table wine for off-premises consumption under §28-

⁵State Code 031 and 032 Established

⁶State Code 010 Established

⁷State Code 011 Established

⁸State Code 020 Established

3A-1, et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of 50% of the amount charged for State wine license by the State of Alabama.⁹

J. 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 §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of 50% 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.¹⁰

K. 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 §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of 50% of the amount charged for State beer license by the State of Alabama.¹¹

L. Retail Beer for Off-Premises Consumption. Each person licensed by the Board to sell beer for off-premises consumption under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of 50% of the amount charged for State beer license by the State of Alabama.¹²

M. Special Retail Liquor License for On-Premises Consumption. Each person who has obtained a special retail liquor license from the Board under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City a license fee of \$250.00 when the period of use is from 8 to 30 days. Such person shall pay to the City a license fee of \$350.00 when the period of use is more than 30 days. In addition to said stated license fee, each such person shall pay to the City 50% 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 15th 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 12% 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. All applications for special event licenses shall be filed with the City Clerk/Treasurer at least 60 days in advance of the event for which a license is sought.¹³

9State Code 070 Established

10State Code 060 Established

11State Code 040 Established

12State Code 050 Established

13State Code 150 - 160 Established

N. Special Events Retail License for On-Premises Consumption.

Each person who has obtained a special events retail liquor license from the Board under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City a license fee of \$200.00. No such license shall be issued for a period in excess of 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 60 days in advance of the event for which a license is sought. In addition to the stated license fee, each such person shall pay to the City on or before the 15th 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 12% 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. Hereunto, shall apply to applicant for a special event retail liquor license: ¹⁴

- i. Submit the non-refundable required filing fee (\$200.00);
- ii. Receive affirmative recommendation to the City Council by the City of Cullman Alcohol Review Committee;
- iii. Receive approval from the City Council;
- iv. Receive license from Alabama Alcoholic Beverage Control Board;
- v. Pay the required non-refundable license fee (\$200.00);
- vi. Each applicant/organization shall not be allowed to apply for more than 5 special event licenses in any one calendar year;
- vii. No sale of alcohol shall be allowed during a special event on any Sunday.
- viii. Shall be required to purchase the alcoholic beverages from a wholesale licensee of the Board.

¹⁴State Code 150 - 140 Established

ix. Pay the bond as required in Sec. 4-76.

O. **Manufacturer License.** Each person who has obtained a manufacturer license from the Board under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$1,000.00.¹⁵

P. **Importer License.** Each person who has obtained an importer license from the Board under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$350.00.¹⁶

Q. **Liquor Wholesale License.** Each person who has obtained a liquor wholesale license from the Board under §28-3A-1 et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$1,000.00.¹⁷

R. **Brew Pub.** Each person who holds a current business license from the City of Cullman and obtained an alcohol license from the Board under §28-3A-1, et. seq., Code of Alabama, 1975, shall pay to the City an annual license fee of \$1,800.00.¹⁸

2. The term "gross receipts" as used in this Section shall not include any so-called "additional license tax" levied by the City under the provisions of this article that are based solely on gross sales and that are directly passed on by the licensee/seller to the consumer/purchaser.

3. In order to apply for or to renew an alcohol license, the requesting party must have a license to do business in the City of Cullman which is current and not in default, submit to having the fixed place of business inspected by the City's fire marshall.

The stated annual license fee levied by the schedule under the foregoing provisions shall be due January 1st of each year and shall be delinquent after January 31st of the year for which such license is due and a penalty of 15% of the license amount shall be collected during February and March; 30% during the month of April, and after April 30th, the license shall be revoked. In addition, such person must pay a \$200.00 citation fee. There shall be no proration 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

¹⁵State Code 200 Established

¹⁶State Code 210 Established

¹⁷State Code 080 Established

¹⁸State Code 220 Established

levied by said schedule shall be due the 15th day of the calendar month specified in each levy and shall be delinquent if not reported and paid by such date. Failure to pay when due of any additional license taxes shall carry a 20% penalty for each month delinquent and if said additional license taxes be delinquent more than 60 days, said license shall be revoked.

Sec. 4-99. 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/Treasure 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.

Sec. 4-100. Alabama Responsible Vendor Act

Sections 28-10-1 thru 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 of Cullman must obtain a Business Certification through the Alabama Responsible Vendor Program within 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.

Sec. 4-101. Appeals and Variances

1. Appeals

A. Appeals to the Council may be taken by any person aggrieved by an officer, department, board, or bureau of the City of Cullman affected by a decision as to an alcohol license or any other city officials based on this Ordinance. Such appeal shall be taken within a reasonable time not to exceed 10 days, by filing with the City Clerk a written notice of appeal specifying the grounds thereof. All papers constituting the record

upon which the action appealed from was taken shall forthwith be transmitted to the City Clerk.

B. An appeal stays all proceedings in furtherance of the action appealed from unless the Building Department certifies to the City Council after the notice of appeal shall have been filed with them, that by reasons of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the City Council or by a court of record.

2. Powers and Duties

A. The Council shall have the following powers and duties:

i. Administration Review - To hear and decide appeals where it is alleged there is error in any other, requirement, decision, or determination made by the Administrative Officer in the enforcement of this Ordinance, excluding the right to amend, alter, or change the intent of the Ordinance.

ii. Variances - Upon appeal in specific cases, such variances from the terms of this Ordinance as will not be contrary to the intent of this Ordinance, or the public interest where, owing to special conditions, the City Council shall also determine before granting any variance, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case upon a finding by the City Council in a manner prescribed by the Council and based on the following only:

a. A written application for variance is submitted indicating the Section of this Ordinance under which the use is requested. Scaled and dimensioned drawings indicating locations of existing and proposed buildings and structures, relationship to adjacent properties, both public and private, and all alleged physical constraints shall accompany the application. Photographs documenting the existing conditions shall be included with the application. The scale drawing must have a vicinity sketch and may require a survey at the City Council's discretion. Said sketch shall denote each property owner and the use of said property.

b. The application shall be submitted to the Council in

compliance with their adopted procedures.

c. All contiguous property owners shall be individually notified by written certified letter of the time and place of the Council's meeting and the applicant's intentions at least 7 days prior to said meeting. The applicant shall furnish a list containing the names and current addresses of said contiguous property owners at the time of application and shall pay such cost as the Council determines.

d. All request for variances must be accompanied by waivers from any entity whose distance to the property would prohibit such a use as set out in paragraph 3 below.

e. The applicant shall appear in person or by agent or by attorney at the meeting.

f. The City Council shall make a finding that is empowered under this Ordinance as specifically described in the application, to grant or deny the request, and that granting it will not adversely affect the public interest and is in accordance with the waivers of neighboring affected property owners. Approval of the variance is void if a license has not been issued within 6 months of the effective date of said approval.

3. Waiver

The distance requirement may be waived by the City Council upon the applicant obtaining permission in writing from the school, church, or licensed child development facility located within the prohibited zone, requesting that said establishment or special event be allowed to be located inside said minimum distance. No variance may be granted without waivers from all affected neighboring property owners within the affected area.

4. Abatement

The City Council may require the conduct of any use, conforming or non-conforming, which results in unreasonable noise, smoke, gas, vibration, fume, dust, fire, radio interference, explosive hazard or nuisance to surrounding property to be modified or changed to abate such hazard to health, comfort, and convenience. The Council may issue an abatement

order but such order may be directed only after a public hearing by the said Council or after notice of which shall be sent by certified mail to the owners and/or operators of the property on which the use is conducted. A hearing to consider issuance of an abatement order shall be held by the City Council if the abatement is to be considered after issuance of a license by this Ordinance and either upon petition signed by any person affected by the hazard or nuisance or upon the initiative of the City. An abatement order shall be directed by the City Council only upon reasonable evidence of hazard or nuisance and such order shall specify the date by which the hazard or nuisance shall be abated.

5. Decisions

A. In exercising the above mentioned powers, the Council may, in conformity with the provisions of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Administrative Official from whom the appeal is taken.

B. The concurring vote of 4 members of the Council shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Official or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

6. Appeal of Decision

Any party aggrieved by any final judgment or decision of the City Council may within 10 days thereafter appeal therefrom to the Circuit Court of Cullman County, filing with the City Clerk a written notice of appeal specifying the judgment or decision from which appeal is taken. In case of such appeal, the City Clerk shall cause a transcript of the proceedings in the cause to be certified to the Court to which the appeal is taken. The review by the Court shall be without jury and be confined to the record and to the determination of the questions of law present. The City Council's findings of fact shall be final and conclusive. Appeals taken from the Circuit Court judgment shall be as provided by law.

Sec. 4-111. Violations Declared Misdemeanor

Any person who violates any provision of this Ordinance 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 Ordinance No. 1374 of the City of Cullman, Alabama.

Sec. 4-112. Application of Municipal Code and Ordinances

Ordinance 1374 of the City of Cullman, Alabama, shall apply in all respects to any violations of this Ordinance.

Sec. 4-113. 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 this Ordinance as originally adopted.

Sec. 4-114. Punishments

In addition to any other penalties imposed by law for violations of any sections of this Ordinance, the City shall revoke the privilege license issued pursuant to this Ordinance and the license Ordinance for the second violation within a two year period of any rule, section, duty or obligation as set out in this Ordinance, Title 28 Code of Alabama, or the Alcohol Beverage Control Board Rules and Regulations, as amended.

Sec. 4-115. Conflicts

1. 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.

2. All Ordinances or parts of Ordinances in conflict herewith are to the extent

of such conflict repealed.

3. 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 a court of competent jurisdiction, then such ruling shall not affect any other paragraphs or sections since the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Sec. 4-150. Effective Date

This Ordinance shall be effective immediately upon its adoption and publication according to law.

ADOPTED this the 11th day of January, 2011.

/s/ Garlan E. Gudger
President of the City Council

ATTEST:

/s/ Ruth W. Rose
City Clerk

Transmitted to the Mayor this the 11th day of January, 2011.

/s/ Ruth W. Rose
City Clerk

APPROVED by the Mayor this the 11th day of January, 2011.

/s/ Max A. Townson
Mayor