

CITY OF CLEVELAND
ORDINANCE NO. 2028-08

AN ORDINANCE OF CITY OF CLEVELAND, GEORGIA AMENDING CHAPTER 4, ALCOHOLIC BEVERAGES TO PROVIDE FOR ISSUING LICENSES FOR THE PACKAGE SALES OF DISTILLED SPIRITS FOR CONSUMPTION OFF PREMISES AND REGULATIONS RELATED TO SUCH BUSINESSES AND TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the duly elected governing authority of the City of Cleveland, Georgia is authorized under Article IX, Section II, Paragraph III of the Constitution of the State of Georgia to adopt reasonable ordinances to protect the public health, safety, and welfare of the citizens of the City of Cleveland, Georgia; and

WHEREAS, the duly elected governing authority of the City of Cleveland, Georgia is the Mayor and City Council; and

WHEREAS, the citizens of Cleveland, Georgia approved a referendum for the purpose of determining whether Cleveland should be authorized to issue licenses to sell at retail package sales of distilled spirits pursuant to an election held on November 8, 2022; and

WHEREAS, the City Council of Cleveland, Georgia desires to combat the undesirable secondary effects of businesses where package sale of distilled spirits may be sold; and

WHEREAS, the City Council of Cleveland, Georgia desires to avoid negative experiences of other municipalities and counties regarding problems with certain businesses where distilled spirits by the package are sold, which include criminal activity, undesirable community conditions, the depression of property value in the areas surrounding certain establishments, increased expenditure for law enforcement, an increased burden on the judicial system because of increased criminal behavior, and acceleration of community blight (collectively referred to hereinafter as the “pernicious secondary effects”); and

WHEREAS, the City Council of Cleveland, Georgia has a substantial interest in preserving the quality of life for the citizens of Cleveland; and

WHEREAS, the City Council of Cleveland, Georgia desires to establish a comprehensive and consolidated ordinance for the licensing, control, taxation, and regulation of the retail package sale of distilled spirits.

NOW, THEREFORE, it is hereby ordained by the City Council of Cleveland, Georgia that the provisions contained herein shall apply regarding the retail package sale of distilled spirits.

Section 1. That Chapter 4 is amended and in some cases by including new subsections or by providing content to previously reserved subsections to Chapter 4 of the Code of Ordinances of the City of Cleveland so that Chapter 4 will include the following provisions:

Sec. 4-121. - Issuance of package licenses limited to designated areas.

No license permitting the retail package sale of malt beverages, wine, or both, or distilled spirits or spirituous liquors shall be granted to any applicant hereunder unless the proposed premises is located in an area of the City which is zoned for commercial use and is adjacent to and includes access to a state route or a city street, provided that the city street is no less than three lanes including a center turn lane with the width, back of curb to back of curb, being no less than 37 feet. Regardless of zoning and street specifications, there shall be no issuance of a license for retail package sale of distilled spirits or spirituous

liquors from a business located within the area indicated in red on the map attached as Exhibit A. The defined area on Exhibit A can only be changed by an amendment of the ordinance from which this chapter was derived.

Sec. 4-122. - Distance from schools, churches, residences, etc.

- (a) No license permitting the retail package sale of malt beverages or wine or both or distilled spirits or spirituous liquors shall be issued for any proposed location for which:
 - (1) The regulated business building is within a distance of 50 feet of any residential building. If the regulated business building is between 50 feet and 200 feet from a residential building a permanent six-foot privacy fence shall be erected and extend the full length of the business property line. The face or finished side of the privacy fence shall face the residential property and shall be maintained by the licensee. The fence shall be inspected and approved by the building inspector;
 - (2) The regulated business building is within a distance of 300 feet of any church building;
 - (3) The regulated business building is within a distance of 300 feet of any public library building, library branch building, or alcohol treatment facility building;
 - (4) The regulated business property is within a distance of 300 feet of a public park property owned or maintained by the City of Cleveland; or
 - (5) The regulated business property is within a distance of 600 feet of any school property, college campus property, licensed after school program or non-residential daycare facility or housing authority property.
- (b) No license permitting the retail package sale of distilled spirits or spirituous liquors shall be issued for any proposed location for which the regulated business building is within a distance of 500 yards of a building in or from which operates any other business licensed for the retail package sale of distilled spirits or spirituous liquors unless other such business is a hotel/motel.
- (c) Said distances for the purpose of this Section shall be measured as defined in Section 4-4 (distance). The term property shall mean property line to property line and the term building shall mean building wall to building wall. Any location licensed hereunder may continue to operate any of the businesses described in this Section in the event that a school property, college campus property, public park property, housing authority property, church building, or alcohol treatment facility building located closer to the licensed location than the distances set forth herein provided that the use of the property for such purpose begins subsequent to the date of the granting of such license hereunder.
- (d) The alcoholic beverage review board may grant reductions of the distance requirements set forth in subsection (a) above upon request of the applicant if the alcoholic beverage review board determines that the reduction of the distance requirements will not have an adverse effect on the surrounding community or the properties provided protection by the distance requirements and that sufficient buffering or separation of the properties exists under the reduced distance requirements. No reduction of the distance requirements may be for an amount greater than 50 percent of the original required distance or to a distance less than the distance required by the general laws of the state. In its consideration of the requested distance reduction, the alcoholic beverage review board may consider whether the applicant has obtained the consent of properties provided protection by the distance requirements, but such consent shall not be required to grant the reduction.
- (e) No premises shall be licensed for the sale of alcoholic beverages in the City without complying with the distance requirements as set forth in O.C.G.A. § 3-3-21, as may be amended from time to

time by the Georgia legislature or any other similar general Georgia law, which laws and restrictions are incorporated herein by reference.

Sec. 4-123. - Hours of sale.

Retail dealers in package malt beverages, package wine, package distilled spirits or package spirituous liquors shall not engage in the sale of malt beverages, wine, distilled spirits, or spirituous liquors except between the hours of 7:00 a.m. and 11:55 p.m. Monday through Saturday and Sunday 12:30 p.m. through 11:30 p.m. No malt beverage, wine, distilled spirits, or spirituous liquors shall be sold on Christmas.

Sec. 4-128. - Distilled spirits or spirituous liquors packaged sales permitted only as provided herein.

Section 4-128 of the City's Code of Ordinances is hereby amended by replacing Section 4-128 in its entirety to read as follows:

Sec. 4-128. - Distilled spirits or spirituous liquors packaged sales permitted only as provided herein.

The retail sale of packaged distilled spirits or spirituous liquors for consumption off the premises shall be permitted only on the specific terms and conditions set forth herein.

Sec. 4-129. - License issuance for distilled spirits package sales - Retail dealer building and inventory requirements.

(a) General regulatory and licensing procedures of distilled spirits package sales shall conform to Chapter 4 Alcoholic Beverages of the City's Code of Ordinances and any other Chapters or Sections of the City's Code of Ordinances as may be applicable, such as enforcement provisions, as well as all laws of the State of Georgia having general application to the sale of distilled spirits package sales.

(b) No retail dealer license for the sale of distilled spirits shall be issued to any applicant whose building where the business will be conducted is not "free standing" (i.e., is part of a larger building or structure), except that such business may occupy leased space within a shopping center, provided that the distilled spirits display area or showroom meets or exceeds the minimum square footage requirement set forth in this Section. A retail dealer's building where the business will be conducted must contain a distilled spirits display area or showroom of at least 1500 square feet in size with an additional storage area of at least 500 square feet. For distilled spirits retail dealers desiring to sell malt beverages and wine in addition to distilled spirits, at least an additional 500 square feet of showroom, and at least an additional 500 square feet of storage area is required over and above the minimum square feet for the establishment set forth above. For the purposes of this ordinance, cooler space shall be considered storage area and spaces such as offices, mechanical rooms, janitorial rooms, breakrooms and bathrooms shall not count towards the minimum square footage requirements.

No retail license for the sale of distilled spirits by the package shall be granted under this chapter unless the premises to be licensed are located under the planning and zoning ordinance of the City in a commercial zoning district subject to the specific limitations of the respective district and located within the approved area as established by resolution of the City Council that allows sale of distilled spirits by the package within such areas, provided all other laws, rules and ordinances are followed. The initial area where the sale of distilled spirits by the package shall be prohibited (in addition to the residential areas of the City) is shown in red on the map attached as Exhibit "A. The City Council, in its discretion, may consider any extenuating circumstances which may reflect favorably or unfavorably on the applicant, application, or the proposed location of the business, and if in its judgment, circumstances are such that

granting of the license would not be in the best interest of the general public, such circumstances may be grounds for denying the application. Such circumstances may include, but are not limited to effect on property, whether there is difficulty in police supervision, whether adequate parking exists, the number of existing licenses, etc.

(c) No person, group, or entity with similar members, including family members, shall have an interest in more than one license for the package sale of distilled spirits or any other package sale of alcoholic beverages issued by the City.

(d) It shall be unlawful for any person to open or consume any alcoholic beverages on premises licensed for the sale of distilled spirits by the package.

(e) It shall be unlawful for any person to sell or offer for sale distilled spirits by the package within the City by means of drive-through sale. For purposes of the section, the term "drive-through sale" means the sale of distilled spirits by the package by any means that allows the customer to remain in their motor vehicles.

(f) License holders hereunder shall not allow any minors to enter or loiter on or about the licensed premises unless such minors are accompanied by a parent, guardian, or custodian.

(g) The provisions of Sec. 36-27 – Loitering shall apply to all premises licensed hereunder and each licensee shall post a "No Loitering" sign conspicuously to inform the public that loitering, as defined by Sec. 36-27 of the Code of Ordinances of the City of Cleveland, is not permitted on the premises and that any violators are subject to prosecution.

(h) The license fee for a retail sales of distilled spirits package license shall be \$5,000.00 annually.

(i) There is imposed by the City an excise tax on the first sale or use of distilled spirits in the City at the rate of \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter. Said tax may be revised from time to time by resolution properly adopted by the Mayor and City Council.

Sec. 4-130. - Maximum number of distilled spirits retail licenses permitted.

(a) Subject to subsection (b)-(e) below, the City will not accept any applications for the retail sale of distilled spirits by the package, and no licenses for the retail sale of distilled spirits by the package shall be issued over the number of three (3).

(b) If at any time and for whatever reason, the number of active licenses for the retail sale of distilled spirits by the package falls below three, then the City shall accept applications for and issue such additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to three.

(c) The provisions of subsection (b) notwithstanding, one (1) additional license may be issued for each 2,000 person increase in population over 2,000 (for example, if and when the population of the City of Cleveland reaches 4,000 the Mayor and City Council may, but shall not be required to, allow one additional license for the sale of distilled spirits by package). In determining population, the City shall utilize the most recent population figures published by the Georgia Mountain Regional Commission. In the absence of such figures, the City shall utilize the U.S. Census of 2020 or any future decennial census.

(d) If the total number of permitted licenses has increased pursuant to subsection (c) above, and if at any time and for whatever reason thereafter, the number of active licenses for the retail sale of

distilled spirits by the package falls below the number then permitted, then the City shall accept applications for and issue such additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to the total number then permitted.

(e) If the City receives more applications than allotted licenses to be issued under this section which applications comply with the standards for the issuance of licenses for the sale of package distilled spirits set forth in this Chapter, then the selection of the successful application(s) shall be conducted by a lottery system overseen by an independent third party firm. The lottery shall consist of assigning a number to each application and the numbers shall be placed in a rotating container which will allow for the mixing of the numbers without human manipulation and all numbers shall be drawn and noted in the order in which they are drawn. The first, second and third numbers drawn, if three licenses are to be granted, shall be granted the first three licenses and the other numbers shall be maintained in order in the event one or more of the first three applicants fail to complete the licensing process to provide a hierarchy for issuance of licenses thereafter. Approved licensees shall have no more than 30 days to fully comply with all licensing requirements and if they fail to do so the City will license the next potential licensee based on the lottery drawing. The applications drawn from the lottery system shall then be presented to the City Council for action on the approval of the licenses to be issued under this Chapter.

Sec 4-131. - Products Other than Distilled Spirits for Sale, Display, or Offer.

No Retailer of Distilled Spirits shall sell, offer for sale, display, or keep in stock for sale or furnish at its licensed Premises where Distilled Spirits are offered for sale, any other products or services except the following:

- (a) Wines, if the Retailer holds a valid and current license to sell Wine at that Place of Business;
- (b) Malt Beverages, if the Retailer holds a valid and current license to sell Malt Beverages at that Place of Business;
- (c) Cigarettes, cigars, chewing tobacco, alternative nicotine products, or vapor products, snuff, if properly licensed to do so, cigarette papers, lighters and matches, chewing gum, breath mints, manufactured packaged consumable single-serving snack items not requiring any preparation for consumption;
- (d) Beverages containing no Alcohol and which are commonly used to dilute Distilled Spirits;
- (e) Packaged ice, ice chests, and "koozies" (individual can and bottle coolers);
 - 1. The term "packaged ice" shall refer only to ice in packages of five pounds or greater that is also in compliance with Georgia Department of Agriculture Rule 40-7-1-.08, entitled "Food from Approved Source," and the packaging complies with Georgia Department of Agriculture Rule 40-7-1-.26, entitled "Labeling."
- (f) Paper, Styrofoam, or plastic cups and gift bags, which are limited in size to accommodate one 750 ml size bottle of wine or distilled spirits and contain only products approved for sale or display by this regulation;
- (g) Bar supplies, limited to:

1. Corkscrews, openers, straws, swizzle stirrers, bar-related containers, and wares made of glass, plastic, metal or ceramic materials.
 2. Cocktail olives, onions, cherries, lemons, limes, and sugars or salts produced and marketed specifically for the preparation of alcohol beverage drinks.
 3. Alcoholic Beverage drink recipe booklets, bar guides, and consumer-oriented Alcoholic Beverage publications.
- (h) Products co-packaged with Alcoholic Beverages, provided that the products are limited to items approved for sale or display by this regulation, are offered for sale and sold as a single unit, and do not include more than one type of Alcoholic Beverage product;
- (i) Check cashing services arising out of the sale of any product lawfully sold under this Ordinance;
- (j) Automated teller machine service for customer use; and
- (k) Gift certificates for use only at the issuing licensed Retailer.

Sec 4-132. - Applicability of article to those businesses operating both the package sale of distilled spirits and package malt beverages and wine for consumption off premises.

For licensees who wish to operate a business which conducts both the package sale of distilled spirits and package sale of malt beverages and wine, in the case of any conflict, the provisions of this article regulating the package sale of distilled spirits for consumption off premises shall prevail, and compliance with these provisions, rather than those provisions applicable to the license permitting the package sale of malt beverages and wine, is required. The applicant shall be required to meet all licensee qualifications and requirements under both this article and the article governing the licensing and sales of package malt beverages and wine.”

Sec. 4-181. - Classification of licenses; fees.

Section 4-181 of the City’s Code of Ordinances is hereby amended to add the following paragraph:

- (16) Retail sale of packaged distilled spirits for consumption off premises - \$5000.00. Additionally, each licensee shall be required to post with the City and maintain annually a cash bond or an insured surety bond in the amount of \$5000.00 which shall only be refunded or canceled upon licensee’s voluntary relinquishment of any license provided said licensee is otherwise in full compliance at such time with this Code of Ordinances.


Section 2. Conflicting Laws and Regulations. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.


Section 3. Severability. If any of the provisions of this resolution or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end, the provisions of this resolution are declared to be severable.

Section 4. Effective. This ordinance will become effective upon its adoption.

Posted: March 13, 2023

Adopted: April 10, 2023

Attest: 
Lisa A. Ritchie, City Clerk


Josh Turner, Mayor
City of Cleveland

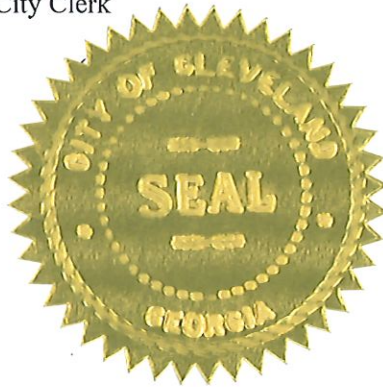


EXHIBIT "A"

District where package sales of distilled spirits are NOT allowed

DRAFT

