

Alcohol Advisory Board
Council Chambers at City Hall
February 13, 2017
4:00pm

Agenda

1. Call Meeting to Order
2. Review of Minutes from Monday, January 9, 2017
3. Adoption of Minutes
4. Discussion of Pricing section of the Ordinance (Happy Hour/Pricing)
5. Discussion of violation hearings held before an appointed Administrative Judge
6. Questions and Comments from the Community
7. Announce Next Meeting- Monday, March 13th at 4:00pm
8. Adjourn

Alcohol Advisory Board
Meeting Minutes
January 9, 2017

The fourth meeting of the Alcohol Advisory Board was held on January 9, 2017 at 4:00 p.m. in the Council Chambers at City Hall. Present were Patrice Jackson, Woody Pumphry, Jim Thibodeau, Laura Wheaton and Matt Hube. Also present was City Clerk Sue Starling.

The minutes from the December 12, 2016 meeting were presented. Laura Wheaton made a motion to adopt the minutes. Woody Pumphrey seconded the motion. The motion carried with a 5-0 vote.

The next item discussed was the “look back” period for alcohol violations. The current look back period is 5 years. The City Council had discussed at their last meeting reducing that look back period to 3 years. Woody Pumphrey shared that he is familiar with the look back periods used by other cities and they are in the 2-3 year period. All members agreed that we are comfortable with a 3 year look back period. Laura Wheaton made a motion that the Board recommend a 3 year look back period for alcohol violations. Jim Thibodeau seconded the motion. The motion passed with a 5-0 vote.

The next item was discussion of the pricing section (happy hour) of the Ordinance. Patrice Jackson drafted some proposed changes to the pricing section which is found at section 6-16. There was some specific discussion about section 6-16(b) and that “happy hour” pricing could be put into place by a bar for an entire day. Michael Cash of Midtown Bar & Grill was present and addressed the Board. He also answered questions posed by the Board. Mr. Cash was the only business owner present for this meeting. There was then discussion about the pricing structure for buckets of beer and/or pitchers and whether those items should be treated differently under any proposed change to the pricing section. There was discussion about having a workshop for bar owners to discuss their feelings on the pricing issue. It was decided by the Board members that our meetings are the appropriate forum for the bar owners to voice their feelings on the matter. Matt Hube made a motion to continue the discussion at the February meeting. Laura Wheaton seconded the motion. The motion passed 5-0.

The next item was discussion of section 6-6(b) and that this section needed to comply with current state law. We discussed that section 6-6(b)(1) provides for a 15 year look back period and state law utilizes a 10 year look back period. The state law is found at Rule 560-2-2.02(9)(b). Additionally, section 6-6(b)(2) was out of line with state law. We discussed that these two sections needed to be in compliance with state law. Laura Wheaton made a motion that the Board recommend to the City Council that the language in section 6-6(b)(1) be replaced with the language found in Rule 560-2-2.02(9)(b) and that the language in section 6-6(b)(2) be replaced with the language found in Rule 560-2-2.02(9)(c). Woody Pumphrey seconded the motion and the motion was passed with a 5-0 vote.

The next item was questions and comments from the community. There were no questions or comments from the community.

The next Alcohol Advisory Board meeting was set for February 13, 2017, at 4:00 p.m.

At 5:32 p.m. Woody Pumphrey made a motion to adjourn the meeting. Jim Thibodeau seconded the motion. The motion carried with a 5-0 vote.

Sec. 6-16. - Alcohol promotions; pricing of alcoholic beverages.

(a) Unless otherwise stated, this section shall be construed to cover, include, and apply to every type of alcoholic beverage licensed to be sold in the City of Statesboro.

(b) It shall be unlawful for any licensee or employee or agent of such licensee to engage in or allow any of the following practices in connection with the sale, service, or other disposition of alcoholic beverages:

(1) Offer or deliver any free alcoholic beverage to the general public. This subsection shall not apply to events conducted in accordance with a special or catered event permit granted pursuant to this Chapter or to samples of beer offered in conjunction with the sale of growlers as provided for in Section 6-8(b).

(2) Sell, offer to sell, or deliver any alcoholic beverage at a price less than \$1.00.

(3) Base pricing of alcoholic beverages in any manner on gender, race, creed, color, or national origin.

(4) Sell, offer to sell, or deliver alcoholic beverages before 5 P.M. or after 8 P.M. at prices less than the normal price the establishment charges for said beverages on that particular day.

(5) Sponsor, conduct, encourage or allow on the licensed premises any game or contest or promotion which either:

- a. Involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize; or
- b. Has as its primary purpose increasing the consumption of alcoholic beverages on the premises.

(6) Sell, offer to sell, or give away any coupons, tokens, tickets, receipts or other devices authorizing the serving of any alcoholic beverage drinks either on the current or a subsequent day.

(7) Sell, offer to serve, or deliver any alcoholic beverage to be inserted into the mouth of a customer in any manner by anyone other than by the customer.

(8) Charge any minimum charge, cover charge, admission charge, or any other non-food or non-alcoholic beverage charge based on gender, race, creed, color, or national origin

(c) There shall be no advertisement or promotion in any way, whether within or without the licensed premises, of any of the practices prohibited under this section.

(d) No provision of this section shall be construed to prohibit licensees from offering free food or entertainment at any time; provided all patrons or customers are allowed equal access to such free food or entertainment, or to prohibit licensees from including an alcoholic beverage as a part of a meal package, or to prohibit the sale or delivery of wine by bottle or carafe when sold with meals or to more than one person, or to prohibit any hotel or motel from offering room service to registered guests.

(e) This section shall not limit or expand any privilege granted by the Commissioner of the Georgia Department of Revenue to a brewer licensed to manufacture malt beverages authorizing said brewer to conduct educational and promotional brewery tours pursuant to O.C.G.A. § 3-5-38

establishment is otherwise licensed to sell alcoholic beverages under the applicable laws and ordinances in the City of Statesboro.

(g) *Possession in automobiles prohibited.* See O.C.G.A. § 40-6-253.

(h) *Posting of notice by establishments.* All licensed alcohol establishments are hereby required to post in a conspicuous location inside such establishment a notice informing patrons that open containers are prohibited on the public streets, sidewalks or right-of-ways, or in any public or semipublic parking facility within the City of Statesboro.

(i) It shall be unlawful to furnish or dispense alcoholic beverages through kegs, barrels, cylinders or other portable receptacles containing tap or pump-type devices in which the flow of contents is controlled by the operator in a public place and facility, public streets, sidewalks, alleyways or rights-of-way, or in any public or semipublic parking facility including areas of ingress and egress. When receptacles are found in violation of this section and the person maintaining the receptacle cannot be identified, the receptacle shall be confiscated and held for 30 days by the city police. The receptacle may be claimed by the owner or lessor, but will be disposed of at the end of 30 days if unclaimed. Nothing in this section shall prohibit persons holding licenses pursuant to this chapter from dispensing through kegs, barrels, cylinders or other such receptacles inside an appropriately licensed premises.

Sec. 6-18. - Furnishing alcoholic beverages in violation of state law.

It shall be unlawful for any licensee, by himself or through another, to obtain, furnish or cause to be obtained or furnished, or permit any other person in his employ to obtain or furnish, distilled spirits, wines, malt beverages, or any other alcoholic beverages in a manner that is a violation of state law.

Sec. 6-19. - Compliance; violations; penalties.

(a) *Violations; penalties.*

(1) It shall be unlawful for any person to violate any provision of this Chapter. Upon conviction for the violation thereof each person shall be subject to the punishments allowed under section 5-3 of the Charter of the City of Statesboro, after hearing before the judge of municipal court.

(2) Unless otherwise provided in the Schedule of Fines and Fees, the minimum fine for a first conviction for violating any provisions of this Chapter in the last five years, as measured from the date of previous offense to the date of the current offense, shall not be less than \$300.00 per citation.

(3) Unless otherwise provided in the Schedule of Fines and Fees, the minimum fine for a second or subsequent convictions for violating any provisions of this Chapter in the last five years, as measured from the date of previous offense to the date of the current offense, shall not be less than \$725.00 per citation.

(b) *Duty of Municipal Court Clerk; Duty of City Clerk.*

(1) Upon filing of any citation(s), accusation(s) or warrant(s) in the Municipal Court of Statesboro that alleges a violation of this Chapter by a licensee, or an employee, agent or representative of a licensee, the Clerk of the Municipal Court shall forward copies of the citation(s), accusation(s), or warrant(s) to the City Clerk, and to the Special Agent in Charge of the Savannah Regional Office of the Alcohol and Tobacco Division of the Georgia Department of Revenue as required by O.C.G.A. §3-3-2.1.

(2) Upon conviction of a licensee or an employee, agent or representative of a licensee, of any provision of this Chapter or paragraph (1) of subsection (a) of Code Section 3-3-23, prohibiting the furnishing of alcoholic beverages to underage persons, the Clerk of the Municipal Court shall forward certified copies of the conviction to the Special Agent in Charge of the Savannah Regional Office of the Alcohol and Tobacco Division of the Georgia Department of Revenue as required by O.C.G.A. §3-3-2.1. The term "conviction" as used in this paragraph shall include a finding or verdict of guilt, plea of guilty, or a plea of nolo contendere.

(3) Upon receipt of copies of any accusation(s), citation(s) or warrant(s) from the Clerk of the Municipal Court alleging a violation of this Chapter by a licensee, or an employee, agent or representative of a licensee the City Clerk shall notify the Mayor, the City Manager, the City Attorney and the Chief of Police.

(c) *Probation, suspension, revocation of license; administrative hearing, administrative hearing fee.*

(1) **The Mayor and City Council** **An Administrative Judge nominated by the City Manager and approved by Mayor and City Council** shall have exclusive jurisdiction over any action brought against any licensee holding a license issued pursuant to this Chapter seeking to revoke, suspend or place the licensee on probation. Said action may be brought by the City Solicitor, the City Manager, or the Police Chief, or their respective designees.

(2) The **Mayor and City Council** **Administrative Judge** may suspend, revoke or impose terms and conditions of probation on the licensee, or any combination of suspension and terms and conditions of probation for one or more of the following reasons:

a. The violation by the licensee, or licensee's employees or agents of any state or federal law or regulation or any provision of this Chapter or other ordinance of the City of Statesboro, at any time adopted, relating to the sale, use, possession, or distribution of alcoholic beverages.

b. The violation by the licensee, or licensee's employees or agents of any federal or state law or of any local ordinance of the City of Statesboro, which is related to building codes, fire codes, smoking, excise tax, property tax, health, solid waste disposal, illegal gambling, or controlled substances.

c. The operation of the licensee's business in such a manner as to constitute a threat to public safety, welfare or health or in such a manner as to constitute a nuisance, or the operation of a licensed business where violations of federal, state, or local laws or ordinances frequently or regularly occur.

d. The making of any untrue or misleading statement in the application for a license or any renewal thereof or the omission from such application or renewal of any information required in the application.

e. Permitting any person to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of any federal or state law or of any local ordinance of the City of Statesboro, which is related to building codes, fire codes, smoking, excise tax, property tax, health, solid waste disposal, illegal gambling, alcohol, or other controlled substances.

(5) Any person holding any license issued pursuant to this Chapter or any employee, agent, or representative of a licensee who violates any provision of this Chapter while acting within the scope of their employment, agency, or representation of the licenses, or directs, consents to, permits, or acquiesces in such violation either directly or indirectly shall, by such conduct, subject the license to suspension, revocation or probation upon conditions.

(6) For purposes of administrative action against a licensee, any act committed by an employee, agent or representative of a licensee in their capacity as an employee, agent or representative of the licensee that violates any provision of this chapter shall be deemed to be an act of the licensee.

(7) In order to take administrative action against a licensee, a hearing before the **Mayor and City Council Administrative Judge** shall be held on a date and time certain which shall be reflected on the summons of administrative hearing issued by the City Clerk or any other person specifically authorized by this Chapter or other law to issue such summons to appear before the **Mayor and City Council Administrative Judge**. The summons of administrative hearing shall contain a place, date and time certain of the administrative hearing and shall be served on responding party more than five days before any scheduled hearing.

(8) The notice of administrative hearing shall be served by certified mail return/receipt requested; or by leaving a copy thereof at the licensed business location with an employee working therein, or by personal service on the responding party, or on an agent authorized by law or by appointment to receive service of process. Said notice shall also be sent by regular mail to the agent set out on the license or listed on the license application. The City Clerk shall also forward a copy of this notice to the Special Agent in Charge of the Savannah Regional Office of the Alcohol and Tobacco Division of the Georgia Department of Revenue.

(9) The evidentiary standard for an action against a licensee is preponderance of the evidence.

(10) In considering the term of suspension, whether to permanently revoke the license or whether to impose terms and conditions of probation on the license, the **Mayor and City Council Administrative Judge** shall consider the following factors:

- a. The gravity of the violation;
- b. Any previous violations within the past **five three** year period as measured from the date of previous offense to the date of the current offense;
- c. Actions of the licensee, its employees, subcontractors or agents in connection with the violation.

(11) The **Mayor and City Council Administrative Judge** may promulgate any rules of procedure for the administrative hearing not in conflict with this ordinance or other law.

(12) If action is taken against the licensee the **Mayor and City Council Administrative Judge** shall cause a written opinion to be prepared **by Mayor and Council** showing the reason or reasons for the revocation, suspension or probation of the license. The written opinion can be the minutes of the hearing kept by the City Clerk showing the evidence considered and the ruling issued. Upon **adoption by the Mayor and City Council finding by the Administrative Judge** the opinion shall be the final decision **of the Mayor and City Council**. The City Clerk shall notify the applicant of the final decision of the **Mayor and City Council** within five days of the adoption of the final decision **by the Mayor and City Council**. Pursuant to O.C.G.A. § 3-3-2.1 the City Clerk shall forward a copy of this final decision to the Special Agent in Charge of the Savannah Regional Office of the Alcohol and Tobacco Division of the Georgia Department of Revenue.

(13) Appeal of the final decision of the **Mayor and City Council Administrative Judge** shall be by Petition for Certiorari to the Superior Court of Bulloch County. **(Or by written appeal to City Clerk for hearing by Mayor and Council upon review of the record, not requiring an evidentiary hearing)**

(d) Temporary Suspension by City Manager Permitted. Notwithstanding the foregoing, and upon determining it is in the interest of public safety the City Manager, upon a written recommendation of the Police Chief, or acting head of the Statesboro Police Department, and approval of the Mayor, may temporarily suspend any license provided for in this Chapter pending an administrative hearing and action **by the Mayor and City Council** in accordance with this Chapter. The City Manager shall issue a written administrative order stating the reasons for the temporary suspension. If a license is temporarily suspended by the City Manager, the Mayor shall call a special **meeting of the City Council to hold an** administrative hearing pursuant to this Chapter as soon as practically possible, but no later than 10 days from the day the license is temporarily suspended.

Sec. 6-20. – Excise Tax on Distilled Spirits sold by the drink.