

Alcohol Advisory Board
Council Chambers at City Hall
August 14, 2017
4:00pm

Agenda

1. Call Meeting to Order
2. Review of Minutes from Monday, February 13, 2017
3. Adoption of Minutes
4. Discussion of striking Chapter 6 Sec 6-6(2)(c) regarding when issuance of license is prohibited due to applicant's prior violations of city alcohol ordinances
5. Discussion of amending Chapter 6 Sec 6-3 Definition of brew pubs and 6-8(a)(1) to allow brew pubs to offer direct package sales in compliance with pending state law
6. Discussion to present a resolution instituting a progressive discipline schedule for violations of Chapter 6
7. Questions and Comments from the Community
8. Announce Next Meeting- Monday, September 11th at 4:00pm
9. Adjourn

Alcohol Advisory Board
Meeting Minutes
February 13, 2017

The fifth meeting of the Alcohol Advisory Board was held on February 13, 2017 at 4:00 p.m. in the Council Chambers at City Hall. Present were Patrice Jackson, Woody Pumphry, Jim Thibodeau, Laura Wheaton, Shubert Lane, and Matt Hube. Also present was City Clerk Sue Starling.

The minutes from the January 9, 2017 meeting were presented. Laura Wheaton made a motion to adopt the minutes. Shubert Lane seconded the motion. The motion carried with a 6-0 vote.

The next item was discussion of the pricing section (happy hour) of the Ordinance. There were multiple local business owners/managers present including Britt Hendrix from Your Pie, Al Chapman from Gnat's Landing, and Joe Lanier from Loco's. Woody Pumphry indicated that the local business owners/managers have been expressing to him that they want to be able to easily understand the pricing section. Joe Lanier from Loco's indicated that he wanted consistency in the rules. He liked the idea of following state law on this issue and he wanted whatever rules were adopted to stay in place for a long period of time instead of having frequent changes as has been the case in the past. Britt Hendrix from Your Pie asked if the pricing section applied to anyone selling alcohol. Patrice Jackson answered that the pricing section applies equally to all establishments serving alcohol. Britt Hendrix also expressed that he wants consistency in the rules. Al Chapman from Gnat's Landing wanted to go over the pricing section with the Board which was done. Patrice Jackson then raised the issue of what boundaries should be in place with regards to the pricing section. Mr. Chapman indicated that, in his opinion, if you stop daily specials there will be low prices all the time at establishments that serve alcohol and that was not a business model that he wanted to follow. Britt Hendrix of Your Pie suggested happy hour be run from 5:00 - 8:00 p.m. daily plus a set amount of days to have 24 hour pricing. Joe Lanier asked a question about pricing for pitchers as that has been a point of confusion in the past. City Attorney Cain Smith presented a proposed draft of the pricing section and there was discussion on that draft. Regarding section (2) it was decided that a recommendation would be made that the minimum price for a drink would be raised from \$1.00 to \$1.50. Regarding section (4) it was decided that a recommendation would be made to allow for a 3 hour window ending no later than 10:00 p.m. daily. Each establishment will be able to determine the specific time they want to designate for happy hour and those times must be posted in a conspicuous place in the establishment. The 3 hour period must be the same each day. Regarding section (6) it was decided that a recommendation would be made to keep that subsection intact to prevent giving away any coupons, tokens, receipts, tickets or other devices authorizing the serving of any alcoholic beverage drinks "either on the current or subsequent day", but that the "subsequent day" language would be removed. A motion was made by Shubert Lane to amend Section 6-16 of the Ordinance with the above changes to sections (2) and (4). Matt Hube seconded the motion. The motion passed with a 6-0 vote.

The next item was discussion was whether violation hearings should be held in front of an appointed administrative judge instead of the City Council. City Attorney Cain Smith presented a proposed change to the current rule. He indicated that the current rule provides for all violations be heard in front of City Council and they decide whether there was a violation and what the appropriate sanction should be. The change would provide that the hearing and decision would be shifted to an administrative law judge instead of City Council. Discussion was had about how the judge will be selected and that they should not come from the immediate community as that will cut down on conflicts of interest. A motion was made by Matt Hube to recommend the adoption of the proposed change as it was made by City Attorney Cain Smith. Shubert Lane seconded the motion. The motion passed 5-1.

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 March 13, 2017, at 4:00 p.m.

At 5:30 p.m. Woody Pumphrey made a motion to adjourn the meeting. Jim Thibodeau seconded the motion. The motion carried with a 6-0 vote.

Sec. 6-6. - When issuance prohibited.

Issuance of licenses and permits required under this chapter is limited as set forth below.

- (1) *Restrictions.* No license defined herein shall be issued to a person:
 - a. Who is not a citizen or legal resident of the United States;
 - b. Who is not at least 21 years of age prior to the date of application;
 - c. Who owes any debt or obligation to the city, including but not limited to excise taxes, occupational taxes, property taxes, or utility fees; or other fines.
 - d. Who indicates on the license application an intention to provide live nude performances on the premises or any other form of adult entertainment on the premises that requires an adult entertainment license pursuant to article VII of chapter 18 of the Code of Ordinances.
- (2) *Convictions; pending violations.* 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 including also anyone currently on probation or otherwise currently under a court's supervision to avoid a judgment of guilt being entered under what is commonly referred to as "first offender sentence" or "pre-trial diversion program." No license for the sale of alcoholic beverages shall be issued to any person or applicant where the applicant or any individual person having an ownership interest in the business:
 - a. Has been convicted of a felony who served any part of a criminal sentence, including probation within ten years immediately following the date of receipt of submission of the application. If at the time of application, the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal;
 - b. Has been convicted within five years immediately prior to the filing of the alcoholic beverage application with the city clerk of the violation (i) of any state or federal law pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof except a first conviction of selling alcohol to underage persons; (ii) of a crime involving moral turpitude; or (iii) of a crime involving soliciting for prostitution, pandering, gambling, letting premises for prostitution, keeping a disorderly place, the traffic offense of hit and run or leaving the scene of an accident, or any misdemeanor serious traffic offense as defined in O.C.G.A. § 40-6-390 et seq., but excluding any first conviction for reckless driving or driving under the influence of alcohol or drugs in the past ten years as measured from the date of arrest, or for whom outstanding indictments, accusations or criminal charges exist charging such individual with any of such offenses and for which no final disposition has occurred. If at the time of application, the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal;
 - c. ~~Has been convicted of two violations of the ordinances of the city governing alcoholic beverages licensed hereunder within the last five years immediately prior to the filing of the licensee's application with the city clerk, except as specifically provided in paragraph (c) below, concerning revocation of alcohol license, or paragraph (d) below, concerning selling alcohol to underage persons. If at the time of application, the applicant is charged with any of the offenses prescribed in this subsection, consideration of the application shall be suspended until entry of a plea or verdict or dismissal.~~
 - c. Has been convicted of a misdemeanor who served any part of a criminal sentence, including probation within five years immediately preceding the date of receipt of submission of the application.

- (3) For 24 consecutive months immediately following the date of a license revocation, no person or any individual person having an ownership interest in the business whose license was revoked shall be eligible for renewal of or issuance of a license at the same location for which the previously revoked license was issued. Furthermore, during said 24-month period, no person or any individual person having an ownership interest in the business whose license was revoked shall be eligible to apply for any additional licenses.
- (4) Except as provided in subsection (5) below, for 24 consecutive months immediately following the date of a citation for any violation for selling alcohol to underage persons within a licensed premise, no application for change in ownership of the license at the same location where the violation occurred shall be allowed unless there is a 100 percent change in ownership and control between the old licensee and the new applicant. For purposes of this subparagraph, 100 percent change in ownership and control shall mean a one hundred percent change in all individuals, partners, officers, directors, shareholders, members, managers and/or all persons having any whole, partial, beneficial or other interest in the business where the alcoholic beverage license is located. One hundred percent change in ownership and control shall not include a transfer in ownership and control to any person in the immediate family of any individuals, partners, officers, directors, shareholders, members, managers and/or any persons having any interest in the business where the alcoholic beverage license is located. The application for the alcoholic beverage license must be applied for and approved prior to the sale of the business. An alcoholic beverage license may not be issued until the new owner has established that the sale of the business is bona fide. The applicant for the new license must provide documentation concerning the sale, including but not limited to documentation concerning ownership of and all business interests in the old license in addition to documentation concerning the ownership of and all business interests in the new license, as requested by the city clerk.
- (5) For 24 consecutive months immediately following the date of a citation for any violation for selling alcohol to underage persons within a licensed premise, an application for less than 100 percent change in ownership and control between the old licensee and the new application shall be allowed only if the following requirements are met:
 - a. The applicant for less than 100 percent change in ownership of the license at the same location where the violation occurred must agree as part of the application that any past violations for selling alcohol to underage persons within the licensed premise shall become part of the record of violations for the new business as if the new owners had been cited and found in violation. Such record of violations shall be taken into consideration in any future hearings against the new licensee.
 - b. Such applications for less than 100 percent change in ownership shall be made prior to the sale of the business but after any pending citations for violations for selling alcohol to underage persons within the licensed premise are adjudicated.
- (6) No person shall hold a license in any retail category hereunder and a license under any wholesale category at the same time.
- (7) For 12 consecutive months immediately following the revocation of an alcoholic beverage license for a licensed premises, no alcoholic beverage license shall issue for the location of that licensed premises.

(Ord. No. 2016-03, § 1, 3-15-16; Ord. No. 2017-02, 2-7-17)

Section 6-3 Definitions:

Brew pub: Any restaurant in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form.

Brew pub: Any restaurant in which beer or malt beverages are manufactured or brewed, subject to the ~~barrel~~ **volume production and sales** limitations prescribed in O.C.G.A. § **3-5-24.1** for retail consumption on **and off** the premises ~~and solely in draft form~~. **A Class B license shall be required for off premises package sales. There is no requirement that brew pubs obtain a Class B license and offer package sales.**

Sec. 6-8. - Regulations pertaining to certain classes of licenses only.

(a) Retail beer and wine by the package.

(1) Retail beer and wine by the package (Class B and C) shall be permitted in food stores, grocery stores, supermarkets, convenience food stores, and discount/general merchandise stores as an item incidental to the sale of foodstuffs, groceries, or other mercantile items. **Retail beer by the package shall be permitted in brew pubs in accordance with O.C.G.A. §3-5-36 (4).**

Further mentioned at 6-8(c) as follows:

(c) Brew Pubs. Any restaurant holding a Class E license shall be allowed to operate as a brew pub upon obtaining a brew pub license from the State of Georgia

The DOR (State) penalty schedule for alcohol license violations is as follows and based upon a three year lookback with all fines being approximate:

1st Offense: \$1000 fine and 12 month probation (additional \$100 admin fee upon violation), no suspension. Note: fine may be cut in half if new training or procedural protocol is implemented by licensee.

2nd Offense: \$1500 fine, 12 month probation, 3-7 day suspension

3rd Offense: \$1900 fine, 30 day suspension

4th Offense: 2 year revocation

Proposed City of Statesboro penalty schedule based on three year lookback with all fines being approximate: (Note: City penalties are typically imposed prior to State penalties, and State may or may not take City sanctions into consideration when assessing penalties. Not all City violations are violations of State law or regulations; however, all State violations are City violations per Section 6-18.)

1st Offense: \$500-\$1,000 fine

2nd Offense: \$1,000 fine, 1-5 day suspension

3rd Offense: \$1,500 fine, 6-10 day suspension

4th Offense: \$1,750 fine, 1 year revocation

Note: City Manager has emergency shutdown power prior to administrative hearing pursuant to City Section 6-19 (d).

Sec. 6-13. - Approval by Mayor and City Council; Public Hearing.

(a) No new alcoholic beverage license to sell, dispense, pour or offer to sell, dispense or pour any distilled spirits, alcoholic beverages, wine, beer or malt beverages within the corporate limits of the City of Statesboro shall be issued to a new owner or new location until the application has been approved by the Mayor and City Council after a public hearing.

(b) At least seven days prior to the date of the public hearing a sign shall be erected on the location for which the application is made in a conspicuous place which may be observed by pedestrian and motor vehicle traffic passing by such location and shall not be removed by the applicant prior to the conclusion of such public hearing. The sign shall specify the nature of the license being requested, that the application applies to the premises where the sign is posted, that a public hearing is scheduled to be conducted in the chambers of the Mayor and City Council, on the second floor at City Hall, at a designated time and date.

(c) In determining whether any alcoholic beverage license applied for shall be granted, transferred, or issued to a new owner, entity or location the Mayor and City Council shall, in the interest of public safety and welfare, hear evidence at the public hearing relevant to the following:

(1) *Reputation.* The reputation, character, trade and business associations, and past business ventures of the applicant, owner, designated manager or any other person associated with the business.

(2) *Previous violations of alcoholic beverage laws.* If the applicant, owner, designated manager and any other person associated with the business is a previous holder of a license to sell alcoholic beverages, whether the applicant, owner, designated manager or any other person associated with the business has violated any law, regulation, or ordinance relating to such business.

(3) *Manner of conducting prior alcoholic beverage business.* If the applicant, owner, designated manager or any other person associated with the business is a current or previous holder of a license to dispense alcoholic beverages, the manner in which the applicant, owner, designated manager and any other person associated with the business conducted the prior business, especially as to the necessity of unusual police observation and inspection in order to prevent the violation of any law, regulation, or ordinance relating to such business.

(4) *Location.* The location for which the license is sought, as to traffic congestion, general character of the neighborhood, and the effect such an establishment would have on the adjacent and surrounding property values.

(5) *Number of licenses in trading area.* The number of licenses already granted for similar businesses in the trading area of the place for which the license is sought.

- (6) *Previous revocation of license.* If the applicant, owner, designated manager or any other person associated with the business is a current or previous holder of a license to dispense alcoholic beverages license issued under the police powers of any governing authority, and has had corrective action taken against said license including, but not limited to, suspension or revocation.
- (7) *Previous denial or revocation for location.* The denial of an application or the revocation of a license which was based on the qualifications of the proposed location.
- (8) *Prior incidents at location.* Evidence that a substantial number of incidents requiring police intervention have occurred within a square city block of the proposed location during any 12 month period in which the location was licensed to sell alcohol.
- (9) The applicant, owner, designated manager or any other person associated with the business is not compliant with all matters bearing upon the conduct of any business venture within the City, including but not limited to zoning, permitting, taxes, code compliance, licensing and fees;
- (10) Evidence that the type and number of schools, colleges, religious institutions, libraries, public recreation areas or other circumstances in the vicinity of the premises cause minors or those under 21 years of age to frequent the immediate area even though in compliance with the minimum proximity requirements provided in this Chapter and in state law.

(d) In considering the application, the Mayor and City Council may impose conditions on the exercise of the privilege granted by the license, to the extent necessary, to minimize any adverse effects the proposed licensed premises may have on public safety and welfare if, after considering all of the evidence, the Mayor and City Council decides such conditions can reduce such adverse impacts on public safety and welfare to an acceptable and reasonable level. Violations of such conditions shall be a violation of this Chapter and the terms of the license.

(e) If the application is denied or conditions are placed on the license, the Mayor and City Council shall cause a written opinion to be prepared and approved by Mayor and City Council showing the reason or reasons for the denial of the license or placement of conditions on the license. Upon adoption by the Mayor and City Council the opinion shall be the final decision of the Mayor and City Council. The City Clerk who 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. In the absence of a formal written opinion, the minutes from the meeting shall constitute the written opinion.

(f) Appeal of the final decision of the Mayor and City Council shall be by Petition for Certiorari to the Superior Court of Bulloch County.

(g) The City Clerk may approve all applications for renewal of an existing license upon payment of all charges due, and the renewal application shows no change of ownership or location. If there has been a change of ownership or location the application must be approved by Mayor and City Council.