AN ORDINANCE BY COUNCILMEMBER NATALYN MOSBY ARCHIBONG

Natalyn Archibong

AN ORDINANCE AMENDING SECTIONS 10-1, 10-88, AND 10-88.1 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA BY ADDING A PARAGRAPH TO DEFINE THE TERM "SPECIALTY FOOD SHOP" AND BY ADDING AND AMENDING PARAGRAPHS TO CREATE DISTANCE REQUIREMENTS FOR SAME.

08-O-0843

WHEREAS specialty food shops are a unique, rapidly growing, and nationally recognized market segment within the retail food service industry; and

WHEREAS specialty food shops sell gourmet foods and items that cannot be found at traditional grocery stores, as well as wine and malt beverages by the package; and

WHEREAS specialty food shops offer prepared gourmet meals for consumers to purchase and take home; and

WHEREAS specialty food shops are ideally suited to serve more densely populated neighborhoods and developments in a pedestrian-friendly manner, and multiple specialty food shops can often serve the same area; and

WHEREAS the current alcohol beverage distance requirements pertaining to package stores do not take into consideration the specialty food shop business model; and

WHEREAS the current distance requirements are needlessly impeding the establishment of specialty food shops within the City of Atlanta; and

WHEREAS the City of Atlanta and its citizens will benefit from the greater range of products and services and the greater availability of products and services made possible by allowing the establishment of specialty food shops in the City of Atlanta; and

WHEREAS the City of Atlanta and its citizens will benefit from the revenues generated by this amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: That Section 10-1 of the City of Atlanta Code of Ordinances be amended to include the definition of *specialty food shop* to read as follows:

Sec. 10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adequate parking means parking that meets the requirements of the Code.

Adequate parking for a nightclub means one (1) lawful parking space for each seventy-five (75) square feet of floor area within the licensed premises. Such parking space shall be exclusively available to the nightclub's patrons between the hours of 10:00 p.m. and 2:30 a.m. the following day on days on which alcoholic beverages may be lawfully sold for on premises consumption at a nightclub. Parking spaces on a street or within any part of the right-of-way shall not be included within this definition of adequate parking for a nightclub. The term "floor area" as used in this definition means, in addition to those areas defined in section 16-29.001(13)(b) of the Code, areas within the existing building footprint where the walls have been removed and a permanent roof remains.

Alcoholic beverages means and includes but is not limited to malt beverages, wine and distilled spirits.

Applicant means the person who files an application to obtain a license to sell alcoholic beverages and:

(1) If a corporation, the chief executive officer, or some other person with written authority from the corporation to bind the corporation as to its business operations within the city;

(2) If a partnership, the partner with the greatest proprietary interest;

(3) If an individual, that individual;

(4) If a firm or association, the person with the greatest proprietary interest.

Auditorium means a permanent building or hall used for concerts, speakers, plays and similar activities and that has a seating capacity in excess of 3,500.

Bar means an establishment having a minimum capacity of 25 persons and a maximum capacity of 100 persons per the City of Atlanta Fire Code that does not meet the definition of a restaurant, nightclub, lounge, farm winery, convention center, hotel, brewpub, open air cafe or sidewalk cafe, that is primarily devoted to selling and dispensing alcoholic beverages by the drink for on-premises consumption. The bar must make food available to its patrons.

Bottle house means any place of business open to the public or any private club which allows patrons or members to bring in and consume alcoholic beverages on the premises.

Brewpub means any eating establishment 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 solely in draft form. As used herein, the term "eating premises and establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Broker means any person who purchases or obtains an alcoholic beverage from an importer, distillery, brewery, or winery and sells the alcoholic beverage to another broker, importer, or wholesaler without having custody of the alcoholic beverage or maintaining a stock of the alcoholic beverage.

Business area means any street length between intersections where 50 percent or more is in use for business purposes.

Church means a permanent building where persons regularly assemble for religious worship.

City food market means a retail grocery supermarket which (a) does not sell or offer for sale any of the following: gasoline, diesel fuel or tire, distilled spirits, tobacco products, lottery tickets or related games of chance or malt beverages by the keg; (b) does not provide for the on premises use of coin operated amusements; (c) maintains at all times that it is open to the public, an inventory of saleable food products, including meat, dairy, vegetable, fruit, dry goods and beverages, with a minimum, cumulative cost of goods sold of such food products of at least $225,000.00; (d) has an interior floor area of at least 10,000 square feet and not more than 30,000 square feet, of which more than 50 percent of such interior floor area is devoted to the display for sale of food products; (e) employs not less than 50 employees who work at least 35 hours per week on the premises; and (f) derives less than 20 percent of its gross receipts from the sale of malt beverages and wine.

College means only state, county, city, church or other colleges that teach the subjects commonly taught in the common colleges of this state and does not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Continuing education center means any facility offering adult education which is operated by a unit of the University System of Georgia and which has housing facilities capable of accommodating 200 people and banquet facilities capable of serving 400 people. The sale of alcoholic beverages shall only be incidental to the principal business of a continuing education center licensed under this chapter.

Convention center means premises that are operated exclusively for the purpose of providing accommodations for conventions, trade shows and other similar activities, as well as some social events such as wedding receptions, bar mitzvahs, banquets and meetings. The facility must be available to public or private groups of persons for monetary consideration on a rental, fee, percentage or similar basis; be used primarily for

special occasions, including but not limited to the events mentioned in this definition; be open to or attended by invited or selected guests or paying patrons; and the premises shall contain a minimum occupancy load of 200 persons for each show, event, reception or activity as permitted by the department of fire. The term "convention center" shall not include premises that provide adult entertainment, as that term is defined and used in part 16 of this Code, either regularly or occasionally, nor shall convention centers licensed to sell alcoholic beverages under this Code provide such adult entertainment on their licensed premises. All convention center licensees holding a valid city license for the sale of alcoholic beverages at the time of the enactment of the ordinance from which this amended definition derives (January 21, 1992) shall be deemed to have complied with all requirements for a convention center.

Distance means the measurement in linear feet from the front door of the structures from which alcoholic beverages are sold or offered for sale in a straight line to the nearest public sidewalk, walkway, street, road or highway by the nearest route to the front door of the building or to the nearest portion of the ground, whichever is applicable. For the purposes of this chapter, distances shall be measured along the pedestrian route of travel to and from the premises.

Distilled spirits or spirituous liquors means all beverages containing alcohol obtained by distillation or containing more than 21 percent alcohol by volume, including fortified wines.

Domestic wine means any and all wines produced by a farm winery within this state.

Entertainment means the live performance by any person, whether such person be a musician, dancer or otherwise, which occurs upon the premises of a licensed establishment.

Family means and includes any person related to the holder of a license within the first degree of consanguinity or affinity, as determined according to civil law.

Farm winery means a domestic winery located on premises, a substantial portion of which is used for agricultural purposes, including the cultivation of grapes, berries or fruits to be utilized in the manufacture or production of wine by the winery, or a domestic winery which:

(1) Makes at least 40 percent of its annual production from agricultural produce grown in this state;

(2) Is owned and operated by persons who are engaged in the production of a substantial portion of the state agricultural produce used in its annual production, and for this purpose such production of a substantial portion of such state agricultural produce shall be determined by the state commissioner of revenue;

(3) Produces less than 100,000 gallons per year; and

(4) Has been certified and licensed as a farm winery by the state commissioner of revenue.

Government center means a building owned or leased by and operated by the state or the county and which contains a lobby or atrium area or other room which is used for group functions. The city is specifically excluded from this definition. If a license is issued for premises within a government center, a government official or employee shall be the named licensee. All government centers, while being used for the serving of alcoholic beverages, shall have posted the following sign visible to persons being served:
"No person may purchase and/or consume within a government center more than three regular servings of alcoholic beverages within a two-hour period. Violations of this ordinance shall be punishable by a fine of up to $1,000.00 or imprisonment up to 30 days."

Hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which 50 or more rooms are used for the sleeping accommodations of these guests, and having one or more public dining rooms, with an adequate and sanitary kitchen and a seating capacity of at least 40 where meals are regularly served to those guests, the sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out in this definition for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a lounge, restaurant or nightclub in their premises and the holder of the franchise shall be included in the definition of hotel.

Importer means any person who imports an alcoholic beverage into the State of Georgia from a foreign country and sells the alcoholic beverage to another importer, broker, or wholesaler and who maintains a stock of the alcoholic beverage.

License means the authorization by the council to engage in the sale or consumption of alcoholic beverages on the premises.

Licensee means a person, real or artificial, holding any class of license issued under this chapter.

Lounge means a separate room connected with a part of and adjacent to a restaurant or located in a hotel or located in any airport owned by the city, with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and shall have a seating capacity for at least 50 persons. However, lounges located in any airport owned or operated by the city shall be exempt from the seating capacity requirement. A lounge that is operated on a different floor in the premises or in a separate building or that

is not connected to or adjacent to a restaurant shall be considered a separate establishment and an additional license fee shall be paid therefor.

Malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product or any combination of such products in water, containing not more than six percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine.

Manufacturer means any maker, producer or bottler of an alcoholic beverage. The term also means:

(1) For distilled spirits, any person engaged in distilling, rectifying or blending any distilled spirits;

(2) For malt beverages, any brewer; and

(3) For wine, any vintner.

Nightclub means an establishment having a capacity of at least 100 persons per the City of Atlanta Fire Code, with all booths and tables unobstructed and open to view, dispensing alcoholic beverages and in which music, dancing or entertainment is conducted. All such establishments shall be equipped with air conditioning. The principal business of a nightclub shall be entertaining, and the serving of alcoholic beverages shall be incidental thereto.

Open air cafe means an establishment which serves food during all hours of operation and which has a seating capacity of at least 40 and which is located within the pedestrian court area of a shopping and retail entertainment center. Such an establishment may be licensed for on-premises consumption only.

Outdoor dining area means a space in which a licensee serves food and beverages as part of the operation of the licensed premises as a sidewalk cafe. An outdoor dining area must be located directly in front of a licensed restaurant and may only be separated from the licensees premises by a sidewalk. No part of a sidewalk cafe shall be located within a public right-of-way. The width of an outdoor dining area shall not exceed the width of the licensed premises. An outdoor dining area shall contain no more than 50 percent of the premises' total seating capacity. The space within an outdoor dining area shall be enclosed within a clearly delineated area, which is surrounded by a continuous physical barrier no less than 36 inches and no more than 40 inches in height. An outdoor dining area shall have a single point of ingress and egress that is controlled by the licensee. Music and/or live entertainment shall not be provided within an outdoor dining area.

Package store means an establishment engaged in the retail sale of packaged alcoholic beverages, such as ale, beer, wine, and whiskey for consumption off the premises and at which on-premises consumption is specifically prohibited, as distinct from a bar,

restaurant or similar establishment which is licensed for the retail sale of alcoholic beverages of any type by the drink and/or for consumption on the premises. The term "package store" is considered synonymous with the term "liquor store". A package store shall include any premises classified as Industry No. 5921 in the Standard Industrial Classification (SIC) Manual 1972, prepared by the Executive Office of the President, Office of Management and Budget. The term "package store" shall not include a "wine specialty shop" and shall not include a city food market and shall not include a specialty food shop.

Park means any public lands owned or controlled and operated by the city, the state or any county of the state, in and upon which play facilities are provided for the recreation and enjoyment of the general public.

Pharmacy means any place of business of a pharmacist, which also sells cosmetics, stationary and other such products.

Premises means the definite closed or partitioned-in locality, whether room, shop or building, wherein alcoholic beverages are sold or consumed. Premises also includes any area or patio immediately adjacent to the main licensed facility and located on property owned or leased by such licensee. The area or patio need not be covered, but must be completely enclosed, except for entrances and exits, by a wall, fence, shrubbery or other decorative material no less than 30 inches in height. Premises of an open air cafe need not be completely partitioned, and patios attached to such an establishment must be enclosed, except for entrances and exits, by a wall, fence, shrubbery or other decorative material no less than 30 inches in height or by a body of water at least three feet wide and one foot deep or by some other architectural or landscaping barrier which would prevent access to the premises. Open air cafes shall be subject to all other requirements contained in this definition.

Private club means a corporation chartered, organized and existing under the laws of the state, exempt from federal income taxes pursuant to section 501(c) of the Internal Revenue Code, as amended, actively and continuously in operation within the city as a nonprofit corporation for at least one year immediately prior to the application for a license under this chapter and during which time such corporation shall have had continuously not less than 250 members whose names, current addresses and current telephone numbers shall be kept listed on the club premises and made available for inspection on the premises by the Atlanta Police Department during all hours during which the private club is open for business, which members shall have regularly paid monthly, quarterly, semiannual or annual dues. In no event shall dues be paid on a daily basis. All applications for either a new or renewal license to sell alcoholic beverages by a private club for the year 2001 and all years thereafter must be accompanied by proof from the Internal Revenue Service that the corporation seeking such license is deemed exempt from federal income taxes by the Internal Revenue Service at the time of application for the new or renewal license. In addition, the corporation shall be required to submit its most recent Form 990 Return of Organization Exempt From Income Tax as certified by a certified public accountant. Furthermore, the corporation shall maintain on its premises any additional federal and state

income tax returns filed by the corporation within the past three years and shall make such documents available for inspection upon request by the Atlanta Police Department during all hours during which the private club is open for business. In the event that a corporation licensed as a private club for any given year loses its 501(c) exemption, such private club must inform the licenses and permits unit in writing of such change in status within 15 days of the change in status. The failure to provide in writing notification of such change in status within 15 days, in addition to the violation of any other provision of this chapter, shall be grounds for the denial, suspension or revocation of said license and/or the implementation of a fine of up to $1,000.00 against the corporation. The corporation shall be operated exclusively for pleasure, recreation and other non profitable purposes, but in no event shall the corporation have as its primary purpose the operation of an establishment licensed for the sale of alcoholic beverages. No part of the net earnings of the corporation shall inure to the benefit of any member, director or officer. During the period of time prior to the time of application, the corporation shall have owned, hired or leased a building having kitchen and dining room space therein for the reasonable use of its members and shall have maintained sufficient personnel and equipment to prepare on the premises and serve hot meals, which hot meals shall have been served and shall continue to be served at least once per day at least six days per week. After an establishment has been granted private club status from the city, these requirements as to meal preparation, kitchen equipment and dining room facilities shall continue in effect. No member, director, officer, agent, or employee of the club shall be paid or directly or indirectly, receive, in the form of salary or other compensation, any profits from the sale of alcoholic beverages by or to the club or its members or guests, except such salary as may be fixed by its members at any annual meeting or by its governing board out of the general revenue of the club. The nonprofit corporation must be the sole owner and operator of the private club. Prior to the date of application, no nonprofit corporation shall have transferred, either directly or indirectly, by sale, lease or otherwise, any ownership, or any interest in the nonprofit entity or its assets (other than in the ordinary course of business), or the right to manage the private club in order to obtain its license to sell alcoholic beverages nor shall any nonprofit corporation transfer, during the time that the nonprofit corporation holds a license pursuant to this chapter, any such interest or right.

Private residence means a house or dwelling wherein not less than one or more than three families customarily reside and does not include a mobile home, an apartment house having facilities for housing more than four families, a boardinghouse or roominghouse where there are five or more boarders or roomers or any residence which has been unoccupied for a period of six consecutive months immediately prior to the filing of an application.

Restaurant means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least 40 people, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. However, restaurants located in any airport owned or operated by the city shall be exempt from the seating capacity requirement. At least one

meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of those meals shall be the principal business conducted, with the serving of distilled spirits to be consumed on the premises as only incidental thereto.

Retail grocery supermarket means any retail market or supermarket selling a full range of food products including meat, dairy, vegetable, fruit, dry goods and beverages.

Retail sale means selling or offering for sale alcoholic beverages to any member of the public.

School means only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools of this state and does not include private schools where only specificalized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Sexual orientation means the state of being heterosexual, homosexual or bisexual.

Shopping and retail entertainment center means a structure containing five or more retail establishments and three or more eating establishments, which has a court area for pedestrian use covered and enclosed on at least three sides. Such a court must extend vertically two or more floor levels and must constitute a minimum of 10,000 square feet. This definition shall also include single floor level shopping and retail entertainment centers which are completely enclosed and which meet all other requirements contained in this definition.

Sidewalk cafe means an establishment that serves food during all hours of operation, has a seating capacity of at least 30 people, operates an outdoor dining area, and is located within a mixed-use development (as that term is defined in section 16-29.001(24)) that has zoning approval for at least 50,000 square feet of retail space, 100,000 square feet of office space and 300 residential units. A sidewalk cafe shall not provide any outdoor seating or any other outdoor service unless it is within an outdoor dining area. When interpreting the hours of operation listed in section 10-209(c) and 10-209(d) of this Code, sidewalk cafes shall be subject to the same limitations as restaurants. Sidewalk cafes must operate in compliance with the city's noise ordinance, found in chapter 74 of the City of Atlanta Code of Ordinances, and with section 10-60(a)(4)b.3.). [As provided for in section 10-109(a)(17)) of this part]

New — *Specialty food shop* means a retail establishment that

(a) deals in the sale of foods, specialty foods, and wine, fortified wine, port, sherry, and malt beverages for consumption off the premises; at which on-premises consumption of alcoholic beverages is specifically prohibited, except that if a specialty food shop is the holder of a license under Section 10-60(a)(1)(c) of this Code, that licensed retail establishment shall be authorized to

hold wine tastings in conjunction with educational programs on the subjects of enology or viticulture;

(b) does not maintain on the premises for sale any of the following: distilled spirits, malt beverages by the keg, single malt beverage components, gasoline, diesel fuel, tires, lottery tickets or related games of chance, or tobacco;

(c) offers prepared food, made and packaged on the premise available for off-premise consumption;

(d) maintains an inventory of saleable food products including, but not limited to, prepared foods, packaged foods, meat, dairy, vegetables, dry goods, and beverages;

(e) has an interior floor area of not more than 5000 square feet (inclusive of storage), of which more than 50% of interior floor area is devoted to the display for sale of food products; and

(f) derives less than 41% of its gross receipts from the sale of wine and malt beverages.

Sports coliseum means premises operated exclusively for the purpose of providing major league sporting events of basketball, hockey or similar athletic or amusement events for attendance by the public and where such premises contain a minimum of 3,000 square feet.

Suite hotel means a building or other structure kept, used, maintained, advertised and held out to the public to be a place where 50 or more suites, each consisting of at least one bedroom, a living room and a bathroom, are offered for adequate pay to travelers and guests, whether transient, permanent or residential, and where alcoholic beverages are served and the price of such beverages is included in the suite rates.

Tasting room means an outlet operated by a farm winery for the promotion of a farm winery's wine by providing complimentary samples of such wine to the public and for the sale of such wine at retail.

Wholesaler means any person engaged in distribution or selling of alcoholic beverages to retailers for the purpose of resale.

Wine or vinous liquors means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes but is not limited to all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as

a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to this definition of wine.

"Wine specialty shop" means a retail establishment:

(1) Which shall deal in the sale of table wine, fortified wines, port, sherry for consumption off the premises and/or wine accessories; and at which on-premises consumption of alcoholic beverages is specifically prohibited, except that if a wine specialty shop is the holder of a license under Section 10-60(a)(1)(c) of this Code, that licensed retail establishment shall be authorized to hold wine tastings in conjunction with educational programs on the subjects of enology or viticulture.

(2) Which shall not maintain on the premises or offer for sale malt beverages or distilled spirits;

(3) Which shall maintain on the premises and offer for sale at all times a variety of wines from not less than 100 nor more than 200 manufacturers or importers of wine or any combination thereof the total of which shall not fall below 100 nor exceed 200;

(4) Which shall maintain and replenish an inventory of at least 36 bottles of wine from each manufacturer or importer of wine referred to in subsection (3) above; provided however, that any inventory which is depleted to less than 36 bottles of wine must be replenished to at least 36 bottles of wine within 15 days of the date that the inventory falls below 36 bottles;

(5) Which shall submit an inventory list of all wines maintained on the premises and offered for sale to the licenses and permits unit of the police department. Such inventory list shall be submitted to the licenses and permits unit on a quarterly basis by the first day of each of the following months: January, April, July and October; and

(6) Whose total interior floor area, inclusive of storage area, shall not exceed 2,000 square feet.

SECTION 2: That Section 10-88 of the City of Atlanta Code of Ordinances be amended to read as follows:

Sec. 10-88. Distances of establishments from residences, schools, churches, library, hospitals and other public places.

(a) No license hereunder shall be issued for any location where alcoholic beverages are sold whose proposed boundary line is within 300 feet of any private residence. The distance for the purpose of this section, notwithstanding the definition of distance

contained in section 10-1, shall be measured by straight line from the closest point of the property line of the proposed site where alcoholic beverages are sold to the nearest point of any residential building, provided, however, that when the applicant is located within a shopping center containing a minimum of 80,000 square feet the distance from any private residence shall be reduced to 150 feet.

(b) No license shall be issued hereunder where the applicant's place of business where alcoholic beverages are to be sold is located within 300 feet of a branch of the Atlanta Public Library or within 500 feet of any church, or public park or within 300 feet of any private hospital, or mental health care facility, or public hospital which is owned and operated by any government agency or authority and used for hospitalization, or within 600 feet of a school ground or college campus, or any youth-serving organization or any recreational facility that primarily serves schoolchildren under 18 years of age, except that the restrictions of this section shall not apply to hotels of 50 rooms or more which have been in continuous operation for a period of at least five years immediately prior to April 5, 1938, or to the operator of a restaurant applying for a license for the sale and consumption by the drink of spirituous liquors where the operator held a license authorizing the sale and consumption by the drink of either malt beverages or vinous liquors at that restaurant on October 3, 1966, and has maintained the license in good standing from that time until the time of the application hereunder; provided further, that alcoholic beverage establishments which are located within a shopping center having 30,000 square feet or more and in which a branch of the Atlanta Public Library is also located shall not be required to comply with the above-described distance requirement for a branch of the Atlanta Public Library; provided further with regard to applications for licenses to sell alcoholic beverage for consumption on the premises, no distance requirements as to churches shall apply to churches which are located in commercial buildings or that move into existing commercial buildings in areas zoned for commercial purpose, and when such churches are within 300 feet of an existing establishment with a license to sell alcoholic beverages on the premises.

(c) The wholesaler's license for the sale of alcoholic beverages may be issued for a location within the above-prescribed distances of a private residence or residences, if the residence or residences are situated on property which is zoned for commercial or industrial use under the zoning ordinance of the city.

(d) The distance requirements and exemptions set forth in this section shall no longer apply to package stores which must meet the distance requirements set forth in section 10-88.1; provided, however, that the provisions of this section shall not apply to locations licensed prior to the effective date of this section or to renewals thereof. The distance requirements and exemptions set forth in this section shall not apply to wine specialty shops which must meet the distance requirements set forth in subsection 10-88.1(e). The distance requirements and exemptions set forth in this section shall not apply to City Food Markets which must meet the distance requirements set forth in subsection 10.88.1(f). The distance requirements and exemptions set forth in this section shall not apply to Specialty Food Shops, which must meet the distance requirements set forth in subsection 10.88.1(g). New

(e) The provisions of this section shall not apply to licenses issued hereunder to continuing education centers, restaurants or sidewalk cafes, as defined in section 10-1, for the sale of alcoholic beverages for on-premises consumption; provided, however, that in order for a restaurant or sidewalk cafe to come within this exemption it shall provide no entertainment, as defined in section 10-1, unless it is located either:

(i) Within a mixed-use development (as that term is defined in section 16-29.001(24)) that has zoning approval for at least 50,000 square feet of retail space, 100,000 square feet of office space and 300 residential units or

(ii) Within a multi-building complex, which, for purposes of this code section, shall mean a group of buildings planned, developed and managed as a unit which is comprised of at least 50,000 square feet of retail shopping and/or restaurant space, at least 50,000 square feet of institutional office space; at least 100,000 square feet of space used for research and education, and at least 100,000 square feet of conference center space, as long as such multi-building complex is located on a college campus.

Under no circumstances may music and/or live entertainment be provided in an outdoor dining area.

(iii) Or within a mixed-use development (as that term is defined in section 16-29.001(24)), comprised of not less than 99,000 total square feet, that has zoning approval for at least 2,000 square feet of retail space, 3,000 square feet of office space and at least 70 residential units, which is located within the jurisdictional boundaries of the City of Atlanta Downtown Development Authority and is also located within an Urban Enterprise Zone created by the city.

SECTION 3: That Section 10-88.1 of the City of Atlanta Code of Ordinances be amended to read as follows:

Sec. 10-88.1. Package stores.

(a) No package store, as defined in section 10-1, shall be located within 1,500 feet of any other package store. This distance shall be measured by the most direct route of travel on the ground, in accordance with O.C.G.A. § 3-4-49. An application for a renewal license to sell distilled spirits by the package shall not be subject to this restriction if the location associated with such application is one for which a license to sell distilled spirits by the package has been issued prior to July 1, 1997. An application for a renewal license to sell beer and/or wine by the package shall not be subject to this restriction if the location associated with such application is one for which a license to sell beer and/or wine by the package has been issued prior to July 1, 1997. Nor shall the restriction of this subsection apply to any location for which a new application to sell distilled spirits by the package has been filed with the police department if the sale of distilled spirits by the package was lawful at any time during the 12 months immediately preceding such application. Nor shall

the restriction of this subsection apply to any location for which a new application to sell beer and/or wine by the package has been filed with the police department if the sale of beer and/or wine by the package was lawful at such location at any time during the 12 months immediately preceding such application.

(1) This restriction shall not apply to:

a. Any hotel licensed for the sale of alcoholic beverages.

b. A retail grocery supermarket or pharmacy:

i. Which contains an interior floor area of 14,000 square feet or more; and

ii. In which not more than five percent of the interior floor area of such store is devoted to the display of beer and/or wine products for retail sale; and

iii. Which derives less than eight percent of its gross receipts from the sale of beer and/or wine.

(2) Any store which is construed to be a package store pursuant to this chapter and which sells beer and/or wine, but not distilled spirits, shall not be required to meet the 1,500 feet distance requirement between package stores, as set forth above, in regard to its distance between a retail grocery supermarket or pharmacy selling beer and/or wine, but not distilled spirits, which contains an interior floor area of 14,000 square feet or more and which is already in existence and is located in either a shoppingcenter, which, for purposes of this section and notwithstanding the definition of a "shopping and retail entertainment center" as that phrase is defined in section 10-1, is comprised of 45,000 square feet or more, which contains at least three or more commercial establishments planned, developed and managed as a unit, which provides common on-site parking facilities; or which is located in a mixed-use development (as that term is defined in section 16-29.001(24)) comprised of 45,000 square feet or more, if such package store will be located within such shopping center or mixed-use development as defined herein.

Any other package store seeking to obtain a license in a shopping center or mixed-use development, as defined above, in which a package store other than a retail grocery supermarket or pharmacy is located shall adhere to the 1,500 feet distance requirement between package stores as set forth above. Distance requirements contained in this chapter between all other package stores shall remain in effect.

Pursuant to this provision, any package store seeking to obtain a license to sell either beer, wine, and/or distilled spirits in either a shopping center or mixed use

development, as such terms are defined above, in which is already located a retail grocery supermarket or pharmacy which is licensed to sell alcoholic beverages by the package, and also in which Is already located any other store which is licensed to sell alcoholic beverages by the package shall be required to meet the 1,500 feet distance requirement set forth above as to each of these existing stores. However, this provision shall not affect any locations within either an existing shopping center or mixed-use development for which a valid license to sell alcoholic beverages was in effect on the date this section became effective.

(b) No package store, as defined in section 10-1, shall be located within the following distances of the specified other uses:

(1) From any structures in residential use, 600 feet.

(2) From any public or private school, 600 feet.

(3) From any public or private park or recreation facility, 600 feet.

(4) From any public library branch, 600 feet.

(5) From any church or similar place of religious worship, 250 feet.

(6) From any public or private hospital or mental health care facility, 600 feet.

(7) From any child care or day care facility, 600 feet.

The distance in subsection (b)(1)--(7), notwithstanding the definition of distance contained in section 10-1, shall be measured in a straight line from the closest point of the property line of the site proposed to be occupied by the package store to the closest property line of any use identified above.

Package stores that derive less than five percent of their gross receipts from the sale of alcoholic beverages shall be exempt from the distance requirements set forth in subsection (b)(1)--(7) above.

In order to be exempt from the distance requirements set forth in subsection (b)(1)--(7) above, an applicant for a license to sell alcoholic beverages by the package which is not a wine specialty shop or a City Food Market or a Specialty Food Shop, is required to file with the police department a sworn statement stating that it is the applicant's belief that the subject package store will derive less than five percent of the package store's gross receipts from the sale of alcoholic beverages. This statement shall accompany the original application for a license to sell alcoholic beverages by the package.

In order to obtain exempt status when renewing a license to sell alcoholic beverages by the package, the applicant for renewal must provide the police

department with a statement from a certified public accountant that proves that during the preceding year, the package store did in fact derive less than five percent of its gross receipts from the sale of alcoholic beverages. For the purposes of this section, revenue derived from the sale of lottery tickets or related games of chance shall not be calculated when determining gross receipts.

The failure of an applicant for renewal to provide the police department with a statement from a certified public accountant evidencing that the package store derived less than the percentage established by ordinance of gross receipts from the sale of alcoholic beverages, shall result in the denial of a renewed license.

(c) Except as otherwise provided in section 10-113, a location licensed for the retail sale of packaged alcoholic beverages on or before May 6, 1997 shall not be required to comply with the distance requirements set forth in subsection (b)(1--7) above provided that such location is not expanded or enlarged.

(d) Applicants for a package store license shall include with their application, a plat of survey prepared and sealed by a surveyor registered in the state certifying that all of the locational requirements listed above in subsection (a) have been met. Such applications shall be reviewed by the bureau of buildings for compliance with all distance requirements.

(e) No wine specialty shop, as defined in section 10-1, shall be located within the following distances of the specified other uses:

(1) From any other wine specialty shop, 600 feet as measured by the most direct route of travel on the ground, in accordance with O.C.G.A. § 3-4-49.

(2) From any public or private school, 600 feet.

(3) From any public or private park or recreation facility, 600 feet.

(4) From any public library branch, 600 feet.

(5) From any church or similar place of religious worship, 250 feet.

(6) From any public or private hospital or mental health care facility, 600 feet.

(7) From any child care or day care facility, 600 feet.

The distance in subsection (e)(2)--(7), notwithstanding the definition of distance contained in section 10-1, shall be measured in a straight line from the closest point of the property line of the site proposed to be occupied by the wine specialty shop package store to the closest property line of any use identified above.

(f) No city food market, as defined in section 10-1, shall be located within the following distance, as defined in section 10-1, of the following specified other uses:

(1) From any other city food market, 600 feet.

(2) From any public or private school, 300 feet.

(3) From any public or private park or recreation facility, 300 feet.

(4) From any public library branch, 300 feet.

(5) From any church or similar place of religious worship, 300 feet.

(6) From any public or private hospital or mental health care facility, 300 feet.

(7) From any child care or day care facility, 300 feet.

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(g) No specialty food shop, as defined in section 10-1, shall be located within the following distance, as defined in section 10-1, of the following specified other uses:

(1) From any public or private school, 300 feet.

(2) From any public or private park or recreation facility, 300 feet.

(3) From any church or similar place of religious worship, 250 feet.

(4) From any public or private hospital or mental health care facility, 300 feet.

(5) From any child care or day care facility, 300 feet.

SECTION 4: That all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.