AN ORDINANCE 08-O-1230

BY COUNCILMEMBER KWANZA HALL

AS SUBSTITUTED BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO AMEND SECTION 10-1, 10-62 AND 10-88 TO CHAPTER 10 OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA, SO AS TO CREATE A NEW CATEGORY OF ALCOHOLIC BEVERAGE LICENSE FOR COMMUNITY THEATRES; TO MAKE SUCH COMMUNITY THEATRES EXEMPT FROM THE DISTANCE REQUIREMENTS CONTAINED IN SECTION 10-88; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the public safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, the City of Atlanta has interest in regulating, through the lawful exercise of its police powers, the sale of alcoholic beverages for the public health, safety and welfare; and

WHEREAS, certain areas of the City of Atlanta are being revitalized and are being built to take advantage of the opportunity to establish an environment of in-town living which caters to the convenience and character of the residents and businesses therein; and

WHEREAS, the City of Atlanta recognizes that the absence of proper definitions for certain businesses and the prohibition regarding entertainment is antiquated, is not flexible, and is not always desirable within the City's various communities; and

WHEREAS, the City of Atlanta recognizes that due to their inherent nature, community theatres appeal to their surrounding communities, and that the addition of in-town community theatres will promote neighborhood awareness whilst providing persons the accessibility to enjoy entertainment in a pleasant and safe venue and will not hinder the public's safety and health; and

WHEREAS, *in State of Georgia v. Heretic, Inc., et al,. 277 Ga. 275, 588 S.E. 2d 224 (2003)*, the Supreme Court of Georgia held that a city may establish regulations for one kind of establishment which sells alcoholic beverages for on-premises consumption which differ from regulations which pertain to other kinds of establishments which sell alcoholic beverages for on-premises consumption, including exemptions from general regulations, as long as "any state of facts can reasonably be conceived to support the legislature's exception…", and

WHEREAS, the City of Atlanta acknowledges there currently exists in the City Code a distinction in regard to distance requirements for restaurants, sidewalk cafes, continuing education centers, and distance requirements for other establishments which sell alcoholic beverages for on-premises consumption which will not be changed by the amendment detailed below; and

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

Section 1.
That section10-1 of the Code of Ordinances of the City of Atlanta be amended to add the following definition:

> *Community Theatre* means any facility located on a certain lot **having a seating capacity of not less than 125, and** that provides live theatrical productions in attendance before a collective group of spectators, listeners, or viewers for 4 out of every 7 days in any calendar week for no less than 40 weeks in any calendar year. Community theatres must make available to the community a varied schedule of workshops and classes at the licensed facility throughout each year. Community theatres must provide limited use of their facilities on a no fee, weekly basis to whichever neighborhood association governs their location. Community theatres must promote and engage the "walkability" of its residing neighborhood, and make available not less than one bike rack for every 5 parking spaces available.
> All licenses issued hereunder as community theatre, for the purpose of on-premise consumption of alcoholic beverages are non-transferable. **The term "community theatre" 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 community theatres licensed to sell alcoholic beverages under this Code provide such adult entertainment on their licensed premises.** No special exemption shall exist for community theatres in issues relating to noise, odor, or traffic.

Section 2.
That Section 10-62 of the Code of Ordinances of the City of Atlanta be amended by replacing the current language within such section with the following language:

> No license for the sale of distilled spirits by the drink or for the operation of a bottle house shall have issue to any applicant who does not meet the requirements of a restaurant, hotel, private club, lounge, nightclub, convention center, nonprofit performing arts theatre, nonprofit museum, nonprofit zoological park, nonprofit botanical garden, auditorium, sports coliseum, suite hotel, open air café,

government center, tasting room, sidewalk café, continuing education center, or **community theatre**.

Section 3.
That section 10-88(e) of the Code of Ordinances of the City of Atlanta be amended by replacing the current language within such section with the following language:

(e) The provisions of this section shall not apply to licenses issued hereunder to continuing education centers, restaurants, sidewalk cafes, or **community theatres**, 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 café to come within this exemption it shall provide no entertainment, as defined in section 10-1, unless it is located either:

Section 4.
If it shall be found that any prior ordinance or parts of any prior ordinance are in conflict herewith, then those sections contained herein shall be deemed controlling.

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> *Community Theatre* means any facility located on a certain lot that provides live **theatrical productions in attendance before a collective group of spectators, listeners, or viewers** for 4 out of every 7 days in any calendar week for **no less than** 40 weeks in any calendar year. Community theatres must make available to the community a varied schedule of workshops and classes at the licensed facility throughout each year. Community theatres must provide limited use of their facilities on a no fee, weekly basis to whichever neighborhood association governs their location. Community theatres must promote and engage the "walkability" of its residing neighborhood, and make available not less than one bike rack for every 5 parking spaces available.
> All licenses issues hereunder as community theatre, for the purpose of on-premise consumption of alcoholic beverages are non-transferable. No adult entertainment shall for any reason be permitted to do business in or about a community theatre. No special exemption shall exist for community theatres in issues relating to noise, odor, or traffic.

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That Section 10-62 of the Code of Ordinances of the City of Atlanta be amended by replacing the current language within such section with the following language:

> No license for the sale of distilled spirits by the drink or for the operation of a bottle house shall have issue to any applicant who does not meet the requirements of a restaurant, hotel, private club, lounge, nightclub, convention center, nonprofit performing arts theatre, nonprofit museum, nonprofit zoological park, nonprofit botanical garden, auditorium, sports coliseum, suite hotel, open air café, government center, tasting room, sidewalk café, continuing education center, or **community theatre**.

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