04-O-1252

AN ORDINANCE

BY COUNCILMEMBER ANNE FAUVER

AN ORDINANCE TO AMEND CHAPTER 10, ARTICLE I, SECTION 10-1 OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA SO AS TO AMEND THE DEFINITION OF "NIGHTCLUB" CONTAINED WITHIN SAID SECTION; TO ADD A DEFINITION FOR "BAR" AS A NEW CATEGORY OF LICENSED ESTABLISHMENT FOR CONSUMPTION ON PREMISES; TO DELETE SECTIONS 10-2 THROUGH 10-14 AND TO REPLACE THOSE SECTIONS AS PROVIDED IN ORDER TO DELETE CERTAIN OBSOLETE SECTIONS OF THE CODE, TO CLARIFY CERTAIN SECTIONS AND TO REORGANIZE THE PROVISIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in regulating, through the lawful exercise of its police powers, the sale of alcoholic beverages in order to provide for the safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, the Public Safety/Legal Administration Committee of the Atlanta City Council formed a task force, known as the Alcohol Technical Advisory Group (ATAG), to undertake the review of the alcohol licensing code; and

WHEREAS, ATAG has completed a review of several areas of the alcohol licensing code and recommends approval of this ordinance; and

WHEREAS, the City of Atlanta currently provides licenses for sale of alcoholic beverages for consumption on premises to several different types of establishments, including restaurants and nightclubs; and

WHEREAS, in order to sell alcohol on Sundays, pursuant to O.C.G.A. § 3-3-7 a "restaurant" must derive greater than 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; and

WHEREAS, the definition of "nightclub" requires minimum seating capacity of 100 persons and requires that the establishment provide "a band or other professional entertainment a minimum of 20 days per month, each and every month;" and

WHEREAS, many licensees do not wish to operate a licensed establishment with professional entertainment but do not have greater than 50% of their sales in food; and

WHEREAS, the City wishes to amend the definition of "nightclub" to address these concerns; and

WHEREAS, the City further wishes to add an additional category of licensed establishment to be called a "Bar" that is smaller than a nightclub but does not meet the 50% food sales requirement of a restaurant; and

WHEREAS, the Code currently contains, in sections 10-5 and 10-8(b), sections that are obsolete and should be deleted; and

WHEREAS, the City Code currently contains certain prohibitions against actions by individuals who are 18 years of age when the State and/or Federal government requires that those individuals be 21 years of age; and

WHEREAS, police officers and the City Solicitor have indicated to ATAG that officers have encountered situations where an individual is unconscious or semi-conscious, apparently inebriated, in public and is unable to respond as required in sections 10-9(b), thus preventing the police from being able to arrest that individual; and

WHEREAS, police officers and the City Solicitor have indicated to ATAG that officers encounter individuals who appear to be under the influence of alcohol engaging in such activities as wandering in the middle of the street but are not immediately risking "persons or property" as required in Section 10-9(a) and thus can't be arrested' and

WHEREAS, ATAG recommends amendment of section 10-9 of the code to provide officers that ability to take into custody individuals who appear to be inebriated in order to protect the individual in the manner prescribed in the amendments.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1.

That Chapter 10, Article I, Section 10-1, the current paragraph and definition for the term "Nightclub" which currently states:

> *Nightclub* means an establishment having a seating capacity of more than 100 persons with all booths and tables being unobstructed and open to view and providing a band or other professional entertainment a minimum of 20 days per month, each and every month, with the exception of holidays, vacations and periods of redecorating. The principal business of a nightclub shall be entertaining, and the serving of distilled spirits shall be incidental thereto.

Be amended to delete the current language and to insert in lieu thereof the following language:

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.**

Section 3.

That Chapter 10, Article I, Section 10-1 be amended to add a new paragraph and definition for the term "Bar" which shall read:

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 café or sidewalk café, 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.**

Section 4.

That Chapter 10, Article I, Sections 10-2 through 10-14 be amended to delete the current language and to insert in lieu thereof the following language:

Sec. 10-2. Purposes of chapter.

This chapter has been enacted in accordance with a plan designed for the purposes, among others, of promoting the health and general welfare of the community; to establish reasonable and ascertainable standards for the regulation and control of the licensing and sales of alcoholic beverages and operation of bottle houses; to protect and preserve schools and churches; to give effect to land use and to preserve certain residential areas, with reasonable considerations, among others, to the character of the areas and their peculiar suitability for particular uses, the congestion in the roads and streets and with a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values; and to protect against the evils of concentration of the retail outlets for distilled spirits in one family or to prevent undesirable persons from engaging in or having any interest in alcoholic beverage **licenses**.

Sec. 10-3. Compliance with chapter required.

It shall be unlawful for any person to sell or offer for sale at wholesale or retail any alcoholic beverages without having first complied with this chapter.

Sec. 10-4. Jurisdiction.

This chapter shall apply to the corporate limits of the city and outside the city limits in all territory to which the jurisdiction of the city extends.

Sec. 10-5. [Severability.]

If any provision, clause, sentence or paragraph of this chapter, or the application thereof to any person or circumstances, shall be held invalid and unconstitutional, such invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are hereby declared to be severable.

Sec. 10-6. Outstanding licenses; compliance assumed.

All licensees holding a valid license for the manufacture or sale of alcoholic beverages issued by the city at the time of the enactment of the ordinance from which this chapter derives shall be deemed to have complied with all requirements as to application and issuance of licenses under this chapter. The licensees shall, however, meet all other requirements as to regulation and control as set forth in this chapter.

Sec. 10-7. Alcohol consumption near package stores.

(a) *Generally.* It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance.

(b) *Enforcement.* The department of police shall be responsible for the enforcement of this section.

Sec. 10-8. Drinking in public.

It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the city, or while in or on the grounds of any MARTA station. **Further, it shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while in any city park except during permitted festivals or at other licensed locations within such parks.** Nothing in this section shall be construed to prohibit the sale and consumption of vinous, malt or any other alcoholic beverage at any convention center or sports coliseum, as defined in section 10-1, or in any golf pro shop which is situated on any golf course owned or operated by the city.

A licensee may prepare and serve alcoholic beverages to be consumed within an outdoor dining area as part of the operation of a sidewalk cafe. Open containers of alcoholic beverages shall only be transported into or out of outdoor dining areas by the licensees' working employees as part of their work duties.

Sec. 10-9. Disorderly while under the influence.

(a) *Acts constituting violation.* It shall be unlawful for any person within the corporate limits of the city to be disorderly while under the influence on the streets, sidewalks or other public places. The following acts are declared to be in violation of this section:

(1) Any person who acts in a reckless manner so as to create an unreasonable risk of harm **to himself, to other** persons or **to** property in the vicinity while under the influence of alcohol or drugs.

(2) Any person who shall defecate or urinate on the streets or sidewalks or in the halls or elevators of public or commercial buildings, or on any property open to public view in the city while under the influence of alcohol or drugs.

(3) Any person who, without provocation, uses to or of another, in such person's presence, fighting words, or who shall panhandle while under the influence of alcohol or drugs.

(4) Any person who shall act in a violent or tumultuous manner toward another so as to endanger the life, limb, health or property of another while under the influence of alcohol or drugs.

(5) Any person who shall lie down or otherwise obstruct, block or impede pedestrian or vehicular traffic on any sidewalk, street, or entrance or exit to any other public way, house of worship, business, public hall, theater, public conveyance or other public place and who shall refuse to remove themselves when ordered to do so by a city police officer or other lawful authority while under influence of alcohol or drugs.

(6) Any person who shall act in a boisterous, turbulent, or agitated manner, or who shall use profane, vulgar, loud or unbecoming language while under the influence of alcohol or other drugs while on the streets, sidewalks, or other public places within the corporate limits of the city.

(b) *Duty of peace officer.* Any peace officer, in accordance with standards set out in standard operating procedures promulgated by the police chief or designee, may take or send an individual under the influence of alcohol or other drugs to such person's home or to a treatment facility in lieu of incarcerating such person for violations of this section **or when such person is unresponsive to the officer's communications**. Any peace officer so acting shall be considered as carrying out such peace officer's official duty. The standard operating procedures shall set out the circumstances under which a peace officer may send an individual home or to a treatment facility without formally rendering charges against such person.

(c) *Penalty.* Upon a finding of guilty for violation of this section, the offender shall be subject to imprisonment for a term not to exceed **180 days** or by fine not to exceed **$1000.00**, either of such penalties to be in the discretion of the municipal judge. Such punishment may be probated by the municipal judge for those offenders desiring to participate in a detoxification program.

(d) *Habitual abusers.* Any person who shall have been convicted or have forfeited collateral under the provisions of subsection (b) of this section three times in the preceding 12 months may be deemed an habitual alcohol abuser and may be probated by the court to an outpatient treatment resource for a period of not more than **180** days.

(e) *Alcoholics.* It is the policy of the city that alcoholics may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. It is the intent of this section to provide for the identification and referral to treatment of persons who are alcoholic and who may be charged with violations of this section.

Sec. 10-10. Furnishing to, purchasing of, or possession by persons under 21 years of age of alcoholic beverages.

(a) Except as otherwise authorized by law:

(1) No person. directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age;

(2) No person under 21 years of age shall purchase**, drink** or knowingly possess any alcoholic beverages;

(3) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;

(4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age;

(5) No person under 21 years of age shall misrepresent such person's identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage**; or**

(6) No person shall keep or maintain a place where persons under 21 years of age are allowed and permitted to come and purchase, drink or possess any alcoholic beverage.

(b) The prohibitions contained in subsections (1), (2) and (4) of subsection (a) of this section shall not apply with respect to the sale, purchase or possession of alcohol beverages for consumption:

(1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or

(2) At a religious ceremony.

(c) The prohibitions contained in subsections (1), (2) and (4) of subsection (a) of this section shall not apply with respect to the possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person under 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present.

(d) The prohibition contained in subsection (1) of subsection (a) of this section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate.

(e) If such conduct is not otherwise prohibited pursuant to O.C.G.A. § 3-3-24, nothing contained in this section shall be construed to prohibit any person under 21 years of age from:

(1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishments;

(2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or

(3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

(f) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding against another person for violation of any provision of this section, shall not be used as an admission in any administrative or judicial proceedings brought against such testifying person under 21 years of age.

(g) Nothing in this section shall be construed to modify, amend or supersede O.C.G.A. tit. 15, ch. 11 (O.C.G.A. § 15-11-1 et seq.).

(h) Any person convicted of violating any prohibition contained in subsection (a) of this section shall be punished by a fine not to exceed $1,000.00 or imprisonment in the city jail or stockade for not more than **180 days** or both; except that any person convicted of violating subsection (a)(2) of this section shall be punished by not more than 30 days' imprisonment or a fine of not more than $300.00 or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(i) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (a)(2) or (a)(3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require. The terms of probation shall preferably be such as require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.

(j) Unless the officer has reasonable cause to believe such person is intoxicated, a law enforcement officer may arrest by issuance of a citation a person accused of violating only subsection (a)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought

before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.

Sec. 10-11. Moved to 10-5. This section 10-11 to be deleted.

Sec. 10-12. Persons under specified ages forbidden to enter, remain in or loiter at certain licensed premises.

No person under the age of 21 years shall enter, remain in or loiter on any licensed premises, as herein defined, licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any licensee or either such licensed premises, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.

Provided, however, it is lawful for persons who are 18 years of age or older that provide entertainment to enter and to remain in any licensed premises, but only during and in the course of their employment as entertainers. Provided further, that it is lawful for persons who are 18 years of age or older to sell, serve, possess or dispense alcoholic beverages in the course of their employment in any licensed premises in accordance with O.C.G.A. § 3-3-24(a), or in any other place where alcoholic beverages are lawfully present, so long as such place is the place of employment for such person under 21 years of age.

This section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises in accordance with O.C.G.A. § 3-3-24(b). However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

Sec. 10-13. Exceptions from restriction on entering or remaining.

It shall not be unlawful for, nor shall section 10-12 be construed to restrict, any person under the age of 21 years from entering or being:

(1) Upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of alcoholic beverages by the drink or for the sale of alcoholic beverages for consumption on the premises or that alcohol beverages, are prepared, mixed or dispensed and served and consumed therein.

(2) In any public stadiums, sports coliseums, government centers, auditoriums, convention centers, and fairgrounds and parks for which a valid license is obtained, notwithstanding that such premises or any portion thereof may be licensed for the sale of distilled spirits, wine or malt beverages by the drink for consumption on the licensed premises or that such products are dispensed and served and consumed therein; provided, that the person under the age of 21 years is attending a lawful activity, show, exhibition, performance or event on the premises or is required to be present as a condition of his employment.

(3) Upon the licensed premises of a tasting room when in the immediate company of at least one of his parents, or of his legal guardian.

(4) Upon the licensed premises of a lounge when in the immediate company of at least one of his parents, or of his legal guardian.

(5) Upon the licensed premises of a supermarket, convenience store, brewery, drugstore, package store, brew pub, private club or open air cafe as defined herein.

(6) Upon the licensed premises of a hotel, except for any area within the premises of a hotel being operated as a nightclub as defined herein.

(7) In any theater, concert hall, or similar establishment which is primarily devoted to theatrical performances. As used in this section only, the phrase "theater, concert hall, or similar establishment which is primarily devoted to theatrical performances" shall mean a building, playhouse, room, hall, or other place, licensed for consumption of alcoholic beverages on the premises, having at least 350 permanently affixed seats so arranged that a body of spectators can have an unobstructed view of the stage upon which theatrical, vaudeville, live concert or similar performances are given, and in which the serving of alcoholic beverages is clearly incidental to such performances, and where the revenue derived from the sale of alcoholic beverages is insubstantial when compared to all other sources of gross revenue; provided, that the person under the age of 21 years is attending a lawful activity, show, exhibition, performance or event on the premises or is required to be present as a condition of his employment.

Sec. 10-14. Posting signs as to restrictions.

Every licensee herein referred to shall keep a sign conspicuously posted over or near each entrance to any place from which persons under 21 years are herein restricted giving public notice of such fact. The wording and size of such signs shall be in accordance with such regulations as the chief of police may prescribe.

Secs. 10-15—10-30. Reserved.

Section 5.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.