04- O-1261

AN ORDINANCE

BY COUNCILMEMBER ANNE FAUVER

AN ORDINANCE TO AMEND CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA SO AS TO AMEND THE DEFINITION OF "DISTANCE" CONTAINED IN SECTION 10-1; TO AMEND THE WAY MEASUREMENT OF THE DISTANCE BETWEEN ALCOHOL LICENSED ESTABLISHMENTS AND DESIGNATED USES IS MADE; TO ELIMINATE DISTANCE REQUIREMENTS FROM PARKS AND LIBRARIES; TO DELETE AND CONSOLIDATE REDUNDANT OR OBSOLETE SECTIONS OF THE CODE IS SECTION 10-91, 10-92, 10-94; 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 at 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 State of Georgia and the City of Atlanta have enacted ordinances establishing that alcohol licensed premises shall be required distances from certain designated uses of land, and the City Code contains different ways to measure those distances and those ways of measurement are different from State provisions; and

WHEREAS, ATAG recommends that the measurement be made using the State method of measurement by making the City method the same as the State; and

WHEREAS, the City currently requires that alcohol license establishments be located certain distances from libraries and public parks while the State does not have such requirements; and

WHEREAS, as development within the City becomes more and more dense and development in certain areas of the City is encouraged, the City should eliminate some of those distance requirements that the State does not require and that seem to serve populations of children at different hours than many alcohol licensed establishments operate; and

WHEREAS, with the increased growth and vitality of the City and the increasing sophistication of the alcohol tastes of the population of the City resulting in some retail

grocery supermarkets and pharmacies having difficulty meeting the required percentage of gross revenues to be exempted from the distance requirements; and

WHEREAS, certain distance exemption provisions are redundant and should be combined particularly in sections 10-92(a) and 10-94(a).

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

Section 1.

That Chapter 10, Article I, Section 10-1 be amended to delete the current language and to insert in lieu thereof the following language:

Section 10-1. Definitions

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 **along such 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. **Unless otherwise provided by ordinance or law, all measurements to determine distances required by this Chapter shall be measured in the above-described manner.**

Section 2.

That Chapter 10, Article II, Section 10-88(a) and (b) are amended by deleting the present subsections which 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 shall be measured by the pedestrian route of traffic in all directions from the nearest walk enclosing the proposed premises 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 Pubic 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.

and inserting in its place the following language:

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 within 300 feet of any private residence. 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 500 feet of any church, 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 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.

Section 2.

That Chapter 10, Article II, Section 10-88.1 is amended by deleting the present subsections which 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 shopping center, 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, 600 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 distances in subsection (b)(1—7) are to 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 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.

Section 3

That Chapter 10, Article II, Section 10-91 which read as follows is hereby deleted:

Sec. 10-91. Exemption for certain malt beverage or wine licenses.

(a) *On-premises consumption of malt beverages.* Any applicant for a malt beverage license for consumption on the premises located within the following area shall not be required to comply with any distance requirement as to public libraries:

Beginning at the intersection of Piedmont Avenue and Baker Street; running thence westerly along Baker Street to its intersection with Spring Street; running thence in a southerly and southwesterly direction along Spring Street to its intersection with Hunter Street; running thence in a southeasterly direction along Hunter Street to Piedmont Avenue; running thence in a northeasterly and northerly direction along Piedmont Avenue to its intersection with Baker Street.

(b) *Nonapplicability of section.* This section shall not apply to adult entertainment establishments.

Section 4.

That Chapter 10, Article II, Section 10-92 is amended by deleting the present subsections which read as follows:

Sec. 10-92. Exemption for consumption on the premises and package sale of malt beverages or wine in certain area.

(a) Any applicant for a license for the sale of alcoholic beverages for consumption on the premises located within the following area shall not be required to comply with the distance requirements set forth in section 10-88:

Beginning at a point on the west right-of-way line of the Louisville and Nashville Railroad at a point where the railroad right-of-way line intersects the northernmost line of land lot 144, 14th district, Fulton County, thence running easterly along the north line of land lots 144, 113, 112, 81, 80, 49 and the 17th district of Fulton County to the intersection of the north line of land lot 17 with the east right-of-way line of Southern Railway; running thence generally south along the east right-of-way line of the Southern Railway to its intersection with the south line of the Georgia Railroad right-of-way; running thence generally west along the south line of the Georgia Railroad right-of-way to its intersection with the east line of Boulevard, S.E.; running thence generally south along the east line of Boulevard, S.E., to the intersection of Boulevard, S.E. and the centerline of Interstate 20 (east expressway); running thence west along the centerline of I-20, to its intersection with the east line of Fraser Street projected over I-20; running thence south along the east line of Fraser Street to its intersection with the south line of Georgia Avenue; running thence west along the south line of Georgia Avenue to its intersection with the west line of Pryor Street; thence running north along the west line of Pryor Street to its intersection with the centerline of I-20; running thence generally west along the centerline of I-20 to its intersection with the west right-of-way line of the Louisville and Nashville Railroad; running thence northerly along the west right-of-way line of the Louisville and Nashville Railroad back to the point of beginning.

(b) Any applicant for a license for the package sale of malt beverages and/or wine within the following areas shall not be required to comply with the distance requirements set forth in section 10-88.1:

(1) That parcel of land known as 2371 Glenwood Avenue, SE, Atlanta, Georgia under the numbering system of the City of Atlanta, more particularly described as follows: Beginning at the southern end of the miter of the intersection of the eastern right-of-way line of Second Avenue and the southern right-of-way line of Glenwood Avenue, said point being the point of beginning; run thence along the mitered right-of-way line in a northeastern direction a distance of approximately 30 feet to a point located on the southern right-of-way line of Glenwood Avenue; run thence along the southern right-of-way line of Glenwood Avenue in an eastern direction approximately 109 feet to a point; run thence in a southern direction approximately 189 feet to a point; run thence in a western direction approximately 129 feet to a point along the eastern right-of-way line of Second Avenue; run thence in a northern direction along the eastern right-of-way line of Second Avenue approximately 165 feet to the point of beginning.

(2) That parcel of land lying and being in the City of Atlanta, in Land Lot 53 of the 14th District of Fulton County, Georgia known as 244 Hill Street, Atlanta, Georgia 30312 under the numbering system of the City of Atlanta, more particularly described as follows: Beginning at the northwest corner of Clarke Street and Hill Street, and running thence north 89 degrees 31 minutes west, along the north side of Clarke Street,

97 feet to a point; running thence north 00 degrees 17 minutes east, 71.37 feet to a point; running thence north 88 degrees 15 minutes west, 50 feet to a point; running thence north 00 degrees 01 minutes west, 125.81 feet to a point; running thence north 89 degrees 49 minutes east, 146.84 feet to a point on the west side of Hill Street; running thence south along the west side of Hill Street 200 feet to the north side of Clarke Street and the point of beginning.

(3) That parcel of land known as 209 Edgewood Avenue, S.E., Atlanta, Georgia under the numbering system of the City of Atlanta.

(4) That parcel of land known as 1061 Ponce de Leon Avenue, Atlanta, Georgia, under the numbering system of the City of Atlanta. This exemption shall be valid so long as an establishment located on said parcel of land derives less than 15 percent of gross receipts from the sale of alcoholic beverages.

(5) That parcel of land known as 1192 B Pryor Street, Atlanta, Georgia, under the numbering system of the City of Atlanta. This exemption shall be conditioned on the requirement that no vending be permitted on said parcel of land.

(c) This section shall not apply to applicants for licenses for adult entertainment establishments.

Section 5.

That Chapter 10, Article II, Section 10-94(a) concerning certain areas exempt from distance restrictions for sale for consumption on the premises is amended by addition of the following subsection (7) as follows:

(7) Beginning at a point on the west right-of-way line of the Louisville and Nashville Railroad at a point where the railroad right-of-way line intersects the northernmost line of land lot 144, 14th district, Fulton County, thence running easterly along the north line of land lots 144, 113, 112, 81, 80, 49 and the 17th district of Fulton County to the intersection of the north line of land lot 17 with the east right-of-way line of Southern Railway; running thence generally south along the east right-of-way line of the Southern Railway to its intersection with the south line of the Georgia Railroad right-of-way; running thence generally west along the south line of the Georgia Railroad right-of-way to its intersection with the east line of Boulevard, S.E.; running thence generally south along the east line of Boulevard, S.E., to the intersection of Boulevard, S.E. and the centerline of Interstate 20 (east expressway); running thence west along the centerline of I-20, to its intersection with the east line of Fraser Street projected over I-20; running thence south along the east line of Fraser Street to its intersection with the south line of Georgia Avenue; running thence west along the south line of Georgia Avenue to its intersection with the west line of Pryor Street; thence running north along the west line of Pryor Street to its intersection with the centerline of I-20; running thence generally west along the centerline of I-20

to its intersection with the west right-of-way line of the Louisville and Nashville Railroad; running thence northerly along the west right-of-way line of the Louisville and Nashville Railroad back to the point of beginning.

Section 6.

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