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ALCOHOL LICENSING ORDINANCE – LSM VERSION DRAFT #2.

LAMAR COUNTY BOARD OF COMMISSIONERS
ORDINANCE NO. 2015-__

AN ORDINANCE TO AMEND CHAPTER 2-3 OF THE LAMAR COUNTY CODE OF ORDINANCES ENTITLED “ALCOHOLIC BEVERAGES”; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF
LAMAR COUNTY, GEORGIA

SECTION 1. Code Sections Amended. Chapter 2-3 of the Code of Ordinances of the Lamar County, Georgia, entitled “Alcoholic Beverages” is hereby amended by deleting Article I entitled “In General” and Article II entitled “Malt Beverages and Wine” in their entirety and substituting in lieu thereof a new Article I entitled “In General” and a new Article II entitled “Alcohol License Required” and sections thereunder which shall read as follows:

ARTICLE I. IN GENERAL.

Sec. 2-3-1. Definitions.

- (a) The definitions contained in O.C.G.A. §§ 3-4-1, 3-5-1, 3-6-1, and 3-11-1, as amended, are hereby incorporated by reference.
- (b) “County” means Lamar County, Georgia.
- (c) “Licensee” means every seller of alcoholic beverages in the County, whether retail, wholesale, or otherwise, required by this ordinance to possess a valid license.
- (d) “Managing agent” means an individual designated by resolution of a corporation, LLC or other business entity (other than a sole proprietorship) to apply for a license as provided herein and to manage the day to day operations of the premises.

Sec. 2-3-2. Penalty.

Any person who violates any provision of this chapter shall upon plea or conviction be punished as provided in Section 2-1-11. Any such punishment, if imposed, shall be in addition to and not in lieu of any license suspension or revocation under this chapter.

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Sec. 2-3-3. Closing hours for clubs.

All clubs in the county shall close each night at 2:00 A.M. The sheriff's department shall enforce this section.

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Sec. 2-3-4. Adoption of State Law.

All applicable provisions of O.C.G.A. Title. 3, Alcoholic Beverages, are hereby adopted by reference. It shall be unlawful to sell alcoholic beverages in Lamar County except in compliance with this chapter, O.C.G.A. Title 3, Alcoholic Beverages, and any applicable regulations adopted by the state department of revenue.

Deleted: O.C.G.A. tit.

Sec. 2-3-5. Purpose of Chapter.

This chapter is enacted in furtherance of the police powers of the County to promote the health and general welfare of its citizens; to regulate and control the licensing and sale of malt beverages, wine, and distilled spirits; to establish reasonable regulations and ascertainable standards for licensees which will ensure the public peace; to protect schools, churches, and residential areas from the negative secondary effects attributable to establishments that sell malt beverages, wine and distilled spirits; and to ensure that only qualified persons obtain licenses for the sale, manufacture or distribution of malt beverages, wine and distilled spirits.

Secs. 2-3-6—2-3-10 Reserved.

ARTICLE II. ALCOHOL LICENSE REQUIRED.

Sec. 2-3-11. License required; application.

(a) *License Required.* It shall be unlawful for any person or entity to sell alcoholic beverages in the County unless such person or entity is in possession of a valid license from both the State of Georgia and from the County authorizing the sale of alcoholic beverages pursuant to the regulations contained in this chapter and in Title 3 of the Official Code of Georgia Annotated entitled *Alcoholic Beverages*. Licenses shall not be transferable.

(b) *Filing.*

(1) Application for original and renewal licenses shall be made to the County Administrator on the form supplied by the County. All information requested by such form and otherwise required to be provided by this chapter, including the fee or fees provided for herein,

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must be provided in order for the application to be complete and acceptable by the County. The County will not accept incomplete applications for consideration. However, the acceptance of an incomplete application by the County Administrator shall not prohibit the Board of Commissioners from denying the application due to said application being incomplete.

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(2) All applications for the issuance of new licenses shall be filed with the County Administrator at least ten (10) days prior to the next regular meeting of the Board of Commissioners to be considered at that meeting. Failure to timely file the application may result in delayed consideration by the Board of Commissioners.

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(2) Licenses shall be valid through December 31 of the year in which they are issued or the year for which they are renewed. Applications for a renewal license shall be provided to the County by November 1 for the following year. All license renewals shall be considered and acted upon by the Board of Commissioners by December 31.

(3) No person holding an expired license not renewed for a succeeding calendar year may sell or serve alcoholic beverages in the succeeding calendar year unless and until the application for license renewal has been tendered and a renewal license has been reissued.

(c) Should any licensee withdraw from, sell or otherwise transfer such licensee's interest in any ongoing business licensed to sell alcoholic beverages, the County Administrator shall be notified in writing of such withdrawal, sale or transfer within seven (7) days. Conduct of the licensed business may be continued for a period of no more than 60 days following the sale of a licensee's interest therein upon application of the purchaser for a new license and with approval of the County Administrator; provided the initial licensee is under management contract with the purchaser of the business to supervise and remain responsible for the conduct of such business during the time investigation of the new application is underway; and further provided that no disciplinary proceedings are pending against the initial license holder or the licensed premises concerning established or alleged violations of this chapter.

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(d) *Display.* Every person, firm or corporation issued a license pursuant to this chapter shall be required to display the license in the same location as is displayed the occupational tax certificate.

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(e) Whenever a licensee is a business entity, other than a sole proprietorship, a new license application shall be required subsequent to any change in more than ten percent (10%) of the ownership of the licensed business entity where a new owner joins said business entity. Where a licensee is a sole proprietorship, a new license application shall be required subsequent to a change in the ownership of the sole proprietorship.

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(f) *Indebtedness to the County.* No license under this chapter shall be issued to any applicant if any person holding a beneficial interest in the business to be licensed owes any delinquent taxes or assessments to the County.

(g) *Event permit for catered function.* Any licensed alcohol beverage caterer who additionally holds a valid license to sell malt beverages or wine by the package or by the drink for consumption on the premises may apply to the County Administrator for an event permit to distribute malt beverages or wine by the drink off-premises within the County at authorized catered functions. Applications shall be supported by evidence of all required licenses in good standing, and proof of payment of excise and occupation taxes, if applicable.

(h) Nonprofit civic organizations: temporary permits.

Comment [LSM1]: This is from Spalding County's Code.

(1) Nonprofit civic organizations may qualify for a temporary permit from the commissioner of the department of revenue to sell alcoholic beverages for consumption on the premises for a period not to exceed three (3) days. No more than six (6) permits may be issued to a non-profit organization in any calendar year.

(2) An authorized representative of a nonprofit civic organization may apply to the County Administrator for a letter certifying the date, time and event location as a condition for seeking a temporary permit from the commissioner of the department of revenue. The County shall not impose a fee or charge for such letter.

Sec. 2-3-12. Misstatement or concealment of fact in application.

All applications for original or renewal licenses shall be tendered under oath, and it shall be unlawful to knowingly make any misstatement or concealment of fact in the application for a license. Any such act shall be cause for revocation, suspension, or denial of a renewal license and shall make the applicant subject to prosecution for perjury under the laws of this state.

Sec. 2-3-13. Grant or denial of license.

(a) *Supporting information.* The following information shall be furnished with the application for a license under this chapter for consideration by the Board of Commissioners:

(1) A complete set of fingerprints of applicant, applicant's representative or managing agent.

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(2) If the applicant is a partnership, LLC, or other business entity, other than a sole proprietorship or corporation, applicant must submit a copy of its partnership agreement, operating agreement, articles of organization, certificate of organization, and other organizational documents, and all members of the business entity must meet the conditions precedent to becoming a licensee and must make sworn statements of these qualifications.

(3) If the applicant is a corporation, applicant must submit a copy of the articles of incorporation, certificate of incorporation, by-laws, and other organizational documents, and the president and secretary of the corporation must meet the conditions precedent to becoming a licensee and must make sworn statements of these qualifications.

(4) A scale drawing of the premises for the proposed business showing its location with respect to all streets within 800 feet in every direction. The front door or main entrance of the proposed location shall be the centerpoint of a circle, having a radius of 600 feet. Such drawing shall also depict the distance from the premises to each church building, school building, educational building, school ground, college campus, governmentally owned and operated alcohol treatment center and housing authority property within the circumference of the circle.

(5) Where applicant is not the owner of the premises, a copy of applicant's lease with the premises owner must be submitted.

(b) *Qualifications for original and renewal license.*

(1) No original or renewal license shall be granted under this chapter to any applicant who is not a citizen or resident legal alien of the United States.

(2) Corporations, limited liability companies and other similar business entities shall apply for a license in the name of the business entity in care of a managing agent, and the license shall be issued to the business entity in care of a managing agent who shall in all respects meet the minimum requirements to qualify for the issuance of a license. In the case of business entity applicants whose primary business is the operation of an alcoholic beverage establishment, the majority stockholder must meet the requirements of an applicant under this subsection at the time application is made and at all times during which the license is in effect. Where the applicant is a business entity whose primary business is other than the operation of an alcoholic beverage establishment, a managing agent of such business entity involved or to be involved in the active management of the business to be licensed, must apply for the license and meet the requirements of an applicant under this subsection at the time application is made and at all times during which the license is in effect. Partnerships shall apply for a license in the name of one of the partners, and the license shall be issued in the name of the applicant partner. If the applicant is a partner in a partnership, the requirements of this chapter shall apply to all partners at

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the time of the application and at all times during which the license is in effect.

(3) Tender of an application for an alcohol license shall serve as an express authorization to the County to conduct an investigation into the background of the applicant and all others authorized in this Article.

(4) No original or renewal license shall be issued to any person, partnership or business entity organized for pecuniary gain where any individual having an interest either as owner, partner, manager, managing agent, or stockholder, directly or indirectly, beneficial or absolute, shall have been convicted of or shall have entered a plea of guilty or nolo contendere to, within five (5) years immediately prior to the filing of said application, any felony, or any violation of this chapter, or any crime involving moral turpitude, or any federal or state law related to liquor, malt beverages or wine, or driving under the influence (DUI) of alcohol or drugs.

(5) No original or renewal license shall be issued to any person, partnership or business entity where any such entity, individual having an interest as owner, partner, manager, managing agent, or stockholder, directly or indirectly, beneficial or absolute, shall have had an alcoholic beverage license denied, revoked or suspended due to due cause by any governmental entity. The restrictions of this subsection as to stockholders shall apply only to stockholders of privately owned corporations and to stockholders of publicly owned corporations who hold in excess of five percent (5%) of outstanding stock.

(6) Any person, firm or business entity who or which owns property leased to an applicant, which lease provides for payment based upon the level of alcoholic beverage derived income, shall be considered a co-applicant and must meet all qualifications contained herein.

(7) At the time of filing an original or renewal application for a license under this chapter, all applicants shall be given a copy of this chapter and shall sign a statement acknowledging receipt hereof. Nothing in this section shall be interpreted to make specific knowledge of this or any other chapter of the County Code a condition precedent to enforcement or amendment.

(c) At the time of license renewal, applicants must meet all qualifications of applicants for original licenses. In addition, suspension, revocation, or other loss of qualifications during the term of a license shall be grounds for denial of renewal.

(d) *Qualification of premises.* All licenses are limited to the site identified in the license application, and no application will be approved unless the premises used in conjunction with a license issued under this chapter shall meet the following qualifications, evidence of which qualifications shall be provided with the application:

(1) The premises upon which sale of alcoholic beverages will be conducted must be located in an area zoned to a suitable commercial classification.

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(2) The premises cannot, at the time of application, be the subject of an ordinance violation enforcement investigation.

(3) The front entrance of the premises must be clearly visible from a public street.

(e) *Commission action.* At the time of consideration of the application for the issuance or renewal of a license provided herein, the Board of Commissioners shall determine whether or not the applicant and applicant's premises meet all of the qualifications of this chapter. If the applicant or applicant's premises do not meet all of the qualifications stated in this chapter, the application shall be denied by the Board of Commissioners.

(f) *Representation at meeting.* At the time that a new or renewal license is considered by the Board of Commissioners, the applicant, or at least one general partner of the partnership, member or manager of the LLC, or officer of the corporation, or the managing agent shall be present to answer any questions that may be submitted to them by the Board of Commissioners. Failure to attend the meeting may be grounds for denial or delayed consideration of the application.

(g) *Reason for denial.* If the application for a license is denied, the County Administrator shall issue a written statement to the applicant within ten (10) days of the decision, which statement shall set forth the reason or reasons for denial.

(h) *Appeal.* If the applicant desires a hearing on the matter of denial of an original or renewal license, the applicant shall notify the Board of Commissioners in writing within ten (10) days of receipt of the notice of denial. The Board of Commissioners shall set a date for a hearing on the matter within 60 days of receipt of a proper notice of appeal from the applicant and notify the applicant of the date in writing at least ten (10) days prior to the date of the hearing. At the hearing, applicant will have the right to present evidence and cross-examine opposing witnesses. After the hearing, the Board of Commissioners shall either uphold, modify, or reverse the denial.

Section 2-3-14. Grounds for license revocation or suspension.

(a) *Grounds.* Any violations of the provisions of this chapter or Title 3 of the Official Code of Georgia Annotated shall be grounds for revocation or suspension for a definite period of the right to sell alcoholic beverages.

(b) *Reason for revocation or suspension.* If it is determined that grounds for revocation or suspension exist, the County Administrator shall formulate a recommendation to the Board of Commissioners and shall send a written statement to the licensee within ten (10) days of the County's intent to revoke or suspend and shall set forth the reason(s) for revocation or suspension.

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- (c) *Appeal.* If the licensee desires a hearing on the matter of revocation or suspension, he shall notify the Board of Commissioners in writing within ten (10) days of receipt of the Notice of Intent to revoke or suspend. A Notice of Appeal shall stay the revocation or suspension until the hearing is held. If the licensee fails to appeal within ten (10) days, then the recommendation of the County Administrator shall take effect. The Board of Commissioners shall set a date for a hearing on the matter within thirty (30) days of receipt of a proper Notice of Appeal from the licensee and notify the licensee of the date in writing at least ten (10) days prior to the date of hearing. At the hearing, licensee will have the right to present evidence and cross examine opposing witnesses. After the hearing, the Board of Commissioners shall either uphold, reverse or modify the revocation or suspension.

Sec. 2-3-15. Annual license fees; application fees.

- (a) The annual license fee for package sale of wine and malt beverages shall be \$500.00.
- (b) The annual license fee for sale by the drink of wine and malt beverages shall be \$500.00.
- (c) The annual fee for wine and malt beverage catering shall be \$100.00.
- (d) The fee for an original application shall be \$100.00. and the fee for a renewal application shall be \$50.00. These application fees are non-refundable.

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Sec. 2-3-16. Payment of license fees.

License fees required under this chapter shall be paid as follows:

- (1) New license: For applications received on or after September 1, fifty percent (50%) of the applicable fee shall be required.
- (2) License renewals: Fees shall be tendered to the County Administrator by November 1 of the year prior to the renewal year, along with the application for renewal.
- (3) If the application for a license is denied, all fees (other than the application fee) shall be refunded to the applicant within ten (10) days.

Sec. 2-3-17. License fee charged to wholesale dealer of malt beverages with principal place of business outside the County.

The license fee for wholesale dealers of malt beverages with their principal place of business located outside of the County shall be the maximum fee allowed by Section 3-5-43 of the Official Code of Georgia Annotated.

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Sec. 2-3-18. Excise tax.

- (a) In addition to the retail license fee, there is assessed a local excise tax based on sales of malt beverages and wine in the county in the following amounts:

(1) Beer:

<i>Size of container</i>	<i>Tax</i>
7 oz.	\$0.029
12 oz.	0.05
14 oz.	0.058
16 oz.	0.067
¼ barrel (7.75 gal)	3.00
½ barrel (15.5 gal)	6.00

is this set by
state?
27 oz growlers

- (2) Wine, twenty-two cents (\$0.22) per liter and a proportionate amount at the same rate on all fractional parts of a liter.

- (b) The excise tax above shall be paid by the wholesale dealer to the county by the tenth day of each month, based upon the units of malt beverages and wine sold during the previous month. Interest shall accrue on late payments at the rate of nine percent (9%) per annum. Wholesale dealers shall keep true and correct records of all sales and shipments and shall render a sworn statement of same accompanying the monthly report to the county.

Secs. 2-3-19 through 2-3-20. Reserved.

SECTION 2. This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

A. It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

B. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other Section, paragraph, sentence, clause or phrase of this Ordinance.

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It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Ordinance.

C. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance and that, to the greatest extent allowed by law, all remaining Sections, paragraphs, sentences, clauses, or phrases of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 4. Repeal of Conflicting Provisions. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption by the Board of Commissioners of Lamar County, Georgia.

SO ORDAINED, this _____ day of _____, 2015.

CHARLES GLASS, Chairman

VAN BAKER

ROBERT HEINEY

BENNIE HORTON

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NANCY THRASH

ATTEST:

Bob Zellner, County Administrator

(SEAL)

First Reading: _____

Second Reading/
Adoption: _____