

ORDINANCE #363

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF MONTEZUMA BY REPEALING CHAPTER 3 ENTITLED "ALCOHOLIC BEVERAGES;" ADOPTING A NEW CHAPTER 3, ENTITLED "ALCOHOLIC BEVERAGES," REPEALING ALL PRIOR ORDINANCES IN CONFLICT HERewith; AND FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of Montezuma desires to provide for the health, safety, and welfare of the citizens of the City; and

WHEREAS, in order to protect the public health, safety, and welfare, the City Council did adopt an Alcoholic Beverages Ordinance to regulate the sale and manufacture of alcoholic beverages within the corporate limits of the City, to impose a specific tax, to establish licensing qualifications and fees, and other related regulations; and

WHEREAS, after careful study and deliberation, the City Council has determined to adopt a new Alcoholic Beverage Ordinance to better protect the health, safety, and welfare of the citizens of the City and provide for the efficient enforcement of the ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Montezuma, and it is hereby ordained by authority of the same, as follows:

Section 1. The Chapter 3 of the City Code of the City of Montezuma entitled "Alcoholic Beverages" is repealed in its entirety.

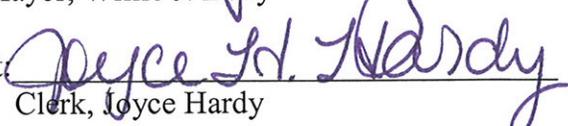
Section 2. A new Alcoholic Beverages Ordinance designated as a new Chapter 3 of the City Code of the City of Montezuma and attached hereto as "Exhibit A" is hereby adopted.

Section 3. All ordinances or parts of ordinances in conflict herewith are repealed.

SO ORDAINED, this 11th day of December, 2007.

CITY OF MONTEZUMA

By: 
Mayor, Willie J. Larry

Attest: 
Clerk, Joyce Hardy

(SEAL)

Chapter 3

ALCOHOLIC BEVERAGES

- Article I. In General
- Article II. Malt Beverages, Wine and Distilled Spirits
 - Division 1. Generally
 - Division 2. Licenses

Article I. In General

Section 3.1 Definitions.

For the purposes of this ordinance, the following definitions shall apply:

Church building shall mean a building used primarily for the purpose of religious worship or all buildings owned by and operated exclusively as a church when the owning entity is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

City as used herein shall mean the incorporated area of the City of Montezuma, Georgia.

City Council or *Council* shall mean the City Council of the City of Montezuma, Georgia.

Conviction shall mean an adjudication of guilt or a plea of guilty, or a plea of nolo contendere or the forfeiture of bond by a person charged with a crime.

Distance. The distances prescribed in this ordinance shall be measured in a straight line from the front door of the structure for which alcoholic beverages are offered for sale and by way of the nearest public sidewalk street or road along such public sidewalk, street or road by the nearest route to the nearest portion of the church building, school building, school grounds or education campus as is applicable.

Distilled Spirits. All beverages containing alcohol obtained by distillation or containing more than twenty-one (21) per cent alcohol by volume, including fortified wines.

License shall mean the authorization by the City Council of the City of Montezuma to engage in the sale of malt beverages and/or wine.

Malt Beverages and *Wine* shall mean those beverages defined by the Official Code of Georgia Annotated, § 3-1-2.

Minor shall mean any person to whom the sale of alcoholic beverages is prohibited by O.C.G.A. § 3-3-23.

Person shall mean any individual.

Premises shall mean the definite closed or partitioned-in locality, whether a room, shop, or building, wherein malt beverages, wine and/or distilled spirits are sold and any and all surrounding and adjacent areas, whether enclosed or not, which are owned by or under the control of the person to whom the license is issued.

Retail Sale shall mean selling or offering for sale any malt beverage and/or wine to any member of the public.

School or *College* shall mean such state, county, city, church or other school that teaches the subjects commonly taught in the common schools of this state, to include licensed preschool and/or kindergarten facilities and shall not include private schools where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations, and other special subjects are taught.

School building or *educational building* shall apply only to state, county, city or church school buildings and to such buildings at such other schools in which re taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of O. C. G. A. Section 20-2-690.

Section 3.2 **Public possession or consumption.**

(a) It shall be unlawful for any person to drink any alcoholic beverage upon property of the City or upon any open premises adjacent to any public business in the City, whether or not such person is located in a vehicle.

(b) It shall be unlawful for any person to have in his or her hand any open container used, or which has been used, for alcoholic beverages, upon the property of the City or upon any open premises adjacent to any public business in the City.

(c) This section shall not be applicable to the “parking lot” or other premises of a duly licensed business selling alcoholic beverages where “curb service” is regularly provided by employees of such business; however, this section is expressly applicable to such businesses where customers “service themselves,” which is to say, where the customer makes his purchase and returns to a vehicle or the outside premises of such business.

Section 3.3 **Possession, etc., by minors.**

(a) It shall be unlawful for a minor to attempt to purchase or purchase, or for any other person to purchase for a minor, any alcoholic beverage.

(b) It shall be unlawful for a minor to exhibit any fake, forged, or borrowed credentials in an effort to obtain alcoholic beverages to which he or she is not legally entitled.

(c) It shall be unlawful for a minor to have alcoholic beverages in his or her possession.

(d) It shall be unlawful to sell any alcoholic beverage to any individual without first checking the purchaser's credentials which shall include a date of birth.

(e) It shall be unlawful to allow any minor on the premises of any business or establishment when thirty percent or more of the gross receipts of the business is from the sale of alcoholic beverages. Provided however, this paragraph shall not apply to any establishment granted a license authorized under Section 3.21(d).

Section 3.4 **General operational regulations.**

(a) No holder of a license authorizing the retail sale of alcoholic beverages in the City, or any agent or employee of the licensee, shall do any of the following upon the licensed premises:

1. Knowingly sell malt beverages and/or wine and distilled spirits to a minor.
2. Knowingly sell malt beverages and/or wine and distilled spirits to any person while such person is in an intoxicated condition.
3. Sell malt beverages and/or wine and distilled spirits upon the licensed premises, or permit the consumption of malt beverages and/or wine and distilled spirits upon the licensed premises, on any day or at any time when such sale or consumption is prohibited by law.
4. Permit on the licensed premises any disorderly conduct or breach of peace.

(b) Establishments that do not have a license for on-premises consumption issued pursuant to Section 3.36 shall not permit alcoholic beverages of any form to be consumed on their premises or in their establishments.

Section 3.5 **Hours of operation.**

(a) Retail and wholesale dealers of malt beverages, wine, and distilled spirits shall not

permit their places of business to be opened for the sale of such beverages on Sundays, Christmas Day, or any other days prohibited by state law.

(b) Establishments having an on-premises consumption license issued pursuant to Section 3.21(d) of this Chapter and realizing 50 percent or greater of their business, as measured by gross receipts, from the sale of food may be permitted to be opened for any reason on Sundays, Christmas Day, or any other days on which the sale of alcoholic beverages is prohibited by state law. Provided however, no alcoholic beverage may be sold.

Section 3.6 **Use of licensed wholesalers.**

Alcoholic beverages shall be received at or delivered to the premises of the retail licensee by no other means than by a conveyance owned and operated by a wholesale dealer with a permit from the State of Georgia and a license from the City to make deliveries in the City. Transportation of such beverages by any other means shall be grounds for revocation of the retail license or wholesale license.

Section 3.7 **Statutes adopted.**

All state laws and regulations pertaining to the sale of alcoholic beverages are incorporated herein and considered a part of this article.

Section 3.8 **Video Security Surveillance.**

Any establishment where a license has been granted for the package sale of alcoholic beverages shall install, maintain and operate a video security surveillance system in compliance with the requirements and guidelines established by the City of Montezuma Police Department.

Section 3.9 **Penalties.**

A violation of any provision of this Chapter shall constitute an offense punishable by a fine of \$1,000.00 or imprisonment for up to 180 days or both.

Sections 3.10 - 3.19 **Reserved.**

Article II. Malt Beverages, Wine and Distilled Spirits

DIVISION 1. GENERALLY

Section 3.20 Title.

This article shall be known as the "Montezuma Alcoholic Beverage Ordinance."

Section 3.21 General provisions.

(a) The sale of alcoholic beverages shall be legal in the City of Montezuma, subject to the following terms, conditions, and restrictions, and upon full compliance by all persons engaged in business under the provisions of this ordinance.

(b) The license granted hereunder shall be a mere grant or privilege to carry on a business during the terms of the license, subject to all the terms and conditions imposed herein and by related laws located in the applicable provisions of the Official Code of Georgia Annotated and other City ordinances relating to business licenses.

(c) Licenses may be granted for the purpose of package sales of malt beverages and/or wine.

(d) Licenses may be granted for the sale of distilled spirits, malt beverages and/or wine for on-premise consumption where fifty (50) percent or more of the gross income of the establishment is from the sale of food.

(e) Licenses may be granted for the purpose of package sales of distilled spirits.

(f) There shall be no license issued for package sales and on-premise consumption on the same premise.

(g) No other licenses may be granted except as provided in this Section 3.21.

Section 3.22 Excise tax--Malt beverages.

(a) There is hereby levied and imposed upon all wholesale dealers selling malt beverages within the City a specific excise tax in the amount of \$.05 per 12-ounce container or any portion thereof so as to graduate the tax on bottles, cans, and containers of various sizes of malt beverages sold by each wholesale dealer within the City, and an excise tax on tap or draft

beer in the amount of \$6 for each container sold, as hereinafter specified, containing not more than 15½ gallons and at a like rate for fractional parts, where the beverage is sold in or from a barrel or bulk container, such beverage being commonly known as tap or draft beer.

(b) *Against whom levied:* The malt beverage excise tax is levied against and shall be paid by each licensed wholesale dealer in malt beverages in the City.

(c) *Due date and required report:* The malt beverage excise tax shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of, and payment shall be accompanied by a report itemizing the exact quantities of malt beverages sold for the preceding calendar month by size and type of container.

Section 3.23 **Excise tax--Wine.**

(a) *Rate of levy:* There is hereby set and levied on the sale of wine, excluding fortified wine, an excise tax in the sum of \$.22 per wine gallon and in similar proportion for bottles and containers of various sizes.

(b) *Against whom levied:* The wine excise tax shall be paid by each licensed wholesale dealer in wine in the City.

(c) *Due date and required report:* The wine excise tax shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of, and payment shall be accompanied by a report itemizing the exact quantities of wine sold for the preceding calendar month by size of container.

Section 3.24 **Excise tax--Distilled Spirits.**

(a) *Rate of levy:* There is hereby levied an excise tax computed at the rate of \$0.22 per liter on all distilled spirits sold, displayed, or stored in the City.

(b) *Against whom levied:* The distilled spirits excise tax shall be paid by each licensed wholesale dealer in distilled spirits in the City.

(c) *Due date and required report:* The distilled spirits excise tax shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of and payment shall be accompanied by a report itemizing the exact quantities of distilled spirits sold. The tax imposed by this section shall be prorated down on one-half pints, pints, fifths, quarts, half-gallons, wile gallons and other authorized sizes so that each bottle or each individual size container shall be taxed on the basis set forth in this section.

Sections 3.25 - 3.29 **Reserved.**

Division 2. LICENSES

Section 3.30

Licensee qualifications.

All applicants shall be investigated by the City of Montezuma Police Department or by such other person or entity as may be designated by the City Council. The report of such investigation shall be presented to the City Council for consideration with the application.

No alcoholic beverage license required by this chapter shall be issued:

(a) To any person who is not a resident of Macon County unless such person designates a resident of the County who shall be responsible for any matter relating to the license.

(b) To a person who, in the opinion and judgment of the governing body, is not of good moral character and reputation in the community in which such person resides.

(c) To a person found by the governing body to have been guilty of the violation of any federal, state, or local law or regulation respecting the manufacture, possession, or sale of any alcoholic beverage within the last five years, or who has forfeited a bond to appear in court to answer charges for any such violation within the last five years.

(d) To any person who is the previous holder of an alcoholic beverage license and is, in the judgment and discretion of the governing body, an unfit person to have a license because of the manner in which such person conducted business thereunder as to the necessity for unusual police observation and inspection in order to prevent the violation of any laws or regulations relating to such business.

(e) For a location not suitable in the judgment and discretion of the governing body because of traffic congestion, general character of the neighborhood, or by reason of the effect which such establishment would have on the adjacent and surrounding properties.

(f) For a location within an area where, in the judgment of the governing body, the number of alcoholic beverage licenses already granted makes it contrary to the public interest and welfare of the citizens of the City.

(g) For a location at which a previous alcoholic beverage license has been denied, revoked, or suspended, and where, in the judgment of the governing body, the problems which have arisen from the operation of an alcoholic beverage license at such location indicate that it is not in the best interest of public health, safety, welfare, or morals that the sale of alcoholic beverages be permitted at such location.

(h) To any person who has made any false statement on an application for a license under this chapter or any previous application for a license under this chapter.

(i) To any person who has been convicted of a felony, or a violation of the laws or regulations of any state or political subdivision relating to the use or sale of drugs or alcoholic beverages, or who has been convicted of a misdemeanor involving the use of firearms, theft, violence, or a crime of moral turpitude. The forfeiture of bond or collateral or a plea of nolo contendere or a plea of guilty shall be considered a conviction for the purpose of this section.

(j) To any spouse, child, parent or sibling of any person who has been previously denied a license or had a license revoked or suspended, if such previous applicant or holder of a license has any ownership interest in the applicant's business.

(k) To a person who has had a license revoked within the last five years.

(l) For a location for the sale of distilled spirits within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds or college campus.

(m) For a location for the sell of malt beverages and wine within 100 yards of any school building, educational building, school grounds or college campus.

(n) For a location which does not have adequate off-street facilities or other parking available for its patrons.

(o) To any corporation unless all directors, officers and stock holders are residents of the City of Montezuma unless such corporation designates a resident of the City who shall be responsible for any matter relating to the license.

(p) To anyone making a statement on an application for a license that is found to be false.

Section 3.31 **Malt beverages--License required.**

Each brewer, wholesale dealer, and retail dealer of malt beverages, as such terms are defined in O.C.G.A. §§ 3-1-2 and 3-5-1, who does business within the City shall be required to obtain an annual license from the City Clerk. Each brewer, wholesale dealer, and retail dealer shall make application in the manner prescribed by the City Clerk prior to January 1 of each year. Each application shall be considered by the City Council no later than the first regularly scheduled meeting in January. No new applicant for an alcohol license may engage in the sale of alcohol without approval by the City Council. Applicants for renewal may continue the sale of alcohol beverages until the license application is denied by the Council.

Section 3.32 **Same--Fees.**

The annual license fee for malt beverage brewers, retail dealers, and wholesale dealers shall be adopted by the Mayor and Council from time to time.

Section 3.33 **Wine--License required.**

Each retail or wholesale dealer of wine, as such term is defined in O.C.G.A. §§ 3-1-2 and 3-5-1, who does business within the City shall be required to obtain an annual license from the City Clerk. Each such dealer shall make application in the manner prescribed by the City Clerk prior to January 1 of each year. Each application shall be considered by the City Council no later than the first regularly scheduled meeting in January. No new applicant for an alcohol license may engage in the sale of alcohol without approval by the City Council. Applicants for renewal may continue the sale of alcohol beverages until the license application is denied by the Council.

Section 3.34 **Same--Fees.**

The annual license fee for each place of retail wine distribution and each wholesale dealer of wine in the City shall be adopted by the Mayor and Council from time to time.

Section 3.35 **Distilled Spirits--License required.**

Each retail or wholesale dealer of distilled spirits, as such term is defined in O.C.G.A. § 3-1-2 who does business within the City shall be required to obtain an annual license from the City Clerk. Each such dealer shall make application in the manner prescribed by the City Clerk prior to January 1 of each year. Each application shall be considered by the City Council no later than the first regularly scheduled meeting in January. No new applicant for an alcohol license may engage in the sale of alcohol without approval by the City Council. Applicants for renewal may continue the sale of alcohol beverages until the license application is denied by the Council.

Section 3.36 **Same--Fees.**

The annual license fee for retail and wholesale distributors of distilled spirits shall be adopted by the Mayor and Council from time to time.

Section 3.37 **On premise consumption.**

In addition to the license fees required by Sections 3.32 and 3.34 of this chapter, there shall be an additional fee for on premises consumption of malt beverages, wine and/or distilled spirits, such fee to be adopted by the Mayor and Council from time to time.

Section 3.38 **Change of location and/or licensee.**

A license issued under the provisions of this section shall permit the sale or manufacture of alcoholic beverages only on the premises described in the application under the supervision of the named licensee. There shall be an application fee adopted by the Mayor and Council from time to time for the transfer to a location other than the premise described in the original application. No license under this article shall be transferable to any person. It shall be the duty

of the licensee to immediately surrender his/her license to the City Council when he/she ceases to operate the business.

Section 3.39

Suspension and revocation--Grounds for suspension or revocation.

(a) The City Council may suspend or revoke any alcohol license. Should the Council revoke a license, such license may not be reinstated for five years. Provided further, a license shall not be granted to any person who is related in the first degree of consanguinity and affinity as is computed according to common law or to any person who has had an ownership interest or management with responsibility of the applicant's business. Should the Council suspend any license, the license shall be suspended for a specific period of time and shall be reinstated at the end of the suspension period upon payment of a reinstatement fee as adopted by the Mayor and Council from time to time without further action by the City Council. Provided, however, should an alcohol license be suspended beyond the end of the calendar year, the City Council shall approve or deny the license at the conclusion of the suspension period as provided in Sections 3.31, 3.33, and 3.35 hereof. Upon such approval, the applicant shall pay the reinstatement fee and the annual license fees required by this ordinance and adopted by the Mayor and Council from time to time.

(b) The following shall be grounds for the suspension or revocation of an alcoholic beverage license; whether or not such grounds exist shall be determined by the governing body in its sole discretion:

1. The violation by the license holder of any federal, state, or local law or ordinance relating to the use and sale of drugs or alcoholic beverages or involving the use of firearms, theft, violence, or a crime of moral turpitude.
2. The failure of the license holder to report promptly to the City of Montezuma Police Department any violation of law or municipal ordinance, breach of the peace, disturbance, or altercation occurring inside the premises.
3. Any conduct on the part of the license holder or license holder's employee on or off premises contrary to the public health, safety, or morals of the citizens of the City.
4. Operating or conducting the business on the licensed premises in a manner contrary to the public welfare, safety, health, or morals of the citizens of the City or in such manner as to constitute a nuisance.
5. Upon the business or the operation or location thereof, or the owner or any person connected therewith, ceasing to meet any of the qualifications for the issuance of a license as stated under Section 3.30 hereof.

6. The failure of the license holder or license holder's employees to keep the licensed premises free and clear of any disturbances of the peace; loud or boisterous conduct; lewd, obscene, or immoral entertainment; violation of any federal, state, or local law or ordinance relating to the use and sale of drugs or alcoholic beverages or involving the use of firearms, theft, violence, or a crime of moral turpitude.

(c) The determination of whether the license holder or license holder's employee has violated this section shall be made by the governing body. An actual conviction in a court for any offense shall not be necessary in order to suspend or revoke the license.

(d) The City of Montezuma Director of Public Safety shall report any violation of this ordinance or any state or federal law by any license holder or any disturbance or violation law of any kind at any location alcoholic beverages are sold to the City Clerk. The report shall be placed on the agenda at the next regularly scheduled meeting of the City Council.

Section 3.40 **Same--Procedure; appeal.**

(a) After the governing body shall deny any application for a license or the transfer of any license or shall suspend or revoke any existing license, the applicant or license holder, as the case may be, shall be given notice in writing with the reasons therefor stated.

(b) Any applicant or license holder aggrieved by the decision of the governing body shall have the right to request, within 10 days after receipt of notice, a hearing on such decision. Upon receipt by the governing body of a request for such hearing, a hearing shall be scheduled within 20 working days; and the applicant or license holder, as the case may be, shall be notified of the date, time, and place of such hearing. At such hearing, the licensee or applicant shall have the right to appear in person and by attorney and to have witnesses appear on his/her behalf and to cross examine opposing witnesses. The witnesses shall testify under oath, and the technical rules of evidence shall not apply.