

ORDINANCE NO. 2022-0019

AN ORDINANCE REGULATING THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES WITHIN THE TOWN OF CHEROKEE RIDGE, ALABAMA PROVIDING LICENSING PROCEDURES AND ESTABLISHING PUNISHMENT FOR VIOLATIONS

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Article I. Short Title

This ordinance shall be known and may be cited as the "Cherokee Ridge Alcoholic Beverage Ordinance."

Article II. Purpose

This chapter is enacted for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and the streets, to a general view of promoting desirable living conditions and sustaining stability of any interest in the sale of alcoholic beverages. This chapter shall be construed as an exercise by the Town of the police power of the state delegated to the Town in the regulation of traffic in alcoholic beverages within the Town as provided by the Code of Alabama.

Article III. Definitions

Whenever used in this Ordinance, the definitions set forth in the Alcoholic Beverages Licensing Code (Code of Alabama 1975, section 28-3A-1 et seq.) are hereby adopted by reference, and made a part of hereof as if fully set forth herein. In addition thereto, the following terms shall have the meanings herein specifically ascribed to them.

(1) *Adult*: A person twenty-one years of age or older.

(2) *Alcoholic License*: A retail alcoholic beverage license or any other license issued by the Alabama Alcohol Beverage Control Board requiring consent and approval of the Town Council.

(3) *Association*: A partnership, limited partnership, limited liability company (LLC) or any form of unincorporated enterprise.

(4) *Bartender/Server*: An employee of a retail alcoholic beverage licensee who is directly involved with the opening, mixing, dispensing, serving, or final sale of alcoholic beverages to a customer of the licensed establishment.

(5) *Beer Wholesale License*: An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge which allows the wholesale storage and dispensing of only beer.

(6) *Beer and Wine Wholesale License*: An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge which allows the wholesale storage and dispensing of only beer or wine.

(7) *Brew Pub*: Also known as a "microbrewery", means an eating and drinking establishment which includes the brewing of beer, ale, or malt beverage as an accessory use to a full-service restaurant that has been issued a food service certificate by the Marshall County Health Department. The amount of beverage produced on the premises cannot be less than 240 barrels or exceed 2,400 barrels in any calendar year. No more than 30 percent of the product brewed may be sold off-premises in either bottles or kegs. A loading and unloading area must be provided for. A full-service restaurant as defined in Article 3 Section 45 herein must occupy at least 51% of the gross floor area of the brew pub and restaurant combined.

(8) *Board*: Means the Alabama Beverage Control Board

(9) *Business License*: The privilege license issued by the Town of Cherokee Ridge allowing the holder to conduct routine business within the Town's limits.

(10) *Business Owner*: A person or persons issued a privilege license by the Town of Cherokee Ridge to conduct routine business.

(11) *Carton*: Packaging of single serving containers in groups of a four or six-unit container and the package, or containers in which alcoholic beverages are originally packaged for shipment to market by the manufacturer, its designated representative, or the importer.

(12) *Case Lot*: Packaging of containers in 6, 12, 18, or 24 containers such as beer, wine, wine coolers, liquor or 12 ounces or less of malt liquor.

(13) *Child Development Facility*: Any child development program that promotes extended educational services that is funded partially or completely by Federal, State, or local government revenue (i.e., head start programs, Boys and Girls Club, etc.). The definition of "licensed child development facility" shall also include any type of group daycare programs, for children or adults, including nursery schools for children under minimum age for education in public schools, parent cooperative nursery schools, playgrounds for preschool children, after school care for school children, and programs which provide organize learning and educational experiences, provided such establishments are licensed by the State and conducted in accordance with State requirements. For the purpose of this definition, the following shall apply to daycare center, nursery schools, or preschools:

A. "Babysitting care" means a dwelling which provides occasional custodial care to children for periods of less than 24 hours who do not reside within the residence of the person providing the care. Babysitting care is not necessarily provided in exchange for compensation.

B. "Home based daycare" means a licensed daycare that regularly provides daycare for not more than 12 children or adults in the provider's home in the family living quarters for periods of less than 24 hours.

C. "Mini daycare center" means a place, other than the home of the provider, which provides regular custodial care for one to 12 children for the periods of less than 24 hours.

D. "Daycare center " means a place, other than the home of the provider, which provides regular custodial care for one to 12 children for periods of less than 24 hours.

E. "Preschool/nursery school" means a place, other than the home of the provider, which provides regular custodial care and/or organized learning and educational experiences for children.

(14) *Church*: Church shall mean an entire house of or structure set apart primarily for use for purposes of public worship, and whose sanctuary is tax exempt under the laws of this State and in which religious services are held and with which a clergyman is associated, and the entire structure is kept for that use.

(15) *Club I*: A non-profit corporation or association organized or formed in good faith by authority of law which must have at least one hundred fifty (150) paid-up members. It must be the owner, lessee, or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature or the like, but not for pecuniary gain (non-profit), and the property as well as the advantages of which belong to all the members and which maintains an establishment provided with special space and accommodations where, in consideration or payment, food with or without lodging, is habitually served. The club shall hold regular meetings, continue its business through officers regularly elected, admit members by written application, investigation and ballot and charge and collect dues from elected members and/or a club fitting the above definition

whose main purpose is not the sale or consumption of food and/or alcohol that would exist without the sale of alcohol.

(16) *Club II*: A corporation or association organized or formed in good faith by authority of law which must have at least one hundred (100) paid-up members. It must be the owner, lessee, or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature or the like. The club shall hold regular meetings, continue its business through officers regularly elected, admit member by written application, investigation and ballot and charge and collect dues from elected members.

(17) *Town Alcohol License Fee*: A fee charged by the Town of Cherokee Ridge to a person or persons that have been granted approval by the Alabama Alcoholic Beverage Control Board and the Town of Cherokee Ridge Alcohol License Review Committee for the privilege of selling alcoholic beverages within the Town limits of Cherokee Ridge.

(18) *Committee, a.k.a. the Town of Cherokee Ridge's Alcohol Review Committee (A.R.C.)*: The Town Clerk or designated representative as approved by the Town Council; the Mayor or designated representative, and two other members to be appointed by the Town Council.

(19) *Container*: The single bottle, can, keg, bag, or other receptacle in which alcoholic beverages are originally packaged for the market by the manufacturer or importer and from which the alcoholic beverages are consumed by or dispensed to the public.

(20) *Convenience Store*: Establishment that sells convenience items such as, but not limited to, snacks, grocery items, gasoline, and/or other motor fuels. A convenience store shall not be considered a package-store if no more than 25% of the floor space excluding coolers and dry storage area, is dedicated to the public display of alcoholic beverages and the total square footage of the premises is less than 5000 square feet.

(21) *Distributor*: Any person transporting alcoholic beverage in the city for such person's own retail use or for delivery to a retailer whether or not the same be owned by such person or entity..

(22) *Dry County*: A county in which alcoholic beverages may not be legally sold.

(23) *Engaged in Business*: A person shall be deemed engaged in business within the corporate limits if that person has a fixed place of business within the Town limits, or ~~is~~ if, pursuant to agreement of sale, expressed or implied, that person delivers any alcoholic beverage, beer, or wine, within the Town limits, or if that person performs, within the Town limits any act authorized to be done only by the holder of any license issued by the Board.

(24) *Factory Lots*: Group Packaging in a carton or cases of 12 ounces or less of malt liquor originating at the factory or its designated representative or importer.

(25) *Fixed Place of Business*: A permanent structure where any alcoholic beverage, wine, or beer is kept or stored for sale or delivery.

(26) *Grocery Store*: A retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales are at least \$500,000 and whose floor space is at least five thousand (5,000) square feet.

(27) *Kitchen*: A designated area within a premise which is used for the cooking and preparation of meals. The area must be fully staffed and open the same hours as the business and issued a food service certificate by the Marshall County Health Department.

(28) *Licensee*: Any person licensed by the Town Council for the privilege of engaging in a business involved in the sale of alcohol.

(29) *Licensing Board*: means the Committee/Town of Cherokee Ridge's Alcohol Review committee (A.R.C.), as defined herein above.

(30) *Liquor*: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage or combination of liquors and mixed liquor, a part of which spirituous, fermented, vinous, or otherwise alcoholic, and all drinks and drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, except beer and table wine.

(31) *Liquor Store*: An establishment from which a portion of its sales are comprised of liquor sold in unopened containers and/or a store operated by the ABC Board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

(32) *Liquor Wholesale License*: An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge issued to wholesale alcohol beverage warehouses to sell liquors other than beer and wine only to the Alcohol Beverage Control Board.

(33) *Manager*: An employee of a retail alcoholic beverage licensee who is given the responsibility and authority by the licensee to direct the operation of the licensed establishment, either solely or in conjunction with other similarly designated employees, by directing the activities of other employees of the licensed establishment. Such direction could include, but not limited to, such responsibilities as assignment of employee tasks, scheduling of employee hours, evaluation of employee performance, and employee hiring and discipline.

(34) *Meal*: A diversified selection of food, some of which is not capable of being consumed in the absence of at least some

articles of tableware and which cannot be conveniently consumed while one is standing or walking about.

(35) *Merchandise Store With Incidental Table Wine Sales:* Means an establishment principally operated for the sale of apparel, home décor, art, jewelry, antiques, or specifically gifted merchandise, and that also offers the sale of a diversified selection of both domestic and imported table wine but not beer or liquor, in unopened containers for off-site consumption. Such establishments may apply for a license for retail table wine for off-premises consumption. The sale of alcoholic beverages shall be no more than 10% of its gross annual sales and no more than 15% of the public floor space may be dedicated to the public display of alcoholic beverages.

In addition, the owner of a merchandise store with incidental table wine sales may apply with the Town for an on-premises wine license for the purpose of offering up to two wine tastings per month of their product. With respect to these tastings, no alcohol shall be served free of charge. In such case, the establishment may also apply for a retail table wine license for on-premises consumption.

(36) *Minor:* A person who is under the age of twenty-one years of age.

(37) *Opened Container:* Shall mean a container containing alcoholic beverages which has been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

(38) *Package:* The bag, box, or plastic holder of group, single, or multiple serving containers.

(39) *Package Store:* An establishment from which 99% of its sales are comprised of liquor sold in unopened containers and/or a store operated by the ABC Board where alcoholic beverages other than beer are authorized to be sold in unopened containers.

(40) *Person*: A natural person, association of natural persons, partnership, corporation or other legal entity. Whenever used in a provision prescribing a fine or imprisonment, the term "person" shall mean the partners, members, directors, or officers of any partnership, association, corporation, or other legal entity.

(41) *Person in Charge (PIC)*: A person or persons, whether owner, partner, officer, or employee of an alcoholic beverage licensee, who is designated by the licensee as a responsible party for the licensee in ensuring compliance with the law and regulations of the Code of Alabama, Alabama Alcoholic Beverage Control Board, and the ordinance of Cherokee Ridge as apply to the operation of a business having retail sales of alcoholic beverages.

(42) *Private Event*: An event for specific people or group usually attended by invitation and not open to the general public.

(43) *Privilege License*: A privilege license issued by the Town of Cherokee Ridge to a person or persons to conduct routine business.

(44) *Public Place*: Any place or gathering which the public generally attends or is admitted to either by invitation, common consent or right, or by payment of an admission or other charge, and without limiting the foregoing, shall include any streets, alleys, sidewalks, public easements, or right-of-way, parking lots designed for use by the general public, public buildings, buildings which are open to the public including, but not limited to school buildings or grounds, parks and libraries, places where school related and recreational games or contests are held, any theater, auditorium, show, skating rink, dance hall, or other place of amusement or any club, provided that such term shall not mean or include premises which have been duly licensed under the ordinance of the Town and the laws of the State for sale or consumption of such beverages and provided that no private gathering is included within the meaning of public place with respect to the owners or

occupants of such premises or place or to any persons specifically invited therein

(45) *Restaurant*: A reputable place licensed as a restaurant and issued a food service certificate by the Marshall County Health Department, operated by a responsible person of good reputation in which a diversified selection of food, refreshments, and alcoholic beverages are offered for sale for consumption within the building in which the establishment is located that meets the following additional requirements:

- A. The dining room shall be equipped with tables and chairs accommodating at least 50 persons at one time and adequately air conditioned and heated as appropriate.
- B. All spaces of a Class I restaurant must comply with all adopted codes.
- C. A fully equipped and operational kitchen separate and apart from the dining area in which meals are prepared for consumption by the public and served in said dining area adjoining the kitchen area that is open and fully staffed during the same hours as any portion of the establishment that has been issued a food service certificate by the Marshall County Health Department.
- D. The licensee shall maintain and operate the kitchen and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable business hours. Exceptions shall be made where there is a known and provable shortage or temporary unavailable supply of a food item.
- E. Such place shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
- F. The serving of food or meals shall constitute the principle principal business of such establishment with the serving of liquor, malt, or brewed beverages, wines, or other

alcoholic beverages being only an incidental part of the business. During any 90-day period, the gross receipts from the serving of meals and food shall constitute at least 60% of the total gross receipts of the business. The Licensee of such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for no less than (3) years. All such records shall be available for inspection and audit at the licensee's premises within the Town during regular business hours as the A.R.C., or a duly authorized representative may request.

- (46) *Retail Beer License for On-premises:* An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge which allows the retail sale of only beer for on-premises consumption.
- (47) *Retail Beer License for Off-Premises Consumption:* An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge which allows the retail sale of only beer for off-premises consumption.
- (48) *Retail Liquor License for Off-Premises Consumption:* An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge to Lounge I, package stores, and ABC stores which allow the retail sale of liquor for off-premises consumption.
- (49) *Retail Table Wine License for Off-Premises Consumption:* An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge to wine stores which allows the retail sale of table wine for off-premises consumption.
- (50) *Retail Table Wine License for On-Premises Consumption:* An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge to restaurants or special event licensed activities or specialty beverage stores which allow the retail sale of table wine for on-premises consumption.

- (51) *Restaurant Retail Liquor License*: An alcohol license issued by the State Alcohol Beverage Control Board/Town of Cherokee Ridge to Class I or Class II restaurants to sell alcohol for on-premises consumption.
- (52) *School*: A state accredited public or private elementary, intermediate, middle, junior high, or senior high school.
- (53) *Special Event*: An event licensed authorizing a responsible organization or a person of good reputation for a permit not to exceed 7 days and upon such terms and conditions as the ARC shall prescribe and approved by the ABC Board to sell alcoholic beverages, table wine, and/or beer.
- (54) *Specialty Beverage Store*: An establishment principally operated for the sale of diversified selection of both domestic and imported beer and/or wine, but not liquor, in unopened containers for off-site consumption. Such establishments may also apply for a retail table wine for off-premises consumption, and retail beer license for off-premises consumption.

In addition, the owner of a specialty beverage store may apply with the Town for an on-premises beer and wine license for the purpose of offering up to no more than two wine/beer tastings per month for their product. With respect to these tasting, alcohol shall be served free of charge.

I. Wine Tasting:

- A. All participants in any wine tastings shall be of legal drinking age;
- B. Table wine tastings shall be of a structured nature.

- C. All table wine shall be dispensed from original containers prepared by the manufacturer with labels visible to the consumer. Individual samples furnished to a consumer shall contain no more than two ounces of the table wine.
- D. Table wine tastings may be conducted by table wine wholesalers on the licensed premises. The wholesaler shall be permitted to conduct wine tastings utilizing its own personnel with the assistance from retail personnel if desired. At all tastings, the wholesale or retail license shall provide for purposes of the promotion, a person with a sufficient knowledge of the product(s) involved to conduct said tastings.
- E. All costs of a wine tasting, including the cost of the wine, shall be borne by the licensee on whose premises the wine tasting is held.

In such cases, the establishment may also apply for a retail table wine license for on-premises consumption and a retail beer license for on-premises consumption.

II. Beer Tastings

- A. All participants in any beer tastings shall be of legal drinking age.
- B. All beer shall be dispensed from original containers prepared by the manufacturer with labels visible to the consumer. Individual samples furnished

to a consumer shall contain no more than two ounces of the beer.

- C. Beer tastings may be conducted by beer wholesalers on the licensed premises. The wholesaler shall be permitted to conduct beer tasting utilizing its own personnel with the assistance from retail personnel if desired. At all tastings, the wholesale or retail license shall provide for ~~purposed~~ purposes of the promotion, a person with a sufficient knowledge of the products(s) involved to conduct said tastings.
- D. All costs of a beer tasting, including the cost of the beer, shall be borne by the licensee on whose premises the beer tasting is held.

(55) *Special Events Retail License for On-Premises Consumption:* An alcohol license by the State Alcohol Beverage Control Board/Town of Cherokee Ridge issued to vendors or sponsors of an event which shall take place for a period of less than 30 days which allows retail alcohol for on-premises consumption.

(56) *Specialty Wine and Beer Establishment:* An establishment principally operated for the sale of a diversified selection of domestic beer, imported beer, domestic wine, and imported wine. Where otherwise permitted by the Alabama Beverage Control Board, such establishments must apply for and hold the following licenses:

- A. Retail table wine license for off-premises consumption;
- B. Retail beer license for off-premises consumption;

C. Retail table wine license for on-premises consumption; and

D. Retail beer license for on-premises consumption;

All sales for off-premises consumption must be sealed, unopened containers.

A specialty wine and beer establishment must also offer incidental food service including the sale of food for on-premises consumption and the sale of containerized, gourmet food for off-premises consumption, but not in such a manner that the establishment will constitute a Class I or Class II Restaurant.

A specialty wine and beer establishment may offer up to two tasting events per month of their product.

- (57) *Unopened container:* A container containing alcoholic beverages which has not been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.
- (58) *Warehouse/Warehousing:* A premises used for the storage of alcoholic beverages whether beer, wine or liquor licensed by the State Alcohol Beverage Control Board/Town of Cherokee Ridge which allows to warehouse table wine for wholesale distribution.

Article IV. Location of Both On and Off Premises Sales Near A Public or Private School

No facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where any part of a building in which there is a public or private elementary or secondary school is within 500 feet.

Article V. Maintenance of Order; Report Violation

It shall be the duty of each owner and of each manager or supervisor at any time charged with the management and supervision of any retail liquor, retail table wine or retail malt or brewed licensed premises, while the same are open to the public, to maintain order upon the premises and to exclude from the premises any person who is drunk and disorderly, or who commits any breach of the peace, or who uses or engages in offensive, disorderly, threatening, abusive, or insulting language, conduct or behavior. It is the intent of this ordinance to impose a duty of each officer, owner, manager, or person in charge of any retail liquor, retail table wine or retail malt or brewed beverage licensed premises within the Town, immediately to make an appropriate report of each assault, assault and battery or affray, occurring on the licensed premises while said premises are open for business. It shall further be the duty of said person to make a written report of each of said incidents to the Marshall County Sheriff's Office, the Town Clerk, and to the local field office of the Alcoholic Beverage Control Board within thirty-six (36) hours thereof.

Article VI. Minors; Drunkards, Insane Persons – Offenses by Seller or Agents

- (1) It shall be unlawful for any person or for any employee, servant or agent of any person to sell or offer for sale, any liquor, wine or beer to any person visibly intoxicated, or to any insane person, or to any minor, or to any habitual drunkard.
- (2) It shall be unlawful for any person to serve to a minor or allow a minor to be served any liquor, beer or wine in any place where such beverages are sold.
- (3) It shall be unlawful for any person who operates any business of selling liquor, beer or wine to allow any liquor, beer or wine to be sold to any minor, or to be consumed by any minor on the premises where such liquor, beer or wine is sold.

* Alabama Code (1975) Section 28-1-5 provides the minimum age (21), provision for employment of underage persons in places licensed to serve alcohol, and penalties for violations of its provisions.

Article VII. Same – Offenses Generally

It shall be unlawful to do or perform any of the acts or things designated as follows:

- (1) For any minor person, directly or indirectly, to purchase any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to purchase any of said beverages.
- (2) For any minor person to possess or to consume any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, in any public place, or in any business establishment or club.
- (3) For any person to sell, furnish, give to or purchase for any minor person any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to sell, furnish, give to or purchase for any minor person any of said beverages.
- (4) For any person to hire, employ or allow any person under twenty-one (21) years of age to serve or dispense alcoholic beverages of any kind. However, this prohibition does not apply when the only license held by the licensee is an off-premises beer license or off-premises table wine license or a combination thereof, and provided there is an adult in attendance at all times, Provided further that persons who are 19 years of age or older and working as a waiter, waitress, or server may serve alcoholic beverages during normal dining hours in a restaurant which holds an Alcoholic Beverage Control Board restaurant retail license. An employer who employs a person between ages of 19 and 21 to serve alcoholic beverages as provided in

the preceding sentence shall be licensed –by the board and annually certified as a responsible vendor under the Alabama Responsible Vendor Act as provided in Chapter 10 (commencing with Section 28-10-1) of title 28, Code of Alabama, 1975, as amended.)

- (5) For any minor person, directly or indirectly, to falsely represent that such person is not a minor or is not under twenty-one (21) years of age, by means of which false representation such as person buys, receives or otherwise obtains, or attempts to buy, receive or otherwise obtain any malt or brewed beverages, any wine or liquor or any alcoholic or intoxicating beverages.
- (6) For any minor person, directly or indirectly, to falsely represent or attempt to represent, that a minor person is not a minor or is not under twenty-one (21) years of age, by means of which false representation aids or abets, or attempts to aid or abet, such minor person to buy, receive to or otherwise obtain any malt or brewed beverage, any wine or liquor or any alcoholic or intoxicating beverages.
- (7) For any Restaurant Class I or II to allow the accumulation of alcoholic containers on the dining surface's surfaces of the facility.

Article VIII. Authorized Hours

It shall be unlawful for any person, whether liquor, wine, beer licensee or not, to sell offer for sale or to serve or dispense for reward or offer to serve or dispense for reward, any liquor, wine or malt beverage during the following times:

Between the hours of 1:00 a.m. and 6:00 a.m.,

Article IX. Regulation of Conduct in Clubs, Etc.

It shall be unlawful for any person, club, firm or corporation or the officers, members, agents, servants or persons in charge thereof at any club or at any other

place to which the public generally resorts or is admitted, which is a liquor, wine or beer licensed place, or any combination thereof, to permit, allow, conduct or condone any of the following:

- (1) Topless or bottomless waitresses, dancers or performers, or any lewd or indecent conduct.
- (2) Acts, or stimulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
- (3) Acts, or stimulated acts, of caressing or fondling of the breasts, buttocks, anus or genitals, or any part of the body or clothing of a performer.
- (4) Acts involving the displaying of the anus, vulva or genitals.
- (5) Permitting any patron, customer or member to touch, caress or fondle the breasts, buttocks, anus or genitals, or any part of the body or clothing of a performer.
- (6) Permitting the showing of films, still pictures, electronic reproductions or other visual reproductions depicting:
 - a. Acts or stimulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
 - c. Scenes wherein a person displays the vulva or the anus or the genitals.
 - d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above in this section.

- (7) Any waiter, waitress, dancer, entertainer or model employed upon the licensed premises to sit at tables with the customers or members and guest while employed and during the time that said establishment is open for business.
- (8) Any person at the time employed or engaged on the licensed premises as an entertainer, to also serve as a waiter or waitress while so employed.
- (9) The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the darkened area surrounding the nipple, or the depiction of covered male genitals in a lewd or indecent manner by any waiter, waitress, dancer, entertainer, employee, model or customer.

Article X. Records Reports

It shall be the duty of each person subject to the license tax imposed by this chapter to keep full and complete records of all purchases, sales and deliveries of alcoholic beverages, from which records that can be readily obtained information as to the correct amount of license tax due to the Town.

As a part of such records, each wholesaler shall keep an individual ledger or card account for each of his customers, and said ledger or card account shall show the correct name and address of each person to whom any alcoholic beverages are delivered, together with the dates thereof and the number of cases sold or delivered, and each wholesaler shall also keep, as evidence of the forgoing, a receipt delivery ticket signed by each purchaser or by his authorized agent.

Each retailer shall keep an individual ledger or card showing the correct name and address of the each person from whom he purchased alcoholic beverages, a delivery ticket showing

each purchase, the date thereof and the number of cases purchased.

The aforesaid records shall be kept posted currently and shall be reserved for not less than three (3) years succeeding said calendar year. All such records shall be open for inspection and checking during regular business hours as the town clerk, or duly authorized representative, may request. Failure to keep any of the records required by this section, or elsewhere in this chapter, or by any amendment shall constitute grounds for revocation of any license issued under this chapter. In addition thereto, an annual report, under oath, shall be filled with the town clerk, or duly authorized representative, in January of each year, showing the purchases of the entire year next proceeding.

* Alabama Code (1975) Section 28-3A-25(a) (5) requires keeping adequate records for three (3) years, available for ABC inspection.

Article XI. Packaging of beverages

Retail licensees for off-premises sales of alcoholic beverages must place each container thereof in a bag, box or other similar opaque covering prior to the customer's leaving the licensee's building used for beverages sales.

Article XII. Delivery Vehicles

A manufacturers or wholesaler shall deliver any alcoholic beverages in vehicles bearing the required information on each side of the vehicle as required by the Alabama Beverage Control Board. (Title 28-3A.25.13)

Article XIII. Discrimination Prohibited

It shall be unlawful for any alcoholic beverage licensee of the Town to discriminate against any person with respect to the sale of any food, beverage, product, cover charge, or admission charge based upon race, color, creed or sex. It is specifically

provided that no alcoholic beverage licensee shall have or permit any entertainment, show, or presentation on the licensed premises to which any person is excluded based upon race, color, creed, or sex. This section shall apply to the owner, manager, to any person in charge of any licensed premises, and to any employee of the licensee authorizing, permitting, or committing any violation hereof.

Article XIV. Sign Restrictions

It shall be unlawful for any person to display any sign (electronic, painted, or otherwise) containing the name, brand name, or any phonetic spelling or misspelling of a name for any alcoholic beverage as enumerated and defined in this chapter (including any type of illustration or image depicting an alcoholic beverage) outside any place of business or in any window or door visible from the outside of the business. For the purposes of this section, any sign attached directly to any part of a window or its surround (including windows integrated into doors), or any sign placed within twelve (12) inches of the window with its content visible from the outside, will be considered to be in the window. Furthermore, this section shall be read in conjunction with the Town's sign ~~and~~ regulations. Any inconsistency with any prior ordinance, which is in conflict with the terms and conditions of this section, or contrary to its intent, shall superseded by this section to the extent of the conflict.

Article XV. ARC Town Alcohol License Review Committee

- (1) There is hereby created for the purpose of assisting and advising the Town Council in the review of application for the Town licenses, and inquiry and recommendation concerning complaints or disciplinary action of a Town licensee, a committee to be known and designated as the Town of Cherokee Ridge's Alcohol Review Committee (A.R.C.) to composed as follows:

- a. The Mayor or a designated representative by the Mayor; and
- b. Two other members to be appointed by the Town Council.

The Town Clerk or designated representative shall act as liaison to the Town Council on behalf of the A.R.C., shall hold meetings as necessary to consider appeals by applicants for alcohol licenses, resolve matters of public concern, or make inquiry into the compliance of a current Town licensee with this Ordinance and other provisions of this Chapter.

- (2) The A.R.C. shall review the information contained within the application for an alcoholic beverage license and shall submit a written recommendation to the Town Council concerning the approval or disapproval of the application before the applicant is submitted to the Alcohol Beverage Control Board.
- (3) The A.R.C. shall investigate complaints or initiate its own inquiries into conditions which may violate provisions of this Ordinance concerning the operation of any establishment licensed by the Town to conduct routine business in the selling of alcoholic beverages as allowed by State law.
- (4) The A.R.C. shall have the authority to require the licensee to produce records for its review as related to the operation, ownership, or management of the licensed establishment. The A.R.C. shall promulgate procedures for documenting and investigating complaints concerning the operation of an alcoholic beverage establishment as well as establishing a method of documenting violations of this Ordinance by a licensee or its employees.

Article XI. Applicability When Governing Body Approval Required

In those instances where the consent and approval of the town Council is required for an alcoholic beverage license, other than where specified by statute, the application provisions of this chapter shall apply.

Article XIII. Alcohol License Tax Bond

- (1) It shall be the duty of each person subject to a license fee, privilege tax, or excise, tax imposed by this article to deliver to the Town a bond conditioned to promptly pay to said Town all such amounts as are required to be paid to said Town under the terms of this article, or any amendment hereto, and any other amount which may become due to the Town for any licensee fee, privilege tax, or excise tax becoming due after the date of the bond. The amount of the bond shall be \$10,000.000 for each location of the person's business that is engaging in activity with respect to which a license or excise tax under this article is imposed. Such a bond must remain in place continuously during the entire period that the person is subject to a license fee, privilege tax, or excise tax imposed by this article.
- (2) With respect to those instances where the consent and approval of the Town Council is required with respect to the issuance of an alcoholic beverage license, such consent and approval will not be granted where the bond described in this section has not been delivered to the Town Clerk, or the designated representative. Moreover, where such a bond is required by this section, no privilege license shall be granted, renewed or maintained, where the Town Clerk or the authorized representative, has not received or does not hold a valid and binding bond as required by this section.

Said bond shall be posted in substantially the same manner and form as follows:

STATE OF ALABAMA
TOWN OF CHEROKEE RIDGE

ALCOHOL ORDINANCE TAX OR FEE BOND

That _____ hereinafter
called Principal and _____ as Surety are held
and firmly bound unto
the Town of Cherokee Ridge, Alabama, a municipal corporation, in
the sum of \$ _____ 10,000.00 _____
for the payment of which well and truly to be made, we hereby bind
ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firm by the presents.

The condition of the foregoing is such, however, that WHEREAS, as
one of the conditions
precedent to the consent and approval of the Town Council with
respect to the issuance
of an alcoholic beverage license, or to the granting, renewal,
maintenance, transfer, or
allowance of a privilege license, the Principal is required to deliver to
the Town of
Cherokee Ridge, Alabama, a bond conditioned to promptly pay to
said Town all such
accounts as are required to be paid to said Town under the terms of
its License Ordinance or any amendment thereto, and any other
amount which may become due to the Town of Cherokee Ridge,
Alabama for any license fee, privilege tax, or excise tax imposed by
said ordinance and becoming due after the date of the bond.

NOW, THEREFORE, the condition of this obligation is such, that if
the Principal shall faithfully comply with all the laws and ordinances of
the Town of Cherokee Ridge no in force, or that may hereafter be
adopted and will promptly pay to said Town of Cherokee Ridge,
Alabama, all such amounts as may become due as required under
the terms of the above license, the his obligation is to become null
and void; otherwise, to remain in full force and effect.

If the Surety shall so elect, this bond may be cancelled by providing notice through certified mail to the Town Clerk of the Town of Cherokee Ridge or the designated representative. This notice shall provide for 30 days' notice to the Town of Cherokee Ridge and this bond shall be deemed cancelled at the expiration of said 30 days; the Surety remaining liable, however, subject to all the terms, conditions, and provisions of this bond, for any acts covered by this bond which may have been committed by the Principal up to the date of such cancellation.

IN WITNESS WHEREOF, the said Principal and the said Surety have hereunto set their hands and seals at Cherokee Ridge, Alabama, on this the ____ day of _____, 20____.

Principal

Surety

By: _____

By: _____

Its: _____

Its: _____

Article XIX. Required; Suspension, Display

- (1) It shall be unlawful for any person to have in such person's possession any alcoholic beverages, within the Town, for the purpose of sale, or to sell, or keep for sale, or offer for sale, any alcoholic beverages without first having procured from the Town a license therefore. Licenses issued under this chapter may not be assigned.

- (2) The Town shall have the right to suspend any license for cause, issued to any person for any violation of this chapter and the Alabama Alcoholic Beverages Licensing Code, after notice and hearing before the governing body.

- (3) Every license issued by the Town for the sale of alcoholic beverages shall be conspicuously and constantly exposed under a transparent and visible substance on the licensed premises.

Article XX. Application for a Restaurant License Deposit

Each applicant seeking the consent and approval of the Town Council for a restaurant retail liquor license or other license issued by the Alabama Alcoholic Beverage Control Board shall make application to the Town Council as required in this Section. Said application shall be upon an appropriate form supplied by the Town Clerk or duly authorized representative, and shall be signed and verified by oath or affirmation by the licensee, if natural person, or in the case of a partnership, association or unincorporated enterprise, by a partner, limited liability company (LLC) or managing member thereof, or in the case of a corporation, by an executive officer thereof. The applicant shall deposit with the Town Clerk the required application fee that includes the background check with the Alabama Bureau of Investigation and the amount of publication costs to be incurred hereunder upon filing the application.

Article XXI. Application for Retail Liquor License

Application for retail liquor license shall be made in accordance with the Town of Cherokee Ridge Procedures.

Article XXII. Review of Application

- (1) The application shall be submitted to the Town Clerk or designated representative as required by Article 18 Section 1.
- (2) In the event of approval by the Town Council, the Town Clerk or designated representative shall be responsible for ensuring the all required approvals are included as a part of the application indicating that satisfactory compliance with the applicable requirements for each respective department.

- (3) Subsequent to the Town Council approval and the applicant's compliance with Subsection 2 of this Section, the Town Clerk or designated representative, is hereby authorized to indicate and communicate in writing the Town's approval for the issuance of a license for the applicant to the Alcoholic Beverage Control Board. The method for the communication of this approval by the Town shall be determined based on the most current mechanism indicated as acceptable by the Alcoholic Beverage Control Board field office supervisor responsible for Marshall County.

Article XXIII. Public Notice

Upon receipt of an application, together with the results of the investigation and recommendations made thereon, the Town Clerk shall cause notice to be published in the Town stating that the application will be considered at the next regular meeting of the Town Council, which notice must be published as aforesaid at least six (6) days in advance of the next regular meeting of the Town Council and further stating the time and place that same is to be considered and that at such time and place, all interested persons may appear at said meeting and be heard for or against that application.

Article XXIV. Consideration of Application

In rendering a decision on each application for a license under this article, the Town Council shall consider, among others, the following:

- (1) The character and reputation of the applicant, each partner, member, officer, member of board of directors, landlord, bartender and manager.
- (2) The criminal court records of the applicant, each partner, member, officer, member of the board of directors, landlord, bartender and manager.

- (3) The compliance by applicant, each partner, member, officer, member of the board of directors, landlord, and manager with the laws of the State ordinances for the Town.
- (4) The recommendation of the Town of Cherokee Ridge Alcohol License Review Committee. Any recommendation factor must be grounded in the protection of the safety, and public welfare of the community.

Article XXV. Filing Fee

There is hereby required, as a filing fee to cover the costs of processing and investigating each application filed with the Town license of any kind or class, the sum of \$200.00 and the Town Clerk or duly authorized representative shall not accept any application for any such license not accompanied by said payment to the Town along with the payment of the publication costs, as required in this Ordinance. The Town shall retain said non-refundable filing fee to cover the expenses of processing and investigating said application, whether or not said application results in approval or denial, provided however that the non-refundable filing fee for a special events license application shall be \$200.00.

Article XXVI. License Fee

- (1) Each person licensed by the board, who shall engage in the alcoholic beverage, liquor, beer or wine business within the corporate limits, prior to engaging in such business shall pay to the Town, for the privilege of so engaging in business, an annual privilege business license fee and further license fee as established below:

A. Beer Wholesale License. Each person licensed as a beer wholesaler under Section 28-3A-1 et seq., Code of Alabama 1975, shall pay the Town an annual license fee of 50% of the amount charged for the State beer license by the State of Alabama. In addition, each licensee will remit monthly to the Town Clerk on forms provided, the

privilege or excise tax levied on the sale of beer by the "Uniform Beer Tax Act", Acts 1982, No 82-344. Wholesale beer dealers and distributors will not sell to any retail outlet that does not have a current Town license.

B. Wine Wholesale License. Each person licensed as a wine wholesaler under Section 28-3A-1 et seq., Code of Alabama 1975, shall pay the Town an annual license fee of 50% of the amount charged for the State wine license by the State of Alabama. In addition, each licensee will remit monthly to the Town Clerk on forms provided by such Town Clerk, the privilege or excise tax levied on the sale of table wine by the "Alabama Table Wine Act", Acts 1980 and No 80-382. Wholesale wine dealers and distributors will not sell to any retail outlet that is not properly licensed by the Town.

C. Beer and Wine Wholesale License. Each person licensed as a beer and wine wholesaler under Section 28-3A-1 et seq., Code of Alabama 1975, shall pay the Town an annual license fee of 50% of the amount charged for State wine and beer license by the State of Alabama. In addition, each licensee will remit monthly to the Town Clerk on forms provided by such Town Clerk, the privilege or excise tax levied on the sales of beer by the "Uniform Beer Tax Act", Acts 1972, and No. 82-344. In addition, each licensee will remit monthly to the Town Clerk on forms provided by such Town Clerk, the privilege or excise tax levied on the sales of table wine by the "Alabama Table Wine Act". Wholesale beer and wine dealers will not sell any retail outlet that is not properly licensed by the Town.

D. Warehouse License. Each person licensed by the board to receive, store, or warehouse alcoholic beverages within the state for transshipment inside and outside the State shall pay to the Town an annual license fee of \$500.00.

E. Retail Liquor for Off-Premises Consumption. Each person licensed by the Board to operate a retail lounge under Section 28-3A-1 et seq., Code of Alabama, 1975, shall pay to the Town an annual license fee of \$3,000.00. In addition to said stated license fee, each person shall pay to the Town, on or before the 15th day of the calendar month next succeeding each separate calendar month, for the privilege of having engaged in such business, an additional license tax of 10% of gross receipts of such business derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month.

F. Restaurant Retail Liquor License. Each person licensed by the Board to sell alcoholic beverages in connection with the operation of a restaurant under Section 28-3A-1, et seq., Code of Alabama, 1975, shall pay to the Town an annual privilege license fee of the \$1,500.00. In addition to the stated license fee, each such person shall pay to the Town, on or before the 15th day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of 10% of the monthly gross receipts of such business derived from the sale and/or including.

G. Retail Table Wine License for Off-Premises Consumption. Each person licensed by the Board to sell table wine for off-premises consumption under Section 28-3A-1, et. seq., Code of Alabama,

1975, shall pay to the Town an annual license fee of 50% of the amount charged for State wine license by the State of Alabama.

H. Retail Table Wine License for On-Premises and Off-Premises Consumption. Each person licensed by the Board to sell table wine at retail for on premises and off-premises consumption under Section 28-3A-1 et.seq. Code of Alabama, 1975, as amended, shall pay to the Town an annual license fee of 50% of the amount charged for State wine license by the State of Alabama, unless such person shall have paid for an on-premises liquor license.

I. Retail Beer for On-Premises and Off-Premises Consumption. Each person licensed by the Board to sell beer for on-premises and off-premises consumption under Section 28-3A-1, et.seq., Code of Alabama, 1975, shall pay to the Town an annual license fee of 50% of the amount charged for State beer license by the State of Alabama.

J. Retail Beer for Off-Premises Consumption. Each person licensed by the Board to sell beer for off-premises consumption under 28-3A-1, et.seq., Code of Alabama, 1975, shall pay to the Town an annual license fee of 50% of the amount charged for State beer license by the State of Alabama.

K. Special Retail Liquor License for On-Premises Consumption. Each person who has obtained a special retail liquor license from the Board under Section 28-3A-1 et.seq., Code of Alabama, 1975, shall pay to the Town a license fee of \$250.00 when the period of use is from 8 to 30 days. Such person shall pay to the town a license fee of \$350.00 when the period of use is more than 30 days. In addition to said stated license fee, each such person shall pay to the Town 50% of the amount charged for

State wine license by the State of Alabama. In addition to the stated license fee, each such person shall pay to the Town on or before the 15th day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of 10% of the monthly gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month. All application for special event licenses shall be filed with the Town Clerk at least 60 days in advance of the event for which a license is sought.

L. Special Events Retail License for On-Premises Consumption. Each person who has obtained a special events retail liquor license from the Board under Section 28-3A-1 et.seq. Code of Alabama, 1975, as amended, shall pay to the Town a license fee of \$200.00. No such license shall be issued for a period in excess of 7 days. Such alcoholic beverages as are authorized by the Board may be sold. All applications for special event licenses shall be filed with the Town ~~Manager~~ Clerk at least 60 days in advance of the event for which a license is sought. In addition to the stated license fee, each such person shall pay to the Town on or before the 15th day of the calendar month next succeeding such separate subject month, for the privilege of so engaging in such business in said subject month, an additional license tax of 10% of the monthly gross receipts derived from the sale of all alcoholic beverages, except beer and table wine, received during such immediate next preceding calendar month. Hereunto, shall apply to applicant for a special event retail liquor license:

- i. Submit the non-refundable required filing fee (\$200.00);

- ii. Receive affirmation/ recommendation to the Town Council ~~by the Town Council~~ by the Town of Cherokee Ridge Alcohol Review Committee;
- iii. Receive approval from the Town Council;
- iv. Receive license from Alabama Alcoholic Beverage Control Board;
- v. Pay the required non-refundable license fee (\$200.00)
- vi. Each applicant/organization shall not be allowed to apply for more than 5 special event licenses in any one calendar year;
- vii. Shall be required to purchase the alcoholic beverages from a wholesale licensee of the Board.
- viii. Pay the bond as required in Article XIII

M. Manufacturer License. Each person who has obtained a manufacturer license from the Board under Section 28-3A-1 et.seq., Code of Alabama, 1975, shall pay to the town an annual license fee of \$1,000.00.

N. Importer License. Each person who has obtained an importer license from the Board under Section 28-3A-1 et.seq., Code of Alabama, 1975, as amended, shall pay to the town an annual license fee of \$350.00.

O. Liquor Wholesale License. Each person who has obtained a liquor wholesale license from the Board under Section 28-3A-1 et.seq., Code of Alabama, 1975, as amended, shall pay to the town an annual license fee of \$1,000.00.

P. Brew Pub. Each person who holds a current business license from the Town of Cherokee Ridge and obtained an alcohol license from the Board under Section 28-3A-1, et.seq., Code of Alabama, 1975 as amended, shall pay to the Town an annual license fee of \$1,800.00.

Q. Club I or Club II. Each person (or business entity) who holds a current business license from the Town of Cherokee Ridge and obtained an alcohol license from the Board under Section 28-3A-1, et seq., Code of Alabama, 1975, as amended, shall pay to the Town an annual license fee of \$250.00. In addition to the stated license fee, each such person (or business entity) shall pay to the Town, on or before the 15th day of the calendar month next succeeding each separate subject month, for the privilege of engaging in such business in subject month, an additional license tax of 10% of the monthly gross receipts of such business derived from the sale of alcohol.

(2) The term “gross receipts” as used in this Section shall not include any so called “additional license tax” levied by the Town under the provisions of this article that are based solely on gross sales and that are directly passed on by the licensee/seller to the consumer/purchaser.

(3) In order to apply for or to renew an alcohol license, the requesting party must have a license to do business in the Town of Cherokee Ridge which is current and not in default, and submit to having the fixed place of business inspected by the Town’s fire marshal.

The stated annual license fee levied by the schedule under the foregoing provisions shall be due January 21st of each year and shall be delinquent after January 31st of the year for which such license is due and a penalty of 15% of the license amount shall be collected during February and March; 30% during the month of April, and after April 30th, the license shall be revoked. In addition, such person must pay a \$200.00 citation fee. There shall be no proration of any license fee because of having operated only a part of a calendar year, except as required under State law, nor shall any rebate be allowed upon revocation, suspension, abandonment, or surrender of such license before the expiration thereof. All additional license taxes levied by said schedule shall be due the 15th day of the calendar month specified in each levy and shall be delinquent if not reported and paid by such date. Failure to pay when due of any additional license taxes

shall carry a 20% penalty for each month delinquent and if said additional license taxes be delinquent more than 60 days, said license shall be revoked.

Article XXVII. Reports of Business Done and Tax Due.

The person liable for any license tax or other tax imposed by this chapter shall file with the Town Clerk or duly authorized representative, on or before the final date on which the tax may be paid without a penalty, such report or reports in such form as the Town Clerk or duly authorized representative, may prescribe evidencing the amount of business done and the amount of license tax or other tax due thereon, together with full payment for any tax liability. Any failure to comply with this section shall be declared unlawful and be punishable as such.

Article XXVIII. Alabama Responsible Vendor Act.

Sections 28-10-1 through 28-10-8, of the Code of Alabama, 1975, as amended, are hereby adopted by reference and made a part hereof as if fully set forth herein.

(1) Each business requesting to sell alcoholic beverages within the Town of Cherokee Ridge must obtain a Business Certification through the Alabama Responsible Vendor Program within 30 days of license approval by the Board.

(2) Upon a business becoming de-certified from the Alabama Responsible Vendor Program, the Town privilege license shall be suspended or revoked for a time no more than one (1) year.

Article XXIX. Waivers.

A. Variances: Upon appeal in specific cases, such variances from the terms of this Ordinance as will not be contrary to the intent of this Ordinance, or to the public interest where, owing to special conditions, the Town Council shall also determine before granting any variance, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in practical difficulty or

unnecessary hardship, so that the spirit of the Ordinance shall be observed public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case upon a finding by the Town Council in a manner prescribed by the council and based on the following only:

- i. A written application for variance is submitted indicating the Section of this Ordinance under which the use is requested. Scaled and dimensioned drawings indicating locations of existing and proposed buildings and structures, relationship to adjacent properties, both public and private, and all alleged physical constraints shall accompany the application. Photographs documenting the existing conditions shall be included with the application. The scale drawing must have a vicinity sketch and may require a survey at the Town Council's direction. Said sketch shall denote each property owner and the use of said property.
- ii. The application shall be submitted to the Council in compliance with their adopted procedures.
- iii. All requests for variances must be accompanied by waivers from any entity whose distance to the property would prohibit such a use as set out in paragraph 3 below.
- iv. The applicant shall appear in person or by agent or by attorney at the meeting.
- v. The Town Council shall make a finding that is empowered under this Ordinance as specifically described in the application, to grant or deny the request; and that granting it will not adversely affect the public interest and is in accordance with the waivers of neighboring affection property owners. Approval of the variance is void if a license has not been issued within 6 months of the effective date of said approval.

(B) Waiver.

The distance requirement may be waived by the Town Council upon the applicant obtaining permission in writing from the school

church or licensed child development facility located within the prohibited zone, requesting that said establishment or special event be allowed to be located inside said minimum distance. No variance may be granted without waiver from all affected neighboring property owners within the affected area.

-(C) Abatement

The Town Council may require the conduct of any use, conforming or nonconforming which results in unreasonable noise, smoke, gas, vibration, fume, dust fire, radio, inference, explosive hazard or nuisance to surrounding property to be modified or changed to abate such hazard to health, comfort, and convenience. The Council may issue an abatement order but such order maybe directed only after a public hearing by the said Council or after notice of which shall be sent by certified mail to the owners and/or operators of the property on which the use is conducted. A hearing to consider issuance of an abatement order shall be held by the Town Council if the abatement is to be considered after issuance of a license by this Ordinance and either upon petition signed by any person affected by the hazard or nuisance or upon the initiative of the Town. An abatement order shall be directed by the Town Council only upon reasonable evidence of hazard or nuisance and such Order shall specify the date by which the hazard or nuisance shall be abated.

Article XXX. Violations Declared Misdemeanor.

Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor and unless otherwise provided herein, shall, upon conviction or adjudication of guilt, be punished in accordance with the provision of Ordinance of the Town of Oneonta Cherokee Ridge, Alabama.

Article XXXI. Application of Municipal Code and Ordinances.

Ordinances of the Town of Cherokee Ridge, Alabama, shall apply in all respects to any violations of this Ordinance.

Article XXXII. Severability.

The provisions of this ordinance are severable so that if any provision hereof is declared unconstitutional, void, or invalid by a court of competent jurisdiction, all other provisions hereof shall not be affected by such declaration and shall remain in full force and effect as though the unconstitutional, void, or invalid provision had not been included in this ordinance as originally adopted.

Article XXXIII. Punishments.

In addition to any other penalties imposed by law for violations of any sections of this ordinance, the town shall revoke the privilege license issued pursuant to this ordinance and the license ordinance for the second violation within a two-year period of any rule, section, duty or obligation as set out in this ordinance, Title 28 Code of Alabama, or the Alcohol Beverage Control Board Rules and Regulations, as amended.

Article XXXIV. Conflicts.

(1) This Ordinance shall be deemed cumulative with and supplemental to any and all statutes of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes of the State of Alabama. Any provision hereof in conflict with any provision of any State statute shall be construed so as to be in harmony with the same where possible and otherwise to be subordinate to and superseded by the provisions of such State statute.

(2) All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict repealed.

(3) The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs or sections since the same would have been enacted by the Town Council without the

incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Article XXXV. Effective Date.

This Ordinance shall be effective September 1, 2022.

ADOPTED this the 13th day of _June, 2022.

Town of Cherokee Ridge, Alabama

By _____

Mayor

ATTEST:

Town Clerk