

October 4, 2007

STATE OF ALABAMA,
LIMESTONE COUNTY,
CITY OF ATHENS.

The City Council of the City of Athens, Alabama, met in special session in the old City Council Chambers located at 203 N. Marion Street on October 4, 2007, at 9:00 a.m. The meeting was called to order by Harold Wales, President of the City Council, who acted as chairman of the meeting. Upon roll call, the following were found to be present: Councilmembers Johnny Crutcher, Harold Wales, Jimmy Gill, Ronnie Marks and Mildred Caudle. Mayor Dan Williams and John Hamilton were present. John Hamilton recorded the Minutes of the Meeting. The Chairman stated that a quorum was present and that the meeting was open for the transaction of business.

Councilman Crutcher introduced the following ordinance:

STATE OF ALABAMA,
LIMESTONE COUNTY,
CITY OF ATHENS.

ORDINANCE NUMBER 2007-1655

**AN ORDINANCE AMENDING SECTION 6-33,
SECTION 6-34, AND SECTION 6-47 OF THE CITY
CODE, RELATING TO THE DEFINITION OF A
“CHILD DEVELOPMENT FACILITY,” THE
LOCATION OF PREMISES SELLING ALCOHOLIC
BEVERAGES, AND THE LOCATION OF
PRIVILEGES SELLING LIQUOR FOR ON AND OFF
PREMISES CONSUMPTION**

WHEREAS, the City Council of the City of Athens desires to exercise its police powers, set forth in § 11-45-1 of the *Code of Alabama* and elsewhere, to further regulate the location of the sale of alcoholic beverages in the City; and

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA while in regular session on October 4, 2007 at 9:00 a.m., as follows:

Section 1. The definition of “child development facility” in Section 6-33 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Child development facility means any child development program or club that promotes extended educational services that is funded partially or completely by federal, state, or

local government revenue (i.e., Head Start Programs, Boys & Girls Club, etc.). The definition of “child development facility” shall also include any day care center licensed by the Alabama Department of Human Resources.

Section 2. Section 6-34 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Section 6-34. Restriction of Location of Sale of Alcoholic Beverages.

(a) In addition to all other regulations and restrictions, no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the facility or property is located in a B-4 zone. However, this subsection (a) shall not apply to Class I or Class II Restaurants, Convenience Stores, or Grocery Stores.

(b) In addition to all other regulations and restrictions, no Club in a residential zone or in a planned development district shall be authorized for on-premises sale or off-premises sale of alcoholic beverages unless the same has been approved as a conditional use by the Athens Planning Commission, as may be required by the Athens Zoning Ordinance.

(c) In addition to all other regulations and restrictions, and subject to exceptions contained in this section, no facility or property shall be authorized for on-premises sale or off-premises sale of alcoholic beverages where the facility or property is less than five hundred (500) feet from any church, public or private elementary, intermediate, middle or junior high, high school or child development facility. The aforesaid distance restriction in this subsection (c) shall not apply in the following enumerated cases:

- (1) Where the facility or property is located in a B-4 zoning district, and the façade on the lot frontage of the facility or property is not less than fifty (50) feet from the church, school, or child development facility.
- (2) Where (i) the facility or property is separated from the church, school, or child development facility by a street or highway having four (4) or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four (4) of the traffic lanes that separate the licensed premises from the church, school, or child development facility extend continuously and together for more than one (1) mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the licensed premises and the church, school, or child development facility building is at least two hundred (200) feet;
- (3) Where the church, school, or child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of twelve (12) months; or
- (4) Where the establishment upon the facility or property is a grocery store as defined herein.

(d) When measuring from a church, school, or child development facility, the closest exterior wall of the closest building in the church, school, or child development facility complex wherein an essential function or activity of the church, school, or child development facility is carried on shall constitute the beginning point for measurement. When measuring from the facility or property, the closest point on the exterior wall of the building occupied by the person seeking to sell alcoholic beverages shall be used for measurement purposes if the building is occupied solely by that person; otherwise, such measurement shall be made from the closest point of the person’s occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points.

(e) In instances where the Council has delegated the authority to make such a determination to an agent, any person aggrieved by the decision of the agent may appeal the agent’s decision to the Council.

Such an appeal must be filed in writing within ten (10) days of the date of the agent's decision and must specify the details of the reason for the appeal. The Council shall hold a public hearing on such appeal at its next regularly scheduled meeting which is at least fourteen (14) days after the appeal is received by the Clerk. The aggrieved party shall have the right to address the Council and present any relevant evidence and testimony at said hearing. The decision of the Council shall be final.

Section 3. Section 6-47 of the Code of Ordinances of the City of Athens is hereby amended to read as follows:

Section 6-47. Additional Regulations Concerning the Sale of Retail Liquor for On-Premises and Off-Premises Consumption.

(a) Sale of Retail Liquor for Off-Premises Consumption

(1) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the same is situated in any zoning district other than a B-3 zone. The sale of retail liquor for off-premises consumption shall only be permitted in a B-3 zone subject to such other rules and regulations as prescribed by law, such as conditional use regulations prescribed by the city zoning ordinance.

(2) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the facility or property is less than one thousand (1,000) feet from another facility or property that (i) has previously been authorized for the sale of retail liquor for off-premises consumption and (ii) is currently licensed for the sale of retail liquor for off-premises consumption. When measuring from these facilities or properties, the closest point on the exterior wall of the buildings occupied by the persons selling or seeking to sell alcoholic beverages shall be used for measurement purposes. If a building is not solely occupied by that person, then the measurement shall be made from the closest point of that person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points. A state liquor store (i.e., a store operated by the Alabama Alcoholic Beverage Control Board which offers the retail sale of liquors for off-premises consumption) shall not be construed as "another facility or property" pursuant to this subsection (a)(2).

(3) In addition to all other regulations and restrictions, and subject to exceptions contained in this subsection, no facility or property shall be authorized for the sale of retail liquor for off-premises consumption where the building in which the premises are located is less than one thousand (1,000) feet from any church, public or private elementary, intermediate, middle or junior high, high school, or child development facility. The method of measurement shall be the same method as found in Section 6-34. The aforesaid distance restriction in this subsection (a)(3) shall not apply where (i) the premises is separated from the church, school, or child development facility by a street or highway having four (4) or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four (4) of the traffic lanes that separate the premises from the church, school, or child development facility extend continuously and together for more than one (1) mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the premises and the church, school, or child development facility building is at least two hundred (200) feet. The aforesaid distance restriction in this subsection (a)(3) shall also not apply where the facility or property is a grocery store as defined herein, or where the church, school, or child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of twelve (12) months.

(b) Sale of Retail Liquor for On-Premises Consumption

(1) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the same is situated in any zoning district other than a B-3 zone. The sale of retail liquor for on-premises consumption shall only be

permitted in a B-3 zone subject to such other rules and regulations as prescribed by law, such as conditional use regulations prescribed by the city zoning ordinance. This subsection (b)(1) shall not apply to Class I or Class II Restaurants, Hotels, or to Clubs.

(2) In addition to all other regulations and restrictions, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the facility or property is less than one thousand (1,000) feet from another facility or property that (i) has previously been authorized for the sale of retail liquor for on-premises consumption and (ii) is currently licensed for the sale of retail liquor for on-premises consumption. When measuring from these facilities or properties, the closest point on the exterior wall of the buildings occupied by the persons selling or seeking to sell alcoholic beverages shall be used for measurement purposes. If a building is not solely occupied by that person, then the measurement shall be made from the closest point of that person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points. This subsection (b)(2) shall not apply to Class I Restaurants, Class II Restaurants, or Hotels.

(3) In addition to all other regulations and restrictions, and subject to exceptions contained in this subsection, no facility or property shall be authorized for the sale of retail liquor for on-premises consumption where the building in which the premises are located is less than one thousand (1,000) feet from any church, public or private elementary, intermediate, middle or junior high, high school, or child development facility. The method of measurement shall be the same method as found in Section 6-34. The aforesaid distance restriction in this subsection (b)(3) shall not apply where (i) the premises is separated from the church, school, or child development facility by a street or highway having four (4) or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (ii) at least four (4) of the traffic lanes that separate the premises from the church, school, or child development facility extend continuously and together for more than one (1) mile before any one of the lanes terminates or becomes a turning lane, service lane, and/or hazard lane, and (iii) the minimum distance between the premises and the church, school, or child development facility building is at least two hundred (200) feet. The aforesaid distance restrictions in this subsection (b)(3) shall also not apply where the church, school, or child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of twelve (12) months. This subsection (b)(3) shall not apply to Class I Restaurants, Class II Restaurants, or Hotels.

(c) In instances where the Council has delegated the authority to make such a determination to an agent, any person aggrieved by the decision of the agent may appeal the agent's decision to the Council. Such an appeal must be filed in writing within ten (10) days of the date of the agent's decision and must specify the details of the reason for the appeal. The Council shall hold a public hearing on such appeal at its next regularly scheduled meeting which is at least fourteen (14) days after the appeal is received by the Clerk. The aggrieved party shall have the right to address the Council and present any relevant evidence and testimony at said hearing. The decision of the Council shall be final.

Section 4. This ordinance shall become effective upon its adoption and publication as required by law.

Section 5. If any provision of this ordinance, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this ordinance that can be given effect without the invalid provisions or application, and to this end, the provisions of this code and such amendments and statutes are declared to be severable.

Section 6. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Athens as an addition or amendment thereto, and shall be appropriately renumbered as necessary to conform to the uniform numbering system of the Code.

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

LIMESTONE COUNTY)

I, John Hamilton, City Clerk of the City of Athens, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the City Council of the City of Athens, Alabama, on the ____ day of _____, 2007.

Witness my hand and seal of office this ____ day of _____, 2007.

John Hamilton, City Clerk

Councilmember Gill moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Caudle, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Crutcher, Wales, Gill, Marks and Caudle; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Marks thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Gill and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Crutcher, Wales, Gill, Marks and Caudle; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

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There being no further business to come before the meeting, the same was, upon motion by Councilman Marks and second by Councilman Gill, duly and properly adjourned.

/s/ Harold Wales
PRESIDENT, CITY COUNCIL

ATTEST:

/s/ John S. Hamilton
CITY CLERK