STATE OF GEORGIA

CITY OF DORAVILLE

ORDINANCE NO. 2009-__

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA AS AMENDED TO ADOPT REVISED SECTIONS, CHAPTER 3 ALCOHOLIC BEVERAGES, ARTICLES II AND III, SECTIONS 3-1, 3-57.1, 3-58, 3-108, 3-109, 3-110(b)(2)(3), 3-153, 3-154, 3-171, 3-172, 3-207, 3-208 AND 3-209(b)(2)(3), TO AMEND CHARACTER QUALIFICATIONS, RESIDENCY REQUIREMENTS, REGULATIONS ON COIN OPERATED GAMES AND REGULATIONS COUNCIL AND STAFF INTERESTS IN LICENSES; TO PROVIDE PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, O.C.G.A. § 3-3-1 provides that all business in alcoholic beverages in Georgia is a privilege and not a right;

WHEREAS, O.C.G.A. § 3-3-2 holds that local governments are fully empowered to adopt reasonable regulations licensing alcoholic beverage businesses in their jurisdictions;

WHEREAS, the duly elected local governing authority of the City of Doraville, Georgia are the Mayor and Council thereof;

WHEREAS, the existing alcoholic beverage ordinance provides residency requirements and character qualifications for applying and holding certain alcoholic beverage licenses and permits;

WHEREAS, historically places that sold alcoholic beverages and where such beverages were consumed were often havens for prostitution, gambling, sex offenses and felonies and as such, higher regulation and scrutiny of such facilities has been allowed under law;

WHEREAS, the business of alcoholic beverages is the business of sale, distribution, transport and manufacture of a mind altering substance and as such, the conviction, nolo plea or plea of guilty to any felony or other offense involving moral turpitude, prostitution or sex-related offense, lottery, gambling, illegal possession or sale of liquors or intoxicants or narcotics for a period of ten (10) years or less preceding the filing of an application for an alcoholic beverage license is deemed by the Mayor and Council, after due consideration, to clearly be connected with the regulatory purpose of the license and the same offenses are clearly related to the use and sale of drugs or alcohol warranting particular consideration in the application process;

WHEREAS, Council has determined that a blanket prohibition on anyone related to the Council or City staff or being on Council or being a staff member and as such, having no opportunity to apply for an alcoholic beverage license is an unlawful restraint of trade;

WHEREAS, coin operated amusement machines pursuant to state law can be allowed in areas where alcoholic beverages are sold;

WHEREAS, the City staff and Council regularly try to review and update ordinances as needed as cases and laws are issued;

WHEREAS, the Mayor and Council have deemed it appropriate to amend the character qualification, residency, coin operated machines and Council and staff interest in licenses sections of the City's alcoholic beverage ordinance; and

WHEREAS, the health, safety, welfare and aesthetics of the citizens of the City of Doraville shall be improved and protected by adoption and implementation of this Ordinance.

THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY ORDAIN:

Section 1.

That Section 3-1, 3-57.1, 3-58, 3-108, 3-109, 3-110(b)(2)(3), 3-153, 3-154, 3-171, 3-172, 3-207, 3-208 and 3-209(b)(2)(3) of the Code of Ordinances, City of Doraville, Georgia is hereby amended to read as follows:

"Section 3-1. Residency of applicant's designee.

No license for the sale of malt beverages, beer or wine, or distilled spirits or alcoholic beverages for package sales, or for sales for consumption on the premises, shall be granted any applicant who has not designated a citizen of the United States who has been a citizen for a period of three (3) continuous years prior to the date of application or who has had the status of a resident alien for a minimum of three (3) years prior to the date of the application who shall be responsible for the license. Each applicant's designee must have resided continuously for a period of three (3) years in the State of Georgia prior to making application for such license. Where the applicant is a corporation or partnership, the license shall be issued in the name of the corporation, its majority shareholder and the resident designee, or in the name of the partnership, each of its partners and the resident designee. In all instances, all establishments licensed hereunder must have and continuously maintain in DeKalb County and the City of Doraville a registered agent who can be the resident license holder's designee, upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of DeKalb County and the City of Doraville. The licensee shall file the name of such agent, along with a written consent of such agent, with the City in such form as the City prescribes.

Any applicant for a license shall give written permission or get permission from any person as needed to the City and execute such other documentation as the City may require to acquire a ten-year criminal history on any person necessary in the processing of the application. The applicant shall prepay all costs incidental thereto or make such initial deposit as may be required so the City may obtain a criminal history for a ten-year period prior to the date of such application. The criminal history may be in any of the following forms or combinations thereof, but the histories must cover the entire required ten (10) years:

(1) An NCIC report certified by a federal or state law enforcement agency;

(2) A GCIC report if the applicant has resided in the State of Georgia for any portion of the ten-year period (or a similar report of other state agencies if the applicant resided in other states during the ten-year period);

(3) An exemplified copy of the applicant's criminal history from every foreign country in which the applicant resided; and

(4) A certified copy of the applicant's criminal history furnished by Interpol.

. . .

Section 3-571.1. Residency of applicant's designee.

No license for the sale of malt beverages or wine shall be granted to any applicant who has not designated a citizen of the United States who has resided continuously in the City for the one-year period next preceding the year for which application is made to be responsible for any matter relating to the license. The applicant shall designate someone who has been a resident of the State of Georgia for three (3) prior to the year for which the application is made. Where the applicant is a corporation or partnership whose primary business is the operation of a liquor store, the corporation must designate someone who meets such requirements and the license

shall be issued jointly to the corporation and the resident designee. Where the applicant is a corporation whose primary business is other than the operation of a liquor store, the license shall be issued to the corporation and an officer or agent of such corporation who meets the residency requirements. If the applicant is a partnership, the same requirements pertaining to corporations shall apply. In all instances, all establishments licensed hereunder must have and continuously maintain in DeKalb County and the City of Doraville a registered agent who can be the resident license holder designee upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. This person must be a resident of DeKalb County and the City of Doraville. The licensee shall file the name of such agent, along with a written consent of such agent, with the City in such form as the City prescribes.

Section 3-58. Character of applicants.

No person shall be granted a malt beverage or wine license unless it shall appear to the satisfaction of the council that such person, partners in the firm, officers and directors of the corporation shall be of good moral character. In no event shall any license be granted to any person who has been convicted of or has pleaded guilty to or entered a plea of nolo contendere to any felony or to any crime involving moral turpitude, lottery, gambling prostitution or sex-related offenses, or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application, nor shall any such person sell or dispense malt beverages or wine. At the time an application is submitted for a retail or wholesale license, the applicant shall by a duly sworn affidavit certify that neither he, nor any of the other owners of the retail or wholesale establishment, nor the manager nor any agent of such establishment has been convicted or has pleaded guilty or entered a plea of nolo contendere to

any felony or to any crime involving moral turpitude, lottery, gambling, prostitution or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application. Should any applicant, partner, officer, employee or agent used in the sale or dispensing of malt beverages or wine after a license has been granted be convicted or plead guilty or nolo contendere to any felony or to a crime involving moral turpitude, gambling, prostitution, or the violation of any laws regulating the sale of narcotics, liquor, wine or beer, or the lottery laws of this state, such license shall be immediately revoked and canceled. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and are connected to the regulatory purpose of the license.

. . .

Section 3-108. Residency requirements of applicant's designee.

No license for the sale of malt beverages and wine by the drink for consumption on the premises shall be granted to any applicant who has not designated someone who has resided continuously in the City for a continuous period of one (1) year immediately preceding the date on which the application is made to be responsible for the license. The applicant must designate a person to be responsible for the license who has been a resident of the state for three (3) years prior to the year for which the application is made. Where the applicant is a corporation, operating a restaurant, hotel, motel, high-rise office or apartment building, or a private club or organization, the majority owner, or the majority stockholder, or the person with the largest interest in the establishment must meet all of the requirements contained in this section except residency and the license shall be issued jointly to the corporation, the majority stockholder and the resident designee. The same requirements shall apply if the applicant is a partnership.

Sec. 3-109. Character of applicant.

No applicant shall be granted a license for the sale of malt beverages or wine for consumption on the premises unless it shall appear to the satisfaction of the City Council that such applicant, or partners if the applicant is a partnership, or officers, directors and shareholders if the applicant is a corporation, are of good moral character, and evidence thereof must be attached to the application. In no event shall a license be granted to any persons who, or a corporation if any of its officers, directors or shareholders, have either committed, pleaded guilty, been convicted or entered a plea of nolo contendere to any felony or any offense which involves moral turpitude, prostitution or sex-related offenses, lottery, gambling, illegal possession or sale of liquors or intoxicants or narcotics for a period of ten (10) years preceding the filing of the application. It shall be unlawful for any such person to sell malt beverages or wine by the drink for consumption on the premises within the City. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and as such, are connected to the regulatory purposes of the license.

Sec. 3-110. Employee permit.

. . .

(b) Upon application to the police department and upon compliance with the requirements of subsection (a) of this section:

. . .

(2) No identification tag and permit shall be issued to any person who has committed, been convicted of, has pleaded guilty to, placed on probation for, or entered a plea of nolo contendere to any felony, or other offense involving moral turpitude, lottery, gambling, illegal possession or sale of distilled spirits, malt beverages or wine or any

narcotic drugs or controlled substance, or prostitution, or sex-related offenses, within a period of five (5) years immediately preceding the application for a permit and identification tag. First offender status will be recognized only upon satisfactory completion of the terms of any sentence which may be imposed. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and as such, are connected to the regulatory purpose of the license.

(3) Each applicant must comply with federal, state, county and local laws, rules, regulations and ordinances related to the sale of food or the serving of food and the terms of this ordinance and state law for service of alcoholic beverages for consumption on the premises.

. . .

Section 3-153. Residency of applicant's designee.

No license for the sale of distilled spirits shall be granted to any applicant who has not designated a citizen of the United States who has not resided continuously in the City for the one-year period next preceding the year for which application is made to be responsible for the license. The applicant shall designate someone who has been a resident of the state for three (3) years prior to the year for which the application is made. Where the applicant is a corporation whose primary business is the operation of a liquor store, the majority stockholder must meet such requirements except residency and the license shall be issued jointly to the corporation, the majority stockholder and the resident designee. Where the applicant is a corporation whose primary business is other than the operation of a liquor store, the license shall be issued to the corporation and an officer or agent of such corporation who meets the above requirements. If the applicant is a partnership, the same requirements pertaining to corporations shall apply.

Section 3-154. Character of applicants.

No person shall be granted a license under this article unless it shall appear to the satisfaction of the City Council that such person, partners in the firm, officers and directors of the corporation shall be of good moral character and in no event shall any license be granted to any person or officers or directors of any such corporations who have been convicted or have pleaded guilty or entered a plea of nolo contendere to any felony or to any crime involving moral turpitude, lottery, gambling, prostitution or other sex-related offenses, or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application, nor shall any such person sell distilled spirits. At the time an application is submitted for a license, the applicant shall by a duly sworn affidavit certify that neither he, nor any of the other owners or their agents of the retail or wholesale establishment, nor the manager or employees of such establishment have been convicted or has pleaded guilty or entered a plea of nolo contendere to any felony or to any crime involving moral turpitude, lottery, gambling, prostitution or other sex-related offense, or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application. Should any applicant, partner, officer, employee or agent used in the sale of distilled spirits after a license has been granted be convicted or plead guilty or nolo contendere to any felony or to a crime involving moral turpitude or the violation of any laws regulating the sale of narcotics, distilled spirits, wine or malt beverages, or the lottery or gambling laws of the state, or to prostitution or other sex-related offense, the license shall be instantly revoked and canceled. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and as such, are connected to the regulatory purposes of the license.

. . .

Section 3-171. Coin-operated amusement machines.

"Reserved."

Section 3-172. Interest prohibited to City officials, employees.

"Reserved."

. . .

Section 3-207. Residency requirement of applicant's designee.

No license for the sale of distilled spirits by the drink for consumption on the premises shall be issued to any applicant who has not designated someone who has resided in the state for a continuous period of one (1) year immediately preceding the date on which the application is made to be responsible for the license. Where the applicant is a corporation operating a restaurant, hotel, motel, or organization the majority owner, or the majority stockholder, or the person with the largest interest in the establishment must meet all of the requirements contained in this section except residency and the license shall be issued jointly to the corporation, the majority stockholder and the resident designee. The same requirements shall apply if the applicant is a partnership.

Sec. 3-208. Character of applicant.

No applicant shall be granted a license for the sale of distilled spirits for consumption on the premises unless it shall appear that such applicant, or partners if the applicant is a partnership, or officers, directors and shareholders if the applicant is a corporation, are of good moral character, and evidence thereof must be attached to the application. In no event shall a license be granted to any persons who, or a corporation if any of its officers directors or shareholders have either committed, pleaded guilty, been convicted or entered a plea or nolo

contendere to any felony or other offense which involves moral turpitude, lottery, gambling, prostitution or sex-related offenses, illegal possession or sale of liquors or intoxicants, or narcotics, for a period of ten (10) years preceding the filing of the application. It shall be unlawful for any such person to sell distilled spirits by the drink for consumption on the premises within the City. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and as such, are connected to the regulatory purpose of the license.

Section. 3-209. Employee permit.

. . .

(b) Upon application to the police department and upon compliance with the requirements of subsection (a) of this section:

. . .

(2) No identification tag and permit shall be issued to any person who has committed, been convicted of, has pleaded guilty to, placed on probation for, or entered a plea of nolo contendere to any felony, or other offense involving moral turpitude, lottery, gambling, illegal possession or sale of distilled spirits, malt beverages or wine or any narcotic drugs or controlled substance, prostitution, or sex-related offenses, within a period of five (5) years immediately preceding the application for a permit and identification tag. First offender status will be recognized only upon satisfactory completion of the terms of any sentence which may be imposed. The offenses listed in this section are deemed to be substantially related to the business of alcoholic beverages and as such, are connected to the regulatory purpose of the license.

(3) Each applicant must comply with federal, state, county and local laws, rules, regulations and ordinances related to the sale of food or the serving of food and the terms of this ordinance and state law for service of alcoholic beverages for consumption on the premises.

. . ."

Section 2.

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

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor or Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

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

clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3.

Penalties provided for violations of this Ordinance are set out in Section 1-12, as amended hereby, of the Code of Ordinances, City of Doraville, Georgia and are herby incorporated as if set out fully.

Section 4.

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

Section 5.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 6.

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Doraville.

Section 7.

It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code Ordinances, City of Doraville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 8.

This Ordinance shall become effective upon its adoption by the Mayor and Council.

SO ORDAINED, this ___ day of _____, 2009.

CITY OF DORAVILLE, GEORGIA

_____
Ray Jenkins, Mayor

_____
First Reading

_____
Second Reading

ATTEST:

_____(SEAL)
Rhonda Blackmon, City Clerk

APPROVED AS TO FORM:

_____
Murray J. Weed, City Attorney

	Yea	Nay
Maria Alexander	☐	☐
Brian Bates	☐	☐
Pam Fleming	☐	☐
Donna Pittman	☐	☐
Bob Roche	☐	☐
Bob Spangler	☐	☐