

This document is not meant to be legal advice and should not be treated as such. GMA strongly recommends that city officials consult with their city attorney before taking any action utilizing the provisions available in HB 879 to allow for earlier hours of Sunday sales of alcohol for consumption on the premises, or any other provisions of the Legislation.

Model Guidance for the Comprehensive Alcohol Legislation - HB 879 (2020)

On August 3, 2020, Governor Kemp signed HB 879 (hereinafter “the Legislation”) into law. The Legislation amends the state laws governing five categories of alcohol regulation: centralized permitting, Sunday sales of alcohol, home delivery of alcohol, local control of distance requirements, and pouring events at package stores.

The most impactful change implemented by the Legislation is that now, packaged goods retailers may deliver, within the boundaries of the local jurisdiction, malt beverages and wine in unbroken packages if they have been lawfully sold and purchased by an individual for personal use (see O.C.G.A. §3-3-10(b)), unless such deliveries are otherwise prohibited by local ordinance or resolution. They may only deliver to the address designated by the individual purchaser. A packaged goods retailer is defined as a person licensed under O.C.G.A. § 3-3-10(a)(7) to sell alcoholic beverages in unbroken packages for consumption off premises. This definition excludes entities that are manufactures of alcoholic beverages, carriers, shippers, or persons that take delivery of alcoholic beverages from a retailer or manufacturer. Additionally, a licensed retail package liquor store that is also a packaged goods retailer may deliver distilled spirits under the same stipulations as those that are not licensed retail package stores (see O.C.G.A. §3-3-10(d.1)). Examples of packaged goods retailers that are authorized to deliver malt beverages, wine, or distilled spirits (depending on their designation) include grocery stores, restaurants, convenience stores, and stores selling distilled spirits.

The following provides more detailed information about the provisions of each Section of the Legislation:

Section 1 - Centralized Permitting

Pursuant to the Legislation, on or before January 1, 2021, the State Department of Revenue (hereafter the “Department”) is required to set up a state-wide, centralized permitting system for the purpose of streamlining alcohol permitting for both new state permits and renewals of state permits for all retailers (both “pour” and package).¹ Both

¹ O.C.G.A. § 3-2-7.1(a) (2020).

the department and local city and county governing authorities that issue such permits will be required to use the new state-wide application and renewal process.

Further, the centralized permitting section provides that the Department will prescribe uniform procedures and forms for initial applications and renewals to be used in the centralized process. Where local governing authorities have differing local procedures and rules such as different distance requirements, the Department will also provide for a process by which local authorities may upload documents into the new system for acceptance by the state.² When the applicant completes the process using the centralized system, the initial application or renewal will be sent simultaneously to the Department and to the local governing authority. The Department may require that a valid local license or permit be issued prior to granting a license at the state level.³

The centralized permitting process also affects how local fees are paid. Under the state-wide system, the process provides that, for the remittance and reporting of all fees for initial applications and renewals, the Department may require the applicant to pay the Department and the local governing authority separately at the time the application or renewal is submitted. Lastly, the Department, in its administration of the state-wide, centralized application process, will provide authorized users with access to the system. The Revenue Commissioner will adopt rules and regulations necessary to implement the state-wide application system.⁴ When the relevant regulations are made available GMA will analyze them and provide guidance on them to our member cities.

Section 2 - Sunday Alcohol Sales

Pursuant to Section 2 of the Legislation, in all counties or municipalities that have authorized, following a referendum, the sale of alcoholic beverages for consumption on premises (i.e. by the pour) on a Sunday from 12:30 p.m. to 12:00 a.m. (midnight) and the sale of either malt beverages and wine⁵, or malt beverages and wine and distilled spirits,⁶ on Sundays from 12:30 p.m. to 11:30 p.m., such governing authorities may, by resolution or ordinance, conditioned on approval by the electorate in a subsequent referendum, authorize the sale of alcoholic beverages both by the pour and package on Sundays from 11:00 a.m. until 12:00 a.m. (midnight). Pursuant to this legislation the governing authority may now extend the sale of both drinks by the pour and package sales by an extra hour and a half in one referendum rather than by holding two separate referenda. This is a

² O.C.G.A. § 3-2-7.1(b) (2020).

³ O.C.G.A. § 3-2-7.1(c) (2020).

⁴ O.C.G.A. § 3-2-7.1(c)-(f) (2020).

⁵ O.C.G.A. § 3-3-7(j.2)(1)(2020).

⁶ O.C.G.A. § 3-3-7(j.3)(1)(2020).

permissive provision that gives cities to option to do so but does not require that cities pass such a resolution.

The Legislation provides that in all counties or municipalities where retail sales of malt beverages and wine, but not distilled spirits have been authorized on Sundays from 12:30 p.m. to 11:30 p.m. pursuant to a referendum, and where sales of alcoholic beverages by the pour on Sundays from 11:00 a.m. to 12:00 a.m. (midnight) (including an additional hour and a half from 11:00 a.m. until 12:30 p.m.) have been authorized pursuant to a subsequent referendum the local governing authority may allow, by adoption of a resolution or ordinance (as appropriate), for package sale by retailers of malt beverages and wine on Sundays from 11:00 a.m. to 12:00 a.m. (midnight).⁷ O.C.G.A. §§ 3-3-7(p.1) and (q.1) both contain the line “[t]he provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title relative to the sale of alcoholic beverages by retailers.” This language is somewhat confusing; however it appears to mean that cities may not skip over the requirement of having a first referendum on the sale of alcohol on Sundays from 12:30 p.m. before they hold a referendum on whether alcohol may be sold from 11:00 a.m. on a Sunday.

Further, this Legislation provides that in all counties or municipalities where retail package sales of malt beverages, wine, as well as distilled spirits have been authorized on Sundays from 12:30 p.m. to 11:30 p.m., pursuant to a referendum, and where sales of alcoholic beverages by the pour on Sundays from 11:00 a.m. to 12:00 a.m. (midnight) have been authorized pursuant to a subsequent referendum, the local governing authority may allow, by adoption of a resolution or ordinance (as appropriate), for package sales by retailers of malt beverages, wine, and distilled spirits on Sundays from 11:00 a.m. until 12:00 a.m. (midnight).⁸

As mentioned above, under this code section, if a municipality has not already held a referendum on the question of whether or not to allow Sunday sales of alcohol, the city must first hold a referendum to allow Sunday sales from 12:30 p.m. before they can hold a referendum on whether to allow Sunday sales from 11.00 a.m. This is because, municipalities derive their powers from the State, and as such may only exercise such powers as are expressly bestowed upon them by the State. Therefore, local referenda may only be held specifically as provided for by the General Assembly. The terms of O.C.G.A. § 3-3-7(j.2)(1) and O.C.G.A § 3-3-7(j.3)(1)⁹ clearly state that local governments may only hold a referendum on the sale of alcohol from 11:00 a.m. on a Sunday if the

⁷ O.C.G.A. § 3-3-7(p.1)(2020).

⁸ O.C.G.A. § 3-3-7(q.1)(2020).

⁹ O.C.G.A. § 3-3-7(j.2)(1) provides for the sale of malt beverages and wine only, by both the “pour” and the package. O.C.G.A § 3-3-7(j.3)(1) provides for the sale of malt beverages, wine, as well as distilled spirits by the “pour” and the package.

governing authority has already held a referendum to approve Sunday sales beginning at 12:30 p.m. Therefore, it appears that in order to avail themselves of alcohol sales from 11:00 a.m. on a Sunday local governments will have to have conducted a total of two referendums, the first to allow Sunday sales from 12:30 p.m. and another to roll back the start time to 11:00 a.m. It is unclear whether the requirement of two consecutive referenda was intentional or created through an error in drafting, however, as written, this is what the law requires.

This portion of the legislation is effective from August 3, 2020.

Section 3 - Home Delivery of Alcohol

This Section of the legislation provides for the home delivery of sealed packages of alcohol by "package goods retailers" (defined above). Pursuant to the Legislation, a packaged goods retailer may sell and deliver malt beverages and wine in unbroken packages to an individual for personal use (but not for resale) unless such delivery is prohibited by a local ordinance or resolution.¹⁰ Additionally, retail package liquor stores that are also packaged goods retailers may deliver distilled spirits in unbroken packages if the products are sold to an individual for personal use (and not for resale), unless prohibited by a local ordinance or resolution.¹¹ While the legislation is ultimately silent on whether pour permit holders (i.e. restaurants) are eligible to deliver, the Department has indicated that all state license holders are eligible and this designation includes restaurants. Since restaurants are not retail package liquor stores, they will only be eligible to deliver malt beverages and wine, unless the local governing authority adopts an ordinance prohibiting such delivery. Restaurants are permitted to use their own website or apps for processing orders, and they can use websites or apps owned by third parties.

As described above, the Legislation provides that the revenue commissioner is authorized to promulgate and enforce rules and regulations that it deems necessary to effectuate the delivery process. This includes providing rules and regulations governing the training of individuals making deliveries. The Department has indicated that instead of releasing traditional regulations, they are only providing the "Delivery of Alcoholic Beverages and Alcoholic Beverage Delivery Curriculum." This provides information and guidance for alcohol retail licensees, their employees, and third-party services on the delivery of alcoholic beverages. It also provides the minimum curriculum requirements for alcohol beverage delivery training courses. The Department will not deliver any additional guidance, and the rest of the process is left up to local governments. Once an entity (a

¹⁰ O.C.G.A. § 3-3-10(b)(2020).

¹¹ O.C.G.A. § 3-3-10(d.1)(2020).

licensed retailer, employee, or a third-party service) has completed a training that meets the minimum curriculum requirements, they are certified to deliver provided they meet all other requirements.

Deliveries made pursuant to this legislation can only be made within the municipal jurisdiction or unincorporated area of the county in which the package goods retailer is physically located. O.C.G.A. § 3-3-10(c) through O.C.G.A. § 3-3-10(d)(6) provides detailed requirements for who may purchase alcohol for delivery and how the deliveries must be made. The customer must establish and maintain an account with the package goods retailer in order to make a purchase of alcohol for delivery, and upon delivery must present a valid ID showing that they are over 21 years of age. Among other requirements the deliveries must be made by a person of 21 years of age or older who holds a valid Georgia driver's license and has been subject to a background check and criminal record check. A full list of the requirements can be found at O.C.G.A. § 3-3-10(b)(5).

Local governments will need to decide whether they want to develop different licenses for restaurants, such as a separate license for delivery or whether to allow them to deliver under their current “pour” license with no additional requirements. Local governments might also consider developing a hybrid license that allows for “pour” or retail sales (as applicable) as well as delivery under the same license, and what such a license and application process might entail.

This portion of the legislation is effective from August 3, 2020.

Section 4 - Local Control of Distance Requirements

Pursuant to O.C.G.A. § 3-3-21(a)(1)(B) no person may sell wine or malt beverages within 100 yards of any school building, school grounds, or college campus.¹² O.C.G.A. § 3-3-21(a)(1)(A) provides that any distilled spirits may not be sold within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus. Churches are not included in the beer and wine distance requirements. An extra layer of complexity is added to these broad restrictions by O.C.G.A. 3-3-21(b)(3), which allows for local governments to impose different distance requirements for the retail sale of alcoholic beverages for consumption on the premises only in relation to churches, schools and college campuses.

Section 4 of the Legislation provides that cities and counties may set their local distance requirements, with respect to college campuses, at less than the state boundary for retail package sales of alcoholic beverages for consumption off the premises. However, the

¹² This does not apply at any location which was licensed prior to July 1, 1981.

Legislation does not remove the broad restrictions of O.C.G.A. § 3-3-21(a)(1)(B) or O.C.G.A. § 3-3-21(a)(1)(A). As such, if the city or county does not have any distance requirements for retail package sales **for colleges** then the distance limit provided for by the state shall remain the effective distance. Therefore, this lifting of the distance requirement would only impact permit applicants which are (1) located within the state boundaries of a college campus, and (2) where the city previously had different distance requirements to those imposed by the state. Local governments and permit applicants should be aware that this Legislation is only applicable in this narrow practical application. Restaurants which want to begin selling by the package should be aware that they could be subject to local distance rules for consumption on the premises “pour” (if the local government has lessened standards for such) and still be subject to the 100 yard rule in O.C.G.A. § 3-3-21 (a)(1)(B) for packages sales from the restaurant. So, restaurants should not assume that just because they are outside the distance requirements to pour that they are also necessarily eligible for package sales.

Concerning the enforcement of the distance requirements, it is important that the distances are accurately calculated. The distance between the licensed premises and the protected location must be measured in accordance with Ga. Comp. R. & Regs. 560-2-2-.12. According to this rule, measurement of distances for alcoholic beverage licenses must be done from the front door of the establishment selling alcohol to the front door of the church, government-owned treatment center, or retail package store, or to the nearest property line of the real property being used for school or educational purposes. No matter what, at least one end of the measurements will always be a door. Thus, measurements cannot be made simply by using online maps but instead will always require individual measurement. It is important to take this into consideration when determining the amount of fees to be charged by the licensing local government to licensees as, although fees must be uniform for applicants, such fee schedule should represent the true cost of administering the application process.

Any restaurant now wanting to avail itself of a new municipal allowance for restaurants to sell beer and wine by the package would have to have measurements taken to comply with state or local distance requirements, as applicable.

Section 5 - Tasting Events at Package Stores

The Legislation provides for tastings of beer, wine, and distilled spirit to take place on the premises of a retail package liquor store, or a retail dealer. The legislation allows for tastings of small samples of beers, wines, or distilled spirits provided that the samples are of alcoholic products that are available for sale on the premises and that the samples are consumed in the presence of a representative of the store. The tasting must not take

place in the public area of the store but instead must be conducted “in an office, storage room, or other area of the licensed premises of the retail dealer that is closed to the public”. (More rules relating to how such tasting events must take place can be found in Section 7).

Section 6 – Exception to O.C.G.A. § 3-4-25 for Tasting Events

This Section of the Legislation provides for an exception to the earlier requirements of O.C.G.A. § 3-4-25 (which mandated that the holder of retail dealer's license sell only unbroken packages and prohibited against the breaking of packages on the retail dealer's licensed premises) so as to allow for tasting events as described above.

Section 7 – Requirements for Tasting Events

The Legislation provides rules for how the tasting events, as provided for in O.C.G.A. § 3-3-26 as amended by the Legislation, must take place. Following the Legislation, retail package liquor stores may conduct up to fifty-two (52) tasting events per calendar year. Tasting events may only take place during the hours that the licensed premises may lawfully sell unbroken packages of alcohol. Such tasting events must last no longer than four hours, with only one tasting event being held per day. Only one type of alcoholic beverage may be served at a tasting event, either malt beverages, or wine, or distilled spirits. However, more than one brand of each type of alcoholic beverage may be offered so long as not more than four packages are open at any one time. Packages opened for the purposes of providing samples may not be sold, but instead must be kept locked in a secure room or cabinet except when in use during a tasting event. The Legislation also provides limitations on how much of each type of alcoholic beverage may be served during each tasting, and under what circumstances food may be provided during the tasting event.

Pursuant to the Legislation, prior to holding a tasting event, the licensee must notify the governing authority of the county or municipality in which the licensed premises is located. However, the Legislation does not provide for the local governing authority to require a permit for such a tasting event, only that it be notified.

This model ordinance to provide for home delivery by an authorized package retailer of beer, wine, and/or distilled spirits is not and should not be treated as legal advice. This model ordinance has been developed in response to House Bill 879 from the 2019-2020 legislative session. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model.

MODEL LICENSED RESTAURANT ALCOHOL DELIVERY ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF _____, GEORGIA TO PROVIDE FOR HOME DELIVERY OF ALCOHOL BY AN AUTHORIZED PACKAGE RETAILER WHICH ALSO SELL ALCOHOL FOR CONSUMPTION ON THE PREMISES; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

(HB 879 states that an authorized package retailer with an on-premise pour license may provide for the home delivery of beer and wine unless prohibited by municipal resolution or ordinance. HB 879 further states that an authorized package retailer licensed to sell alcoholic beverages in unbroken packages for consumption off the premises, which is also a licensed retail package liquor store, may provide for the home delivery of beer, wine, and/or distilled spirits unless prohibited by municipal resolution or ordinance upon the effective date of HB 879. If a municipality wishes to prohibit such delivery by an authorized package retailer, they must pass an ordinance to prohibit the home delivery of alcohol in the municipal jurisdiction (see, below for model ordinance restricting the delivery of alcoholic beverages).)

SECTION ONE

That Section _____ of the
(Code of Ordinances), City of _____, Georgia, is hereby amended to
read as follows:

Sec. _____ . Home Delivery of Alcohol.

- (a) For all purposes of this section, a “packaged goods retailer” shall have the same meaning as provided in O.C.G.A. §3-3-10.
- (b) No packaged goods retailer with only a “on-premise” permit shall be permitted to engage in delivery operations without first obtaining a proper alcohol license from the city pursuant to the same procedures as are set forth in Section _____ .

CHOOSE ONE OF THE BELOW THREE OPTIONS

1. In addition to any authorizations provided by state law, on-premise pour permit holders can apply for a “restaurant delivery license” to allow on-premise permit holders to deliver package beer and wine under the provisions of O.C.G.A. § 3-3-10.

OR

1. In addition to any authorizations provided by state law, on-premise pour permit holders can apply for a separate license to allow for the delivery of package beer and wine under the provisions of O.C.G.A. § 3-3-10.

OR

1. In addition to any authorizations provided by state law, on-premise permit holders can provide for the home delivery of beer and wine under an existing on-premise pour license with a letter of intent to provide the service to the municipality.

(In cases where the municipality would create a hybrid license to allow for the delivery of beer and wine on an on-premise pour license, it is recommended to require such a permit on the first renewal after the effective date of HB 879, and allow the on-premise pour permit holder to provide for the home delivery of beer and wine with a notice of intent until their renewal date.)

SECTION TWO

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

SECTION THREE

This Ordinance shall become effective on _____, 20____.

SO ORDAINED, this _____ day of _____, 20____.

Approved:

Mayor

ATTEST:

_____ (SEAL)
City Clerk

This model ordinance restricting home delivery of alcoholic beverages is not and should not be treated as legal advice. This model ordinance has been developed in response to House Bill 879 from the 2019-2020 legislative session. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model.

MODEL ORDINANCE TO RESTRICT HOME DELIVERY OF ALCOHOL

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF _____, GEORGIA TO RESTRICT HOME DELIVERY OF ALCOHOL; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

*(HB 879 states that an authorized package retailer with an on-premise pour license may provide for the home delivery of beer and wine **unless prohibited by municipal resolution or ordinance**. HB 879 further states that an authorized package retailer licensed to sell alcoholic beverages in unbroken packages for consumption off the premises, which is also a licensed retail package liquor store, may provide for the home delivery of beer, wine, and/or distilled spirits **unless prohibited by municipal resolution or ordinance** upon the effective date of HB 879. This model ordinance can be used where a municipality wishes to prohibit the home delivery of alcohol in the municipal jurisdiction, or where the municipality wishes to only allow for the delivery of malt beverages and wine.)*

SECTION ONE

That Section _____ of the (Code of Ordinances), City of _____, Georgia, is hereby amended to read as follows:

Sec. _____. Home Delivery of Alcohol.

- (a) For all purposes of this section, a “packaged goods retailer” shall have the same meaning as provided in O.C.G.A. §3-3-10.

*CHOOSE **ONE** OF THE BELOW THREE OPTIONS*

2. Pursuant to O.C.G.A. § 3-3-10(b), City of _____, Georgia hereby prohibits the delivery of any alcoholic beverages by any packaged goods retailer or “licensed retail package liquor store” located within the municipal boundaries of the City of _____, Georgia.

OR

2. Pursuant to O.C.G.A. § 3-3-10(b), City of _____, Georgia hereby prohibits the delivery of any distilled spirits by any “licensed retail package liquor store” located within the municipal boundaries of the City of _____, Georgia.

SECTION TWO

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

SECTION THREE

This Ordinance shall become effective on _____, 20____.

SO ORDAINED, this _____ day of _____, 20____.

Approved:

Mayor

ATTEST:

_____(SEAL)
City Clerk