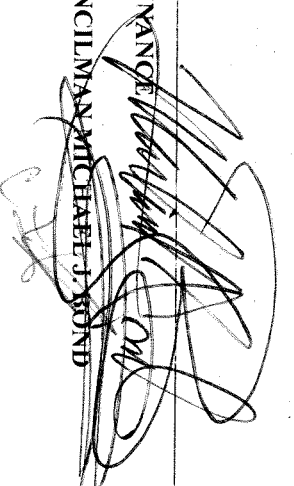


First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
Readings
 Consent V Vote RC Vote

AN ORDINANCE
 BY COUNCILMAN MICHAEL J. ROND



AN ORDINANCE TO AMEND SECTION 10-109.1 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA CHAPTER 10 (ALCOHOLIC BEVERAGES), ARTICLE II (DEALERS AND MANUFACTURER), DIVISION 2 (LICENSE), SUBDIVISION III (RENEWAL, REVOCATION TRANSFER) SO AS TO CREATE MANDATORY PROGRESSIVE PENALTIES FOR "DUE CAUSE" FINDINGS MADE BY THE LICENSE REVIEW BOARD AND PENALTIES IMPOSED BY THE MAYOR; TO WAIVE CONFLICTING ORDINANCES AND CODE SECTIONS; AND FOR OTHER PURPOSES.

Committee _____	Committee _____
Date _____	Date _____
Chair _____	Chair _____
Action Fav, Adv, Hold (see rev. side) Other _____	Action Fav, Adv, Hold (see rev. side) Other _____
Members _____	Members _____
Refer To _____	Refer To _____

CERTIFIED

MAYOR'S ACTION

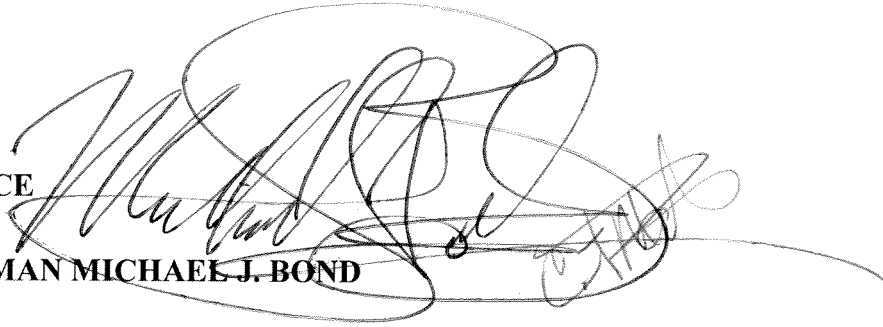
- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred: 2/2/15
 Referred To: Public Safety
 Date Referred: _____
 Referred To: _____
 Date Referred: _____
 Referred To: _____

Committee _____	Committee _____
Date _____	Date _____
Chair _____	Chair _____
Action Fav, Adv, Hold (see rev. side) Other _____	Action Fav, Adv, Hold (see rev. side) Other _____
Members _____	Members _____
Refer To _____	Refer To _____

AN ORDINANCE

BY COUNCILMAN MICHAEL J. BOND

A large, stylized handwritten signature in black ink, which appears to be "Michael J. Bond". The signature is written over the printed name "MICHAEL J. BOND" and extends upwards and to the right.

AN ORDINANCE TO AMEND SECTION 10-109.1 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA CHAPTER 10 (ALCOHOLIC BEVERAGES), ARTICLE II (DEALERS AND MANUFACTURER), DIVISION 2 (LICENSE), SUBDIVISION III (RENEWAL, REVOCATION TRANSFER) SO AS TO CREATE MANDATORY PROGRESSIVE PENALTIES FOR “DUE CAUSE” FINDINGS MADE BY THE LICENSE REVIEW BOARD AND PENALTIES IMPOSED BY THE MAYOR; TO WAIVE CONFLICTING ORDINANCES AND CODE SECTIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in regulating, through the lawful exercise of its police powers, the sale of alcoholic beverages in order to provide for the safety and welfare of the citizens of the city and its visitors; and,

WHEREAS, the alcoholic beverage laws, ordinances and regulations should be reviewed so as to ascertain and recommend improvements to the city’s system of alcoholic beverage licensing and enforcement; and,

WHEREAS, pursuant to Resolution #11-R-0936, adopted June 20, 2011 and approved June 29, 2011, ATAG II was established; and,

WHEREAS, ATAG II was populated and held its first meeting on November 30, 2011; and
WHEREAS, ATAG II has held public input hearings in every quadrant of the city, has had experts from government and the private sector appear before its members, and has discussed, deliberated and debated the myriad of issues involved in the licensing and enforcement of alcoholic beverages; and

WHEREAS, one of the issues discussed, deliberated and debated by ATAG II was the imposition of penalties on licensees upon violations of the Alcoholic Beverage Code of Ordinances; and

WHEREAS, on May 8, 2013, ATAG II took a vote on each of myriad issues to determine whether to include a recommendation regarding each specific issue in a final report to the City Council;

WHEREAS, on May 8, 2013, ATAG II took a vote on each of myriad issues to determine whether to include a recommendation regarding each specific issue in a final report to the City Council;

WHEREAS, during the vote on May 8, 2013, ATAG II voted to approve the inclusion of a recommendation to City Council which addressed the imposition of penalties on licensees upon violations of the Alcoholic Beverage Code of Ordinances; and

WHEREAS, ATAG II specifically voted to "change the ordinance to include a penalty matrix for violations of the alcohol ordinance, such that for each type of violation there is a prescribed penalty for the first, second and third violation of the ordinance, and that the prescribed penalties increase with each violation of the ordinance;" and

WHEREAS, after ATAG II completed its vote on May 8, 2013, regarding each issue, ATAG II presented a report to the City Council entitled "Alcohol Technical Advisory Group Recommendations and Narrative Explaining Concepts" (hereinafter known as "ATAG II Recommendations"); and

WHEREAS, included within the ATAG II Recommendations was a specific narrative explaining ATAG II's recommendation and the concept that ATAG II envisioned for creating a matrix for assessing penalties for violations of the Alcoholic Beverage Code; and

WHEREAS, in its narrative, ATAG II explained the concept by stating the following:

"[A]s a function of the nature of the violation, the penalty for a first violation may involve only a financial penalty, or a fine and/or a short suspension of the license. A second violation (which may be similar to or different from the first) within a certain time of the first violation, may involve only a larger financial penalty, or a fine and/or a longer suspension of the license. A third violation (which may be similar to or different from the second) within a certain time of the second violation may result in only a very large financial penalty and/or revocation of and loss of the license. This is a conceptual explanation of how the 'progressive' three step or incremental penalty assessment framework should be structured" (a copy of ATAG II's Recommendation and Narrative Explaining Concepts for Concept Number 22 is attached hereto); and

WHEREAS, ATAG II's Recommendation and Narrative Explaining Concepts, including the above-cited language, was attached to and made a part of a Resolution 13-R-3271 adopted by the City Council July 1, 2013; and

WHEREAS, the City Council recognizes that the recently enacted legislation, 12-O-1734, which set forth specific penalties based on first, second and third violations, imposes a minimum

suspension period for each and every violation of the Alcoholic Beverage Code regardless of the severity of the violation; and

WHEREAS, the City Council recognizes that the imposition of a minimum suspension on certain violations of the Alcoholic Beverage Code may have unintended consequences, as some violations are not so severe to warrant the imposition of a minimum suspension period, but rather, should be addressed through the imposition of a financial penalty instead; and

WHEREAS, the City Council recognizes that the Georgia Department of Revenue has had a long-standing policy of utilizing a penalty matrix in regard to the imposition of penalties for violations by alcohol license holders which: categorizes violations by severity, allows for consideration of both mitigating and aggravating circumstances related to violations, imposes only financial penalties for some violations and a mix of financial and suspension and/or revocation penalties for more severe violations, and which utilizes a three (3) year review period to assess the number of violations attributed to a licensee when imposing an adequate penalty for a current violation; and

WHEREAS, in addition to establishing a penalty matrix similar to that described above which is based on the category and severity of the violation, the City Council also desires to implement a finite period of time within which violations by alcohol license holders are calculated, comparable with that of the Georgia Department of Revenue's three (3) year review as referenced immediately above; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: Chapter 10, Article II, Division II, Section 10-109.1 of the Code of Ordinances of the City of Atlanta is hereby amended to delete the current language contained in said section and to insert in lieu thereof the following language:

Sec. 10-109.1 Penalty guidelines for violations of chapter after "due cause" findings by the License Review Board; administrative actions.

- (a) **Purpose.** The purpose of this Subsection is to provide a guide for the License Review Board and mayor in assessing fair and consistent consequences for violations of this chapter. The authority to deviate from these guidelines, including but not limited to provisions regarding show cause hearings, computation of number of offenses, time periods, and penalties, is expressly reserved to the governing authority, including the License Review Board and mayor. The License Review Board and mayor shall consider any extenuating,

aggravating, and/or mitigating circumstances presented by the licensee, and may consider other extenuating, aggravating and/or mitigating circumstances deemed appropriate by the License Review Board or mayor in deciding upon possible consequences assessed pursuant to this section. The table below calls for increased sanctions for subsequent violations within a thirty-six (36) month period or per increased class or seriousness; thus, within the same class, sanctions increase as the number of violations within a thirty-six (36) month period increase. The table reflects a willingness to give a licensee the benefit of the doubt, with respect to administrative action, for an initial offense on the part of the licensee or the employee of the licensee, but to be less willing to do so upon subsequent violations within a 36 month period.

(b) **Guidelines of Penalties for Violations.**

Offense	Penalty Recommended on 1st Violation	Penalty Recommended on 2nd Violation within a 36 month period	Penalty Recommended on 3rd Violation within a 36 month period	Penalty Recommended on 4th (and subsequent) Violations within a 36 month period
<p>Class IV Violations (less serious violations): Class IV includes violations of provisions that are administrative in nature, do not pose a threat to health or safety and do not result in an administrative burden being placed upon the City. This Class would include, but not be limited to, violations such as failure to post required signage; employees working without a required permit; failure to uniformly apply a City required dress code; failure to properly maintain the area surrounding the licensed premises as required by this chapter; or failure of the interior of a package store to be visible from the outside.</p>	<p>Warning letter requiring compliance within 10 days plus a 3-year Class IV probation. Failure to comply within 10 days would result in a fine between \$500.00 and \$1,000.00, subject to mitigating and/or aggravating factors.</p>	<p>A Fine between \$500.00 and \$1,000.00, subject to mitigating and/or aggravating factors plus a 3-year Class IV probation.</p>	<p>A Fine between \$750 and \$1,500.00 and/or a Suspension of the alcohol license for 0 days to a maximum of 3 days, subject to mitigating and/or aggravating factors plus a 3-year Class IV probation.</p>	<p>A Fine between \$1000 and \$2,500.00 and/or a Suspension of the alcohol license for a minimum of 3 days and a maximum of 30 days, subject to mitigating and/or aggravating factors plus a 3-year Class IV probation.</p> <p>Upon a Fifth violation within a 36 month period, the license would be subject to the penalties above or Revocation,</p>

				subject to mitigating and/or aggravating factors.
<p>Class III Violations (serious violations): Class III includes violations of provisions not covered under Class I, II or IV. Class III includes violations that are administrative in nature and pose minimal or no threat to health or safety, but result in an administrative burden being placed upon the City. This Class would include, but not be limited to, violations such as failure to renew an alcohol license; failure to file required taxes, reports, forms or requested documents in a timely manner; violation of restrictions on alcohol promotions and alcohol volume; failure to abide by the noise ordinance; failure to abide by certain health or fire codes that do not impose an immediate or significant threat to health or safety; illegal loitering; operating without a proper license; unlawful selling or removal of alcohol beyond the licensed premises; or providing alcohol during prohibited hours.</p>	<p>A Fine between \$500.00 and \$1,000.00 and/or a Suspension of the alcohol license for 0 days to a maximum of 3 days, subject to mitigating and/or aggravating factors plus a 3-year Class III probation.</p>	<p>A Fine between \$500.00 and \$1,000.00, and/or a Suspension of the alcohol license for a minimum of 1 day and a maximum of 10 days subject to mitigating and/or aggravating factors plus a 3-year Class III probation.</p>	<p>A Fine between \$750 and \$1,500.00 and/or a Suspension of the alcohol license for a minimum of 3 days to a maximum of 30 days, subject to mitigating and/or aggravating factors plus a 3-year Class III probation.</p>	<p>A Fine between \$1,000.00 and \$2,500.00, and/or a Suspension of the alcohol license for a minimum of 5 days and a maximum of 60 days or Revocation, subject to mitigating and/or aggravating factors plus a 3-year Class III probation.</p>
<p>Class II Violations (most serious violations): Class II includes violations of provisions that pose an immediate threat to health or safety. This Class would include, but not be limited to,</p>	<p>A Fine between \$500.00 and \$2,500.00 and/or a Suspension of the alcohol license for a minimum of 1</p>	<p>A Fine between \$1,000.00 and \$2,500.00, and/or a Suspension of the alcohol license for a minimum of 5</p>	<p>A Fine between \$1,000.00 and \$2,500.00, and a Suspension of the alcohol license for a minimum of 5</p>	<p>A Fine between \$1,000.00 and \$2,500.00, and a Suspension of the alcohol license for a minimum of 10 days and a</p>

<p>alcohol sales to prohibited persons; unauthorized employment of minors; or willful or reckless allowance of illegal solicitation or drugs on the premises.</p>	<p>day and a maximum of 5 days, subject to mitigating and/or aggravating factors plus a 3-year Class II probation.</p>	<p>days and a maximum of 10 days subject to mitigating and/or aggravating factors plus a 3-year Class II probation.</p>	<p>days and a maximum of 30 days or Revocation, subject to mitigating and/or aggravating factors plus a 3-year Class II probation.</p>	<p>maximum of 90 days or Revocation, subject to mitigating and/or aggravating factors plus a 3-year Class II probation.</p>
<p>Class I Violations (disqualifying violations): This class includes violations of provisions that result in the disqualification of the licensee or the premises from holding an alcohol license. This Class would include, but not be limited to, revocation of the state alcohol license, persons with an unauthorized ownership interest, maintenance of a coin operated machine in a liquor package store; or conviction of a felony reasonably related to the ability of the licensee to operate and maintain the premises in a proper manner.</p>	<p>Suspension of the alcohol license pending resolution of the disqualifying action or Revocation, subject to mitigating and/or aggravating factors plus a 3-year Class I probation.</p>	<p>A Fine between \$500.00 and \$1,000.00 and Suspension of the alcohol license pending resolution of the disqualifying action or Revocation, subject to mitigating and/or aggravating factors plus a 3-year Class I probation.</p>	<p>A Fine between \$750.00 and \$1,500.00 and Revocation.</p>	<p>N/A</p>

(c) **Other Penalties.** When the penalty for violations of this Chapter or an applicable statute, ordinance, or rule regarding alcoholic beverages is not listed in subsection (b) above, the penalty shall be determined by the mayor after consideration of the License Review Board’s conclusions and recommendations and any extenuating, aggravating and/or mitigating circumstances presented by the licensee or which the mayor deems to be appropriate. Any such penalty shall be between \$50 and \$1000 and/or a suspension of the alcohol license for a period of 0 – 30 days depending upon the seriousness and/or repeat nature of the violation.

(d) **Multiple Violations Within A Single “Due Cause” Hearing.** Following a “due cause” hearing before the License Review Board, and after consideration of the License Review Board’s conclusions and recommendations, the mayor must act upon all of the violations that have been alleged in the notice letter sent to the licensee and shall dismiss any violation which was not specifically brought before and considered by the License Review Board for hearing.

(e) **Computation of Violations.** In determining the consequences for a current violation, the License Review Board and the mayor may consider any previous violation of the same Class for which due cause has been found within thirty-six (36) months of the date of the current violation being considered for penalty. The date of the due cause finding shall be the date from which the thirty-six (36) month period commences. Offenses in one Class shall not be counted towards the number of offenses in a different Class. Concurrent violations of different sections of this chapter but arising out of a single act shall be deemed as a single violation, but may be considered as an aggravating or mitigating circumstance. Concurrent violations of different sections of this chapter and arising out of separate and distinct acts but presented together at the same due cause hearing shall be considered as separated violations but will not be considered as “subsequent” to each other for the purposes of the penalty guidelines.

(f) **Extenuating, Aggravating and Mitigating Circumstances.** In determining the penalty to impose on a licensee for any violation or for multiple violations of the law by the licensee, the License Review Board and the mayor shall consider extenuating, aggravating and/or mitigating circumstances presented by the licensee or which the License Review Board or mayor otherwise deem appropriate, including but not limited to the following:

1. Implementation and components of the licensee’s written responsible alcohol sales and service policies;
2. Implementation, components and results of licensee's engagement in a mystery shopper program and/or other means of monitoring employees for compliance;
3. Implementation and components of licensee's management and employee training program;
4. The number of violations of this chapter by the licensed business in the city of Atlanta within the thirty six (36) months immediately preceding the violation(s) being considered;
5. The number of violations of the licensee in the city of Atlanta within the thirty six (36) months immediately preceding the violation(s) being considered;
6. The number of violations in the same class that occurred concurrent with the violation that resulted in the due cause hearing;
7. The length of time the licensed establishment and/or the licensee has been in business;
8. Whether the compliance check was due to a complaint;
9. Whether identification was requested;

10. Whether the licensee knowingly or recklessly allowed the violation(s) to occur;
11. The financial impact upon the business of any proposed penalty; and
12. Any other facts properly in the record deemed relevant by the License Review Board or mayor.

(g) In addition to the penalties provided herein for violation of this chapter, a licensee may be required, at his own expense, to complete an approved responsible alcohol sales and service training course, at the discretion of the License Review Board and mayor.

(h) **Public notice of “Due Cause” hearing.** A first read notice of a “due cause” charge(s) and hearing date shall appear on one of the two monthly License Review Board meeting agendas and shall serve as notice to the general public. The License Review Board shall not conduct the “due cause” hearing until after the “due cause” charge has been published twice on the License Review Board Agenda.

SECTION 2: This ordinance shall become effective upon the Mayor’s signature or as specified by City Charter Section 2-403.

SECTION 3: Should any ordinance or part thereof be found to conflict with this ordinance or the provisions thereof, then the sections contained herein shall be deemed controlling.