

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. 07
ORDINANCE NO. 1792
Series 2024

TITLE: AN ORDINANCE AMENDING SECTIONS 11-51, 11-52.5, 11-53, 11-53.5, 11-55, AND 11-56 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING THE COMPOSITION OF THE WHEAT RIDGE LIQUOR LICENSING AUTHORITY AND MAKING CONFORMING AMENDMENTS IN CONNECTION THEREWITH

WHEREAS, the City of Wheat Ridge (the “City”) is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 44-3-101 et seq., C.R.S. § 44-4-101 et seq., and C.R.S. § 44-5-101 et seq., the City, acting through its City Council (the “Council”), is authorized to adopt ordinances for the creation of a local liquor licensing authority; and

WHEREAS, the Council has previously exercised this authority by enacting Article III of Chapter 11 of the Wheat Ridge Code of Laws (the “Code”); and

WHEREAS, the City’s local liquor licensing authority is currently composed of eight citizens appointed by City Council; and

WHEREAS, the Council and City staff have found it difficult to find citizens interested in serving on the local liquor licensing authority; and

WHEREAS, on February 26, 2024, the Council adopted Ordinance No. 1780, series 2024, an emergency ordinance authorizing the appointment of an administrative hearing officer for liquor licensing matters; and

WHEREAS, to increase efficiency, reduce legal risk, save costs, and facilitate more timely hearings for licensees, the Council finds that it is in the City’s best interest to transition from a citizen board to a hearing officer.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 11-51 of the Wheat Ridge Code of Laws is amended to read as follows:

Sec. 11-51. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcohol beverage means fermented malt beverages or malt, vinous, or spirituous liquors; except that alcohol beverage shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).

Applicant means and includes:

- (1) If an individual, or a husband and wife, that person or persons making an application for a license:
- (2) If a partnership, all partners, any officers, and any members owning ten (10) percent or more interest in the partnership.
- (3) If a corporation, the president, vice-president, secretary, treasurer, directors, managing officer, and each stockholder owning ten (10) percent or more of the stock of the corporation; and
- (4) If an association, organization, or company not listed above, its officers, directors, and any of its members owning a ten (1) percent interest or more interest therein.

Authority or licensing authority means the liquor licensing authority of the city.

Entertainment facility means an establishment the primary business of which is to provide the public with sports or entertainment activities within its licensed premises and incidentally may sell and serve alcohol beverages at retail for on-premises consumption and has sandwiches and light snacks available.

Fermented malt beverage means beer and any other beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one (0.5) percent alcohol by volume.

Investigator means a member of the Wheat Ridge Police Department, or a community service officer as provided by Section 2.33.

Lodging facility means an establishment the primary business of which is to provide the public with sleeping rooms and meeting facilities and incidentally may sell and serve alcohol beverages at retail for on-premises consumption and has sandwiches and light snacks available but does not include a restaurant as defined in C.R.S. § 44-3-103 or an eating establishment as defined in the Wheat Ridge City Code.

Malt liquors includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water, containing not less than one-half of one (0.5) percent alcohol by volume.

Manager includes the person or those persons who manage, direct, supervise, oversee and administer the acts, transactions and acts of servants of the establishments governed by this chapter.

Medicinal liquors mean any liquor sold by a duly licensed pharmacist or drugstore solely on a bona fide doctor's prescription.

Operator means a person licensed by law to sell fermented malt beverages or malt, vinous, or spirituous liquors, other than medicinal liquors, for beverage purposes at retail, and who is engaged at any time during the calendar year in such operation in the city.

Spirituous liquors mean any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, powdered alcohol, and every liquid or solid, patented or not, containing at least one-half of one (0.5) percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in this section, shall not be construed to be fermented malt or malt or vinous liquor, but shall be construed to be spirituous liquor.

Vinous liquors mean wines, including sake, and fortified wines that:

- (1) Contain not less than one-half of one (0.5) percent and not more than twenty-one (21) percent alcohol by volume; and
- (2) Are produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

All other words and phrases used in this chapter shall have the meanings attached by the Colorado Statutes regulating the sale of alcohol beverages, or if not otherwise defined by law, as used in their common, ordinary, and accepted sense and meaning.

Section 2. Section 11-52.5 of the Wheat Ridge Code of Laws is amended to read as follows:

Sec. 11-52.5. - Liquor licensing authority established.

(a) There is established a liquor licensing authority, which shall have and is vested with the authority to grant and refuse licenses and special permits, and to

approve and deny applications for renewal and transfer of licenses for the sale at retail of malt, vinous or spirituous liquors and fermented malt beverages, assess fees, promulgate reasonable rules and regulations, conduct investigations, and to suspend or revoke such licenses for cause, all in the manner provided by law. The licensing authority shall have all the powers of the licensing authority set forth in C.R.S. title 44, articles 3, 4, and 5.

(b) The licensing authority for the City of Wheat Ridge shall be any administrative hearing officer that satisfies the requirements of Code Section 2-87. The administrative hearing officer shall be appointed by the City Manager and shall serve an indefinite term at the discretion of the city manager in the event that none of the administrative hearing officers are available, the city council shall serve as the licensing authority.

(c) All decisions of the licensing authority are final, subject only to appeal to a court of competent jurisdiction.

(d) The licensing authority shall receive compensation at a rate to be determined by the city manager.

(e) The city attorney and the office of the city clerk shall act in an advisory capacity to the licensing authority. The city attorney shall act as prosecutor of all liquor code violations, upon the judgement of the city attorney or when an investigator is not available. At the direction of the liquor authority and as the business need arises, the city clerk's office shall promulgate policies and regulations, which may be approved, revised, or denied by the licensing authority is encouraged to delegate to the city clerk's office the administrative authority to make licensing decisions where such a delegation serves the public interest, results in more efficient business processes, is in accord with the applicable law and satisfies due process protections. The city council shall establish the applicable fee schedule.

Section 3. Section 11-53 of the Wheat Ridge Code of Laws is amended by the deletion of subsection (c) to read as follows:

Sec. 11-53. - Governance by state laws, rules, and regulations.

(a) The licensing authority shall be governed by state law now in effect or subsequently amended and the rules and regulations of the Executive Director of the Department of Revenue of the State of Colorado, as the state licensing authority, which shall apply to the licensing of fermented malt beverages and malt, vinous and spirituous liquors within the city, where applicable. In the event of a conflict between such and any provisions set forth in this chapter, the more restrictive requirement shall prevail.

(b) Notwithstanding the provisions in subsection (a) to the contrary, the distance restrictions imposed by C.R.S. § 44-3-313(1)(d) prohibiting the sale of alcohol beverages within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary, are eliminated for all hotel and restaurant licenses, beer and wine licenses, brew pub licenses, distillery pub licenses, arts licenses, lodging and entertainment licenses, and vintner's restaurant licenses issued pursuant to this article.

Section 4. Section 11-53.5(d) of the Wheat Ridge Code of Laws is amended to read as follows:

Sec. 11-53.5. - Issuance and enforcement of subpoenas.

(a) *Definitions.* For purposes of this section, the following terms are defined:

(d) Failure by any person without adequate excuse to obey a subpoena served upon them may be found in contempt of the liquor licensing authority. Such contempt shall constitute a violation of this Code and, upon conviction thereof, shall be subject to the penalties set forth in section 1-5 of this Code.

Section 5. Section 11-55 of the Wheat Ridge Code of Laws is amended by the addition of a new subsection (e) to read as follows:

Sec. 11-55. - Fine in lieu of suspension.

(a) Whenever a decision of the licensing authority suspending a license for fourteen (14) days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the licensing authority may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The licensing authority may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation that it deems desirable, that:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purpose; and

(2) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy therefrom; and

(3) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine during the two (2) years

immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.

(b) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the City of Wheat Ridge. Such fine shall be paid into the general fund of the city. The licensee shall reimburse the city for all reasonable costs resulting from the application of this section.

(c) The licensing authority may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in subsection (a) above, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the licensing authority.

(d) In this section "fine" means a form of discipline imposed pursuant to this article in lieu of a suspension. Any fine shall be the equivalent of twenty (20) percent of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

Section 5. Section 11-56(c)(2) of the Wheat Ridge Code of Laws is amended to read as follows:

Sec. 11-56. - Alcohol beverage tastings.

(a) Subject to the limitations of this section, alcohol beverage tastings are permitted...

(c) Tastings are subject to the following limitations:

(1) Tastings shall be conducted only:

a. By a person who: has completed a server training program that meets the standards established by the liquor enforcement division in the department and is a retail liquor store or a liquor-licensed drugstore licensee, or a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant promoting the alcohol beverages for the tasting; and

b. On a licensee's licensed premises.

(2) The alcohol beverage used in tastings must be purchased through a licensed wholesaler, licensed brew pub, licensed distillery pub, VINTER'S

RESTAURANT, or winery licensed pursuant to C.R.S. § 44-3-403 at a cost that is not less than the laid-in cost of the alcohol beverage....

Section 6. Severability, Conflicting Ordinances Repealed. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ____ to ____ on this 22nd day of April 2024, ordered published by title in full in on the City's website as provided by the Home Rule Charter, and Public Hearing and consideration on final passage set for May 13, 2024 at 6:30 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ____ to ____, this 13th day of May 2024.

SIGNED by the Mayor on this ____ day of _____, 2024.

Bud Starker, Mayor

ATTEST:

Margo Greer, Sr. Deputy City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

First Publication: April 23, 2024
Second Publication: May 14, 2024
Effective Date: May 29, 2024

Published:
Jeffco Transcript and www.ci.wheatridge.co.us