

## TITLE 5

### ALCOHOLIC BEVERAGES<sup>1, 2, 3</sup>

#### Chapter 5.04 Beer and Wine Licensing

- Sec. 5.04.010 Legislative intent
- Sec. 5.04.020 State Liquor Code adopted
- Sec. 5.04.030 State Beer Code adopted
- Sec. 5.04.040 Aspen Liquor Licensing Authority
- Sec. 5.04.050 City license to sell required
- Sec. 5.04.060 Authority to issue City licenses
- Sec. 5.04.070 State law procedures apply
- Sec. 5.04.080 Term and renewal of licenses
- Sec. 5.04.090 Temporary permit
- Sec. 5.04.100 Temporary licenses
- Sec. 5.04.110 Modification of premises
- Sec. 5.04.120 Change of location
- Sec. 5.04.130 Transfer of ownership
- Sec. 5.04.140 Manager's registration required
- Sec. 5.04.150 Standards for Optional Premises License
- Sec. 5.04.160 Special event permit
- Sec. 5.04.170 License application fees
- Sec. 5.04.180 Annual license fees
- Sec. 5.04.190 Retail liquor store or liquor-licensed drugstore tastings

#### Chapter 5.08 General Regulations

- Sec. 5.08.010 Sales prohibited
- Sec. 5.08.020 Consumption prohibited
- Sec. 5.08.030 Employment of persons under certain age prohibited
- Sec. 5.08.040 Gambling
- Sec. 5.08.050 Report of disturbances
- Sec. 5.08.060 Open containers
- Sec. 5.08.070 Definitions
- Sec. 5.08.080 Education requirements
- Sec. 5.08.090 Reseal and removal of open vinous liquor container

#### Chapter 5.12 Occupation Tax

- Sec. 5.12.010 Declaration of policy and purposes
- Sec. 5.12.020 Classification of operators
- Sec. 5.12.030 Tax levy and assessment
- Sec. 5.12.040 Payment required prior to issuance of license
- Sec. 5.12.050 Revenue receipt
- Sec. 5.12.060 Posting of receipt required
- Sec. 5.12.070 No refund of tax
- Sec. 5.12.080 Delinquency
- Sec. 5.12.090 Recovery of amount due by City

<sup>1</sup> **Editor's note**—Ord. No. 35-1978, § 1, amended Title 5 (formerly Ch. 4) to read as herein set out. Formerly Ch. 4 was derived from Code 1962, §§ 65-1, 9-1-1—9-1-10; Ord No. 40-1974, § 1; Ord. No. 54-1976, § 1; and Ord. No. 82-1975, § 1.

<sup>2</sup> **Cross reference**—Drinking liquor or possession of open container on public property prohibited, § 15.04.180.

<sup>3</sup> **State law reference**—Colorado Beer Code, C.R.S. 12-46-101 et seq.; Colorado Liquor Code C.R.S. 12-47-101 et seq.; local licensing authority, C.R.S. 12-46-117, 12-47-135.

## Chapter 5.04

### BEER AND WINE LICENSING<sup>1</sup>

<sup>1</sup> **Editor's note**—Ord. No. 50-1992, § 1, repealed the provisions of former Arts. I and II, relative to liquor licensing and beer licensing and enacted a new Art. I (Chapter 5.04) to read as herein set out. Ord. 50-1992 further renumbered former Arts. III and IV as Arts. II and III (Chapters 5.08 and 5.12). The provisions of former Arts. I and II derived from Ord. No. 35-1978, § 1.

#### **Sec. 5.04.010. Legislative intent.**

The City Council hereby declares that the purpose of this Chapter is to protect the public health, safety and welfare by requiring all persons desiring to sell or offer for sale any liquor or 3.2 beer to be licensed by the City. The City Council intends that the City issue local licenses for sale of such beverages, as authorized by state law and that the City's licensing requirements be consistent with those for state licenses under state law. The City Council desires to promote responsibility in the consumption of malt, vinous and spirituous liquors by its citizens and guests. The City Council's mission for the separate local liquor licensing authority is to ensure (a) that the needs of the community for licensed premises are measured by free market economic forces and not arbitrary numerical limitations on new licenses; (b) that the privacy rights of licensees and applicants of liquor license are fairly balanced against the Authority's investigatory responsibilities; and (c) that educational efforts be implemented before enforcement activity is undertaken whenever educational efforts are deemed appropriate and necessary. The City Council desires that the separate liquor licensing authority carry out its mission in as streamlined a fashion as possible and that it seek to avoid the creation of new and burdensome paperwork for either the City or its citizens. (Code 1971, § 4-1; Ord. No. 50-1992, § 1; Ord. No. 8-1994, § 1)

#### **Sec. 5.04.020. State Liquor Code adopted.**

The provisions of Article 47, Title 12, C.R.S., as amended and the provisions of Colorado Rules and Regulations adopted under the authorization granted by the provisions of Section 12-47-105, C.R.S., as amended, relating to the definition of terms, licensing, sales, hours of sale, records, inspection, unlawful acts and all other matters pertaining to the retail sale, distribution and consumption of alcoholic liquors are adopted and made a part of this Code as if set out in full. At least one (1) copy of the State of Colorado Liquor Code and all rules and regulations promulgated pursuant thereto shall be kept on file in the office of the City Clerk and shall be available for inspection during regular business hours. (Code 1971, § 4-2; Ord. No. 50-1992, § 1)

#### **Sec. 5.04.030. State Beer Code adopted.**

The provisions of Colorado Statutes, Article 46, Title 12, C.R.S., as amended and the provisions of Colorado Rules and Regulations adopted under the authorization granted by the provisions of Section 12-46-105, C.R.S., as amended, relating to the definition of terms, licensing, sales, hours of sale, records, inspection, unlawful acts and all other matters pertaining to the retail sale, distribution and consumption of fermented malt beverages are adopted and made a part of this Code as if set out in full. At least one (1) copy of the State Beer Code and all rules and regulations promulgated pursuant thereto shall be kept on file in the office of the City Clerk and shall be available for inspection during regular business hours. (Code 1971, § 4-3; Ord. No. 50-1992, § 1)

#### **Sec. 5.04.040. Aspen Liquor Licensing Authority.**

(a) Members; appointment; term; compensation; vacancies.

(i) The City Liquor Licensing Authority shall consist of five (5) members and one (1) alternate member, all of whom shall be appointed by the City Council to serve without compensation. The alternate member shall vote only in the absence of one (1) or more regular members. Members of the Authority shall be qualified electors and residents of the City for at

least two (2) years prior to appointment. In the event that any member is no longer a qualified elector or is convicted of a felony or an offense involving moral turpitude while in office, the City Council shall terminate the appointment of such person as a member of the Authority.

(ii) Appointments by the City Council shall be for a four (4) year term commencing on the first day of January and expiring on the thirty-first day of December at the completion of the member's term. Initial appointments shall be made as soon as practical and shall specify the term of office of each individual in order to achieve overlapping tenure.

(iii) No person, except an alternate, shall serve or continue to serve as a member of the Aspen Liquor Licensing Authority for more than two (2) consecutive four (4) year terms, unless qualified replacement members are unavailable. Further, no person shall serve or continue to serve as a member of the Authority if that person or any member of his immediate family shall or may hereafter obtain any financial interest in the operation of any business issued a license relating to the sale or dispensation of fermented malt beverages or alcoholic beverages pursuant to Articles 46 or 47 of Title 12, C.R.S., as amended.

(iv) Vacancies created by death, resignation or disqualification of a member of the Authority shall be filled by appointment of the City Council and such appointments shall be for the remainder of the unexpired term. When a regular member resigns, the alternate member shall automatically be appointed as a regular member in replacement.

(v) All members of the Authority shall be subject to removal by the City Council.

(b) Functions.

(i) The Authority shall have the duty and authority to grant or refuse licenses for the possession, sale and offering for sale of malt, special malt, vinous or spirituous liquors and fermented malt beverages as provided by law, to conduct investigations as are required by law and to levy penalties against licensees in the manner provided by law.

(ii) The Authority shall have all the powers of the local licensing authority as set forth in Title 12, Articles 46, 47 and 48, C.R.S.

(iii) The Authority shall have the power to promulgate rules and regulations concerning the procedures for hearings before it and the presentation of evidence at hearings.

(iv) The Authority shall have the power to require any applicant for a license to furnish any relevant information required by the Authority.

(v) The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which the Authority is authorized to conduct. It shall constitute a violation of this Code for any person to fail to comply with any subpoena issued by the Authority in the proper conduct of its hearing.

(vi) The Authority shall have the power to perform all other acts or duties required to carry out the purposes of the state and City liquor and fermented malt beverage licensing laws.

(vii) The Authority shall have the power to perform all other responsibilities that the Council may delegate to it and to delegate as many of its functions as it deems appropriate to the City Clerk.

(c) Organization; bylaws.

(i) The Authority shall elect annually from its membership a chairperson and such other officers as may be required. Bylaws may be adopted by the Authority, which bylaws shall not be inconsistent with the Charter and the Code.

(ii) A quorum shall consist of a majority of the members of the Authority and a decision of the majority of those present constituting a quorum shall control.

(iii) On or before January 31 of each year, the Authority shall file a report with the City Clerk setting forth the number of applications for license acted upon, the number of licenses granted and the number denied and any other actions taken by the Authority during the past year.

(d) Secretary. The City Clerk shall serve as secretary of the authority, but shall not be entitled to vote on any matters coming before the Authority. The City Clerk shall, as official secretary of the Authority, designate a person to provide necessary notice of meetings to members and shall also provide secretarial and reporting services for the Authority. The secretary shall prepare and keep minutes of the meetings of the Authority. The records of such meetings, if any, shall be submitted monthly to the City Council and shall become part of the permanent records of the City to be maintained by the City Clerk. The secretary shall perform such other duties delegated to him or her by the Authority or assigned by the Code.

(e) Legal advisor; appeals.

(i) The City Attorney shall be the legal advisor to the Authority and shall represent the Authority and the City in all proceedings before the Authority and in all courts where any decision of the Authority is appealed. The City Attorney may employ special counsel when the City Attorney determines that he or she cannot ethically perform the functions of prosecuting a complaint against a licensee before the Authority and simultaneously representing the Authority.

(ii) All appeals from the Authority shall be directly to the District Court except appeals from the denial of new licenses and the transfer of a license which shall be to the City Council of the City which shall conduct a hearing de novo. Appeals from the City Council shall be directly to the District Court.

(f) Aggravating and mitigating factors considered at show cause hearings. In all cases where a violation of the applicable state or local laws is found at a show cause hearing, the Authority shall consider evidence and statements in mitigation and in aggravation of the violation proper to determine the appropriate penalty. Such evidence and statements may relate to and include, but not be limited to, the following factors:

1) Seriousness of the violation;

2) Corrective action taken by the licensee after the violation;

3) Prior violations at the licensed premises by the licensee or the licensee's employees and the effectiveness of prior corrective action;

4) Prior violations at the licensed premises by a prior licensee or the prior licensee's employees and the sanctions imposed for such violations, if the current licensee or any of the current licensee's owners, partners, shareholder, directors, officers or managers held an ownership interest of five (5) percent or more in the entity holding such prior license.

5) Whether the violation is part of a repeated course of conduct or is an isolated occurrence;

6) Likelihood of recurrence;

- 7) All circumstances surrounding the violations;
- 8) Willfulness of the violation;
- 9) Length of time the license has been held by the licensee;
- 10) Previous sanctions imposed against the licensee; and
- 11) Other factors making the situation with respect to the licensee or the licensed premises unique.

(g) Optional procedures for the payment of fine in lieu of having retail license suspended.

(i)(a) Whenever a decision of the Authority suspending a retail license for fourteen (14) days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the retail licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having his retail license suspended for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

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

(II) That the books and records of the retail licensee are kept in such a manner that the loss of sales of alcoholic beverages which the retail licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefor; and

(III) That the retail licensee has not had his 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 retail license.

(b) The fine accepted shall be the equivalent to 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 not be less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

(c) Payment of any fine pursuant to the provision of this Subsection (i) shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Authority.

(ii) Upon payment of the fine pursuant to Subsection (i) of this Section, the Authority shall enter its further order permanently staying the imposition of the suspension. The authority shall cause such moneys to be paid into the general fund of the City.

(iii) In connection with any petition pursuant to Subsection (i) of this Section, the Authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed. (Code 1971, § 4-4; Ord. 8-1994, § 2; Ord. No. 48-1999, § 1)

**Sec. 5.04.050. City license to sell required.**

(a) No person shall sell or offer for sale any malt, vinous or spirituous liquor in the City without first having obtained a City license therefor under the provisions of this chapter and laws of the State, in addition to any other license required by the State.

(b) No person shall sell or offer for sale any fermented malt beverages without first having obtained a City license therefor under the provisions of this Chapter and the laws of the State, in addition to any other license required by the state.

(c) Nothing in this Code shall be deemed to require a person to obtain a separate City license in order to sell or offer for sale any malt, vinous or spirituous liquor or fermented malt beverage pursuant to a special event permit issued by the State. (Code 1971, § 4-5; Ord. No. 50-1992, § 1)

**Sec. 5.04.060. Authority to issue City licenses.**

(a) An applicant for a City or State license under this Chapter shall apply therefor to the City Clerk on forms provided by the City Clerk.

(b) The authority may issue any type of license set forth at Sections 12-47-135 and 12-46-117, C.R.S.

(c) In order to qualify for a City license under this Chapter, an applicant must meet all conditions for the issuance of the parallel state license prescribed by the Colorado Liquor Code, for malt, vinous and spirituous liquors and the Colorado Beer Code, for fermented malt beverages, except that the fees for a City license are those prescribed by Section 5.04.170 of this Code. (Code 1971, § 4-6; Ord. No. 50-1992, § 1)

**Sec. 5.04.070. State law procedures apply.**

Except as may be amended by this Chapter, provisions of the Colorado Liquor Code and the Colorado Beer Code governing procedures for applications, hearing and decisions for state liquor or fermented malt beverages shall apply for City licenses. (Code 1971, § 4-7; Ord. No. 50-1992, § 1)

**Sec. 5.04.080. Term and renewal of licenses.**

(a) The term of the City license issued under this Chapter is twelve (12) months from the date of issuance.

(b) Applicants for State and City license renewal shall apply to the City Clerk on or before the forty-fifth day prior to the date of expiration of the license.

(c) Upon receipt of a completed application for a license renewal, the City Clerk shall refer the application to the following City departments: Aspen/Pitkin Environmental Health Department, City Utility Department, City Police Department and the Aspen Fire Protection District. If the referral comments received by the City Clerk do not adversely reflect upon the applicant's license, the City Clerk shall approve the renewal application forthwith. The City Clerk shall notify the authority of all such administrative renewals at its next regularly scheduled meeting.

(d) If for any reason the City Clerk decides not to approve a renewal application, he or she shall place the matter on the agenda of the next regularly scheduled meeting of the Aspen Liquor Licensing Authority at which time the authority shall grant the renewal order further staff investigation or order a hearing in accordance with state law. (Code 1971, § 4-8; Ord. No. 50-1992, § 1)

**Sec. 5.04.090. Temporary permit.**

(a) The Aspen Liquor Licensing Authority may, in accordance with the provisions of Sections 12-46-106.5 and 12-47-106.5, C.R.S., issue a temporary permit to a transferee of a fermented malt beverage license issued by the state licensing authority pursuant to the Colorado Beer Code or any class of liquor license issued pursuant to the Colorado Liquor Code. Such temporary permit shall authorize a transferee to sell fermented malt or alcoholic beverages in accordance with either Section 12-46-106.5 or 12-47-106.5, C.R.S.

(b) If the next regularly scheduled meeting of the Aspen Liquor Licensing Authority will not be held within three (3) working days of the receipt by the City Clerk of an application for a temporary permit under this Section, the City Clerk shall issue the temporary permit requested by such an application provided the City Clerk first determines the following:

(1) That the applicant is in compliance with all applicable provisions of Sections 12-46-106.5 and 12-47-106.5, C.R.S.; and

(2) That a preliminary background check conducted by the Aspen Police Department of the applicant and its officers, directors and owners having a five percent (5%) or more ownership interest, indicates that such persons have not been convicted of a felony or an offense involving moral turpitude.

If either of the above determinations cannot be made by the City Clerk with respect to any application under this subparagraph (b), the Clerk shall not issue a temporary permit.

(c) If for any reason the City Clerk decides not to issue a temporary permit applied for under this Section, the applicant shall be entitled to a hearing before the Aspen Liquor Licensing Authority at its next regularly scheduled meeting, at which time the Aspen Liquor Licensing Authority shall consider the City Clerk's decision not to issue the temporary permit and it may, within its discretion, either uphold the decision of the City Clerk or reverse it and issue the temporary permit to the applicant. (Code 1971, § 4-9; Ord. No. 50-1992, § 1)

**Sec. 5.04.100. Temporary licenses.**

(a) Pursuant to Section 12-47-106(1)(b.5), C.R.S., any licensee whose license expires may, upon the filing of an application for a permanent annual alcoholic beverage license and upon payment of all applicable fees relating thereto, also apply for a temporary license to allow continued operation of the licensed premises under the same terms and conditions as provided in the expired license. Such application shall be made no later than ninety (90) days after the expiration of the permanent annual license.

(b) The City Clerk may approve an application for a temporary license when the expiration of the preexisting license resulted from the licensee's inadvertent failure to make application for renewal or any administrative error or mistake.

(c) If, for any reason, the City Clerk decides not to issue a temporary license applied for under this Section, the applicant shall be entitled to a hearing before the Aspen Liquor Licensing Authority at its next regularly scheduled meeting.

(d) A temporary license shall be valid until the licensee's application for a regular annual license has been processed and approved or denied by the authority and the state licensing authority, except that in no event shall such license be valid for more than one hundred twenty (120) days.

(e) The City Clerk shall notify the authority of the approval of all temporary licenses at its next regularly scheduled meeting. (Code 1971, § 4-10; Ord. No. 50-1992, § 1)

**Sec. 5.04.110. Modification of premises.**

(a) No licensee may physically change, alter or modify the licensed premises from that shown in the plans and specifications submitted at the time the licensee obtained its original license until written approval to do so has been received from the Aspen Liquor Licensing Authority and the state licensing authority.

(b) Requests for changes, alterations or modifications of the licensed premises shall be on such forms as are provided by the state licensing authority and, in addition, on such forms as may be provided by the City, if any. The request shall be filed with the City Clerk.

(c) If the City Clerk finds that the proposed modification does not substantially fall within the meaning of Colorado Department of Revenue Regulation 47-106.2A, he or she shall forthwith grant the request. The City Clerk shall notify the authority of all such approved modifications at its next regularly scheduled meeting. If the City Clerk cannot make this determination, he or she shall not grant the request and shall cause the request to be placed on the agenda of the authority for their next regularly scheduled meeting. (Code 1971, § 4-11; Ord. No. 50-1992, § 1)

**Sec. 5.04.120. Change of location.**

(a) No license issued by the Aspen Liquor Licensing Authority shall be transferred to another location howsoever proximate without the approval of the authority.

(b) Applications for permission to change the location of the licensed premises shall be made with the City Clerk. (Code 1971, § 4-12; Ord. No. 50-1992, § 1)

**Sec. 5.04.130. Transfer of ownership.**

(a) No license granted under the provisions of this Chapter shall be transferable without the approval of the Aspen Liquor Licensing Authority.

(b) Applications for permission to transfer ownership of a license shall be made with the City Clerk. (Code 1971, § 4-13; Ord. No. 50-1992, § 1)

**Sec. 5.04.140. Manager's registration required.**

(a) Whenever required by the Colorado Beer Code or the Colorado Liquor Code, licensees shall designate and register managers with the Aspen Liquor Licensing Authority by filing an application with the City Clerk.

(b) Upon receipt of a completed application to register a new manager, the City Clerk shall refer the application to the City Police Department for a background investigation of the proposed manager. If there is no probable cause to believe that the proposed manager is not of good moral character and reputation, the City Clerk shall approve the application forthwith. The City Clerk shall notify the authority of all such administrative approvals of new managers at its next regularly scheduled meeting. If the City Clerk is unable to administratively approve the registration of the new proposed manager, he or she shall place the matter on the authority's agenda for its next regularly scheduled meeting. (Code 1971, § 4-14; Ord. No. 50-1992, § 1)

**Sec. 5.04.150. Standards for Optional Premises License.**

In addition to applicable requirements of the Colorado Liquor Code and regulations adopted thereunder, the following standards for issuance of an Optional Premises License or for an optional premises for a hotel and restaurant license are adopted:

(a) Issuance of an optional premises or optional premises for a hotel and restaurant license shall be limited to the following outdoor sports and recreational facilities:

- (1) Swimming pools,
- (2) Tennis courts,
- (3) Country clubs,
- (4) Golf courses,
- (5) Ski areas.

(b) Each licensee shall demonstrate to the Liquor Licensing Authority a need for the optional premises.

(c) Submittal requirements. When submitting a request for the approval of an optional premises, an applicant shall submit the following information:

(1) A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premises requested.

(2) A legal description of the approximate area within which the optional premises shall be located.

(3) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use.

(4) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises.

(5) A description of the provisions that will be made to ensure the liquor laws of the State and City are being adhered to; including but not limited to, control of the premises, checking identification and carrying of alcohol onto the premises.

(d) Advance notification. Pursuant to Section 12-47-135(6) and (7), C.R.S., as amended, no alcoholic beverages may be served on the optional premises until the licensee has provided written notice to the State and Local Licensing Authorities forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice must contain the specific days and hours on which the optional premises are to be used. In this regard, there is no limitation on the number of days which a licensee may specify in each notice. However, no notice may specify any date of use which is more than one hundred eighty (180) days from the notice date.

(e) All optional premises licenses shall be valid for a period of one (1) year from the date of issuance, unless revoked or suspended and must be renewed annually thereafter.

(f) Due to the fact that an optional premises license or an optional premises for a hotel and restaurant license may involve greater contact between customers drinking alcoholic beverages

and underage persons, the Liquor Licensing Authority shall apply the following additional standards prior to the initial issuance of a license or renewal thereof:

(1) The Liquor Licensing Authority may require the licensee to post in one (1) or more prominent locations on the licensed premises, signs that are reasonably calculated to prohibit underage drinking on the premises. The language of the notices may be determined by the Liquor Licensing Authority.

(2) The Liquor Licensing Authority shall determine whether advertisement for alcoholic beverages or malt liquors should be controlled or, alternatively, whether they should be prohibited entirely from the licensed premises.

(3) An optional premises licensee shall have available for consumption on the premises during business hours sandwiches and light snacks and nonalcoholic beverages.

(4) The Liquor Licensing Authority may require that the licensee show evidence that all managers and servers employed on the premises meet the educational requirements set forth in Section 5.08.080 above of this Code prior to the issuance or renewal of a license.

(5) The Liquor Licensing Authority in determining whether to initially issue or renew a license in accordance with this Section shall consider any evidence brought to its attention that the operation of the premises has had or may have in the future, an adverse effect upon the public health, safety or welfare. The Liquor Licensing Authority may impose such additional requirements or conditions upon the licensee as it may deem reasonably necessary to protect the public's health, safety and welfare. (Code 1971, § 4-15; Ord. No. 17-1993, § 2)

#### **Sec. 5.04.160. Special event permit.**

(a) All applications for a special event permit pursuant to Section 12-48-10 et seq., C.R.S., shall be filed with the City Clerk at least thirty (30) days prior to the date of the special event.

(b) Upon receipt of a completed application for a special event permit, the City Clerk shall refer the application to the following City departments: Aspen/Pitkin Environmental Health Department, City Police Department and Fire Protection District. If the City Clerk determines that the applicant is eligible for a special event permit in accordance with Sections 12-48-101 et seq., C.R.S and the referral comments do not indicate that issuance would be injurious to the public welfare by reason of the nature of the special event, its location within the community or the failure of the applicant in a past event to conduct such event in compliance with applicable laws and regulations, the City Clerk shall grant the permit forthwith. The City Clerk shall notify the authority of all such administrative approvals of special events permits at its next regularly scheduled meeting. If the City Clerk is unable to administratively approve the special events permit, he or she shall place the matter on the authority's agenda for its next regularly scheduled meeting. (Code 1971, § 4-20; Ord. No. 50-1992, § 1)

#### **Sec. 5.04.170. License application fees.**

Each application for a license filed with the City Clerk shall be accompanied by an application fee in an amount equal to that set forth at Section 2.12.070 of this Code.

**Editor's note**—This Subsection was incorrectly noted as former 4-12 in Ord. No. 17-1993. (Ord. No. 50-1992, § 1; Ord No. 17-1993, § 3; Ord No. 8-1994, § 3; Code 1971, § 4-21)

#### **Sec. 5.04.180. Annual license fees.**

Annual license fees shall be paid to the City as provided by state law. Annual license fees shall be paid in advance and shall not be rebated or discounted on a proportionate basis for any license in

existence or issued for less than a year. The fees shall be in addition to any annual license fees required to be paid to the state. (Code 1971, § 4-22; Ord. No. 50-1992, § 1)

**Sec. 5.04.190. Retail liquor store or liquor-licensed drugstore tastings.**

A retail liquor store or liquor-licensed drugstore licensee who wishes to conduct tastings may submit an application or application renewal to the Aspen Liquor Licensing Authority (hereinafter the "LLA"). The LLA may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of the Colorado Liquor Code, without violating Title 5, entitled "Alcoholic Beverages," of this Code or without creating a public safety risk to the neighborhood. The LLA may establish its own application procedure and may charge a reasonable application fee.

Tastings shall be subject to the following limitations:

- (1) Tastings shall be conducted only by a person who has completed a server-training program that meets the standards established by the Liquor Enforcement Division in the Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee or an employee of a licensee and only on a licensee's licensed premises.
- (2) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brewpub or winery licensed pursuant to Section 12-47-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol.
- (3) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (½) of one (1) ounce of spirituous liquor.
- (4) Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.
- (5) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages and in no case earlier than 11:00 a.m. or later than 7:00 p.m.
- (6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.
- (7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.
- (8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.
- (9) The licensee shall not serve more than four (4) individual samples to a patron during a tasting.
- (10) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.
- (11) Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.
- (12) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

(13) A violation of this Code provision or of Section 12-47-801, C.R.S., by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.

(14) A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.

(15) Nothing in this Code provision shall affect the ability of a Colorado winery licensed pursuant to Sections 12-47-402 or 12-47-403, C.R.S., to conduct a tasting pursuant to the authority of Sections 12-47-402(2) or 12-47-403(2)(e), C.R.S. (Ord. No. 24-2004, §1)

## **Chapter 5.08**

### **GENERAL REGULATIONS**

#### **Sec. 5.08.010. Sales prohibited.**

No alcoholic liquor shall be sold or served to any intoxicated person or to any person under twenty-one (21) years of age. No fermented malt beverage shall be sold or served to an intoxicated person or to any person under eighteen (18) years of age. (Code 1971, § 4-25; Ord. No. 35-1978, § 1)

#### **Sec. 5.08.020. Consumption prohibited.**

(a) No person under the age of twenty-one (21) shall be permitted to consume alcoholic liquor on the licensed premises. No person under the age of eighteen (18) shall be permitted to consume fermented malt beverages on the licensed premises.

(b) No person licensed to sell fermented malt beverages shall allow the consumption or display of alcoholic beverages on the licensed premises or serve any liquids for the purpose of mixing with alcoholic liquor. The presence of alcoholic liquor on the premises of such a licensee shall be prima facie evidence of possession of alcoholic liquor for the purpose of sale; and the serving of any liquid for the purpose of mixing with alcoholic liquors shall be prima facie evidence that alcoholic liquor is being permitted to be consumed or displayed contrary to this Chapter.

(c) No alcoholic liquor shall be consumed on any licensed premises unless the premises is licensed to sell alcoholic liquor for consumption on the premises. No fermented malt beverage shall be consumed on any licensed premises unless the premises is licensed to sell fermented malt beverages for consumption on the premises. (Code 1971, § 4-26; Ord. No. 35-1978, § 1)

#### **Sec. 5.08.030. Employment of persons under certain age prohibited.**

No person under the age of twenty-one (21) shall be allowed or employed to serve alcoholic liquor on any licensed premises. No person under the age of eighteen (18) shall be allowed or employed to serve fermented malt beverages on any licensed premises. This Section does not prohibit the employment of a person under the age of twenty-one (21) or eighteen (18) respectively for any lawful purpose on the licensed premises other than the service of alcoholic liquor or fermented malt beverages. (Code 1971, § 4-27; Ord. No. 35-1978, § 1)

#### **Sec. 5.08.040. Gambling.**

No gambling or any gambling device shall be permitted on any licensed premises. (Code 1971, § 4-28; Ord. No. 35-1978, § 1)

**Sec. 5.08.050. Report of disturbances.**

All licensees shall immediately report to the Aspen Police Department any unlawful or disorderly act, conduct or disturbance committed on the licensed premises. Repeated failure to comply with the requirements of this Section shall constitute prima facie evidence that the licensee has failed to conduct the licensed premises in a decent, orderly and respectful manner as required by Regulation 47-105.1 of the Colorado Liquor Code or Section 12-47-105, C.R.S. (Code 1971, § 4-28.1; Ord. No. 8-1994, § 5)

**Sec. 5.08.060. Open containers.**

(a) No person shall carry or have any open container of alcoholic liquor or fermented malt beverage in any vehicle or on any street, sidewalk, alley or other public way or public place or in any public place except in a licensed premises.

(b) No person having legal possession of a public place shall allow the possession of open containers in violation of the provisions of Paragraph (a) of this Section. The furnishing of ice, glasses, containers or of any liquid for the purpose of mixing with alcoholic liquors shall be prima facie evidence that open containers are being allowed contrary to this Chapter. (Code 1971, § 4-29; Ord. No. 35-1978, § 1)

**Cross reference**—Drinking liquor or possession of open containers on public property prohibited, § 15.04.180.

**Sec. 5.08.070. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(a) *Manager* or *owner/operator* means any person who manages or is the *owner/operator* preparing, serving, selling or otherwise providing alcoholic beverages pursuant to licenses issued therefor. The *Manager* or *owner/operator* shall not include persons who sell, serve or dispense alcoholic beverages in the capacity of volunteer or persons employed as a clerk or checkout person in an establishment licensed as a retail liquor store.

(b) *Licensee* means a natural, legal person selling malt, vinous and spirituous beverages pursuant to and authorized by a license issued pursuant to Section 12-46-101 et seq., C.R.S. (Colorado Beer Code) or 12-47-101 et seq., C.R.S. (Colorado Liquor Code) or 12-48-101 et seq., C.R.S. (Special Events Permits) by the City and the State.

(c) *Server* means any person who is employed by a licensee to prepare, serve, sell or otherwise provide alcoholic beverages pursuant to licensee's license. *Server* shall not include persons who sell, serve or dispense alcoholic beverages in the capacity of volunteer or persons employed as a clerk or checkout person in an establishment licensed as a retail liquor store.

(d) *Optional premises* means premises located on an applicant's outdoor sports and recreational facility.

(e) *Hotel and Restaurant License with Optional Premise* means premises specified in an application for a hotel and restaurant license with related outdoor sports and recreational facilities, for the convenience of its guests or general public located on or adjacent to the hotel or restaurant.

(f) *Doorperson/Bouncer* - The informal title for one who acts as a gatekeeper, performs general security duties, and maintains a positive working relationship with the police department for a licensed establishment.

(Code 1971, § 4-29.1; Ord. No. 23-1990, § 1; Ord. No. 49-1992, § 1; Ord. No. 17-1993, § 1)

**Sec. 5.08.080. Education requirements.**

(a) All managers or owner/operators registered with the State and the Local Licensing Authority shall have a valid certificate evidencing successful completion of an educational liquor seminar approved by the Local Liquor Licensing Authority. The certificate received by persons who successfully complete the educational liquor seminar shall be valid for a period of three (3) years.

(b) After the effective date of this Section, persons who become new managers or owner/operators registered with the State and the Local Licensing Authority are required to attend a liquor seminar approved by the Local Licensing Authority within two (2) months of registration and receive a Certificate of Completion.

(c) Every licensee shall ensure that, at a minimum:

1. Seventy-five percent (75%) of all servers employed by the licensee shall have successfully completed within six (6) months of the effective date of this Ordinance, and at all times thereafter, an educational liquor seminar approved by the Local Liquor Licensing Authority.
2. Fifty percent (50%) of all door people/bouncers currently employed by the licensee shall have successfully completed within six (6) months of the effective date of this Ordinance and at all times thereafter, an educational "Bouncer/Doorperson" seminar provided by the Aspen Police Department or an educational liquor seminar approved by the Local Liquor Licensing Authority.
3. The certificate received by a participant who successfully completes either an educational liquor seminar or a bouncer/doorperson seminar shall be valid for a period of three (3) years.

(d) Every agency offering a course of instruction approved by the Local Licensing Authority shall issue a certificate to those enrollees who successfully complete the liquor educational seminar. The certificate shall indicate the date of the completion of the training and the date of the certificate expiration and shall be evidence at a minimum that the person has been in actual attendance the required minimum number of hours at the course and has achieved a reasonable mastery of the subject matter presented. No agency approved by the City Council to provide manager or owner/operator training shall issue a certificate unless the person has actually attended and achieved a reasonable mastery of the materials.

(e) The local licensing authority shall establish, by resolution, the general criteria for courses and qualifications of instructors which shall satisfy the liquor educational requirements of this Section. These requirements shall be available in the office of the City Clerk. Any qualified person may submit to the Local Licensing Authority a request that a particular seminar be deemed to meet the educational requirements. The licensing authority or its designee may make such determination. A file of all course requirements shall be available in the office of the City Clerk.

(f) At the time a licensee files an application to renew or transfer a liquor license or to change the location of the licensed premises or to change the corporate structure, the licensee shall submit to the City Clerk information to prove that the requisite percentage of servers, managers and/or owner/operators required to be certified under this Chapter have certificates in full force and effect. All licensees shall maintain a file of current certificates for all servers, managers and owners/operators employed by said licensee and shall exhibit copies of said certificates when requested to do so by the City Clerk, the Chief

of Police, his employees or other appropriate officials of the City. Failure to comply with this Section shall be considered a violation of the conditions of the issuance of a license in addition to a violation of this Code and may be punished accordingly. (Code 1971, § 4-29.2; Ord. No. 23-1990, § 1; Ord. No. 49-1992, § 1; Ord. No. 53-2007)

**Sec. 5.08.090. Reseal and removal of open vinous liquor container.**

A hotel or restaurant licensee or his or her employee, may permit a customer to reseal and remove from the licensed premises one (1) opened container of partially consumed vinous liquor purchased on the premises so long as the original container does not contain more than seven hundred fifty (750) milliliters of vinous liquor. (Ord. No. 24-2004 § 3)

**Chapter 5.12**

**OCCUPATION TAX<sup>1</sup>**

<sup>1</sup> Cross reference—Taxation generally, Title 23.

**Sec. 5.12.010. Declaration of policy and purposes.**

The City Council hereby finds, determines and declares that considering the nature of the business of selling at retail fermented malt beverages and alcoholic liquors and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the City and a proper, just and equitable distribution of tax burdens within the City and all other matters proper to be considered in relation thereto, that the classification of such business as a separate occupation within this Chapter is reasonable, proper, uniform and nondiscriminatory and that the amount of tax hereby imposed is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the City. (Code 1971, § 4-30; Ord. No. 35-1978, § 1)

**Sec. 5.12.020. Classification of operators.**

The business of selling at retail any fermented malt beverages and alcoholic liquor, other than medicinal liquors, is hereby defined and separately classified for the purposes of this Chapter as follows:

Class "A" Operators. All operators who are licensed to sell alcoholic liquors for consumption on the premises either as hotels or restaurants or taverns shall be class "A" operators.

Class "A-1" Operators. All operators who are licensed to sell alcoholic liquors for consumption on the premises as hotel and restaurants and determined to be "modest establishments" as hereinafter defined shall be class "A-1" operators.

Class "A-2" Operators. All operators who are licensed to sell alcoholic liquors for consumption on the premises either as hotel and restaurants or taverns and determined to be "dance cabarets" as hereinafter defined shall be class "A-2" operators.

Class "B" Operators. All operators licensed to sell beer and wine only by the drink for consumption on the premises shall be class "B" operators.

Class "B-1" Operators. All operators who are licensed to sell beer and wine only for consumption on the premises and determined to be "modest establishments" as hereinafter defined shall be class "B-1" operators.

Class "C" Operators. All operators licensed as retail liquor stores or as drugstores to sell in original containers for consumption off the premises shall be class "C" operators.

Class "D" Operators. All operators licensed to sell alcoholic liquors as arts shall be class "D" operators.

Class "E" Operators. All operators licensed to sell alcoholic liquors as clubs shall be class "E" operators.

Class "F-1" Operators. All operators licensed to sell fermented malt beverages and who sell the same for consumption on the premises shall be class "F-1" operators.

Class "F-2" Operators. All operators licensed to sell fermented malt beverages and who sell the same solely in the original package or container for consumption off the premises shall be class "F-2" operators.

Class "F-3" Operators. All operators licensed to sell fermented malt beverages and who sell the same for consumption on the premises and in the original package or container for consumption off premises shall be class "F-3" operators.

The words defined below shall have the meanings set forth below whenever they appear in this Chapter.

*Dance cabaret* means an establishment licensed to sell alcoholic beverages providing either live or recorded entertainment and space for patron dancing.

*Modest establishment* means an establishment with a hotel and restaurant or beer and wine liquor license which has fifty (50) seats or less, not including outdoor seating and twenty percent (20%) or less of its gross revenue derives from the sale of alcoholic beverages. (Code 1971, § 4-31; Ord. No. 35-1978, § 1; Ord. No. 75-1981, § 1; Ord. No. 6-1992, § 1)

**Sec. 5.12.030. Tax levy and assessment.**

There is hereby levied and assessed an annual occupation tax upon the business of selling fermented malt beverages and alcoholic liquors, except medicinal liquors, in the City, as such occupation has been classified in Section 5.12.020 above, as follows:

- |   |             |
|---|-------------|
| (1) For all class "A" operators the sum of    | \$1,365.00. |
| (2) For all class "A-1" operators the sum of  | 910.00.     |
| (3) For all class "A-2" operators the sum of  | 1,750.00.   |
| (4) For all class "B" operators the sum of    | 910.00.     |
| (5) For all class "B-1" operators the sum of  | 610.00.     |
| (6) For all class "C" operators the sum of    | 910.00.     |
| (7) For all class "D" operators the sum of    | 165.00.     |
| (8) For all class "E" operators the sum of    | 350.00.     |
| (9) For all class "F-1" operators the sum of  | 375.00.     |
| (10) For all class "F-2" operators the sum of | 375.00.     |
| (11) For all class "F-3" operators the sum of | 375.00.     |

For all class "A," "B," "D" and "E" operators with extended hours permits (8:00 p.m. to midnight on Sundays and Christmas), there shall be an additional occupation tax of two hundred seventy-five dollars (\$275.00). (Code 1971, § 4-32; Ord. No. 35-1978, § 1; Ord. No. 75-1981, § 2; Ord. No. 50-1988, § 1; Ord. No. 6-1992, § 2)

**Sec. 5.12.040. Payment required prior to issuance of license.**

The tax prescribed in Section 5.12.030 above shall be due and payable to the City Clerk at the time the City license shall be issued and such license shall not be issued until the tax is paid in full. (Code 1971, § 4-33; Ord. No. 35-1978, § 1)

**Sec. 5.12.050. Revenue receipt.**

Upon receipt of the tax, paid as required by this Chapter, it shall be the duty of the Director of Finance to execute and deliver to the operator paying the tax, a revenue receipt showing the name of the operator paying the tax, the date of payment, the annual period for which such tax is paid and the place at which such operator conducts business. (Code 1971, § 4-34; Ord. No. 35-1978, § 1)

**Sec. 5.12.060. Posting of receipt required.**

The operator shall, at all times during the year, keep the receipt for the tax paid in accordance with this Chapter posted in a conspicuous place in his or her place of business. (Code 1971, § 4-35; Ord. No. 35-1978, § 1)

**Sec. 5.12.070. No refund of tax.**

No refund of the tax required by this Chapter shall be made by reason of the discontinuance of the business prior to the expiration of a license to sell fermented malt beverages and alcoholic liquors. (Code 1971, § 4-36; Ord. No. 35-1978, § 1)

**Sec. 5.12.080. Delinquency.**

Delinquency in payment shall not be a ground for suspension or revocation, nor shall it be considered by the Council upon transfer or renewal. (Code 1971, § 4-37; Ord. No. 35-1978, § 1)

**Sec. 5.12.090. Recovery of amount due by City.**

The City shall have the right to recover all sums due by the terms of this Chapter, by judgment and execution thereon in a civil action, in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies of this Chapter. (Code 1971, § 4-38; Ord. No. 35-1978, § 1)