

Chapter 2

ALCOHOLIC BEVERAGES

3-2-1: DEFINITIONS:

The following words and phrases used in this chapter shall have the following meaning unless a different meaning clearly appears from the context:

BEER, LIGHT BEER, MALT LIQUOR OR MALTED BEVERAGE: Any beverage containing not less than one-half of one percent (0.5%) of alcohol by weight, but not more than four percent (4%) of alcohol by volume, or three and two-tenths percent (3.2%) by weight, and which is obtained by the alcoholic fermentation of an infusion, or decoction, or of any malted grain, or of similar products, and may or may not contain hops or other vegetable products and includes ale, stout or porter.

CABARET: An establishment which allows its patrons to consume alcoholic beverages on the premises, and which permits their patrons to dance, or which entertain their patrons with music or entertainers who sing or dance.

LICENSED PREMISES: Any room, house, building structure or place occupied or used by any person licensed under this chapter for the purpose of selling beer; provided, that an applicant for a license must specifically designate in his application that a room or portion of a building (if there is business other than sale of food or sale or consumption of beer, and merchandise incidental to beer sales) where beer sales will be made, which room or portion of building must be separated from the balance of the business establishment or building by a substantial, solid, permanent wall, from floor to ceiling, composed of materials that will completely shut off all visibility and normal sound and having not more than one door in the interior walls connecting it with the balance of the building. Such room or other portion of the building so designated shall be deemed to be the licensed premises. It is unlawful for any person having a licensed premises where a wall is required as defined herein to construct a wall other than so defined.

LIQUOR: Alcohol, or any alcoholic, spirituous, vinous, fermented, malt or other liquid, or combinations of liquids, a part of which is spirituous, vinous or fermented, and all other drinks, or drinkable liquids that contain more than one-half of one percent (0.5%) of alcohol by volume and is suitable to use for beverage purposes. "Liquor" does not include any beverage defined as a beer, malt liquor or malted beverage that has an alcohol content of less than four percent (4%) by volume.

MINOR: Any person under the age of twenty one (21) years.

RETAILER: Any person engaged in the sale or distribution of beer or liquor to the consumer.

SELL OR TO SELL: To solicit, to receive an order for, to keep or expose for sale, to deliver for

value or gratuity, to peddle, to possess with intent to sell, to traffic in, for any consideration promised or obtained, directly or indirectly, or under any pretext or by any means whatsoever, or procure or to be procured for any other person, and "sale", when so used, shall include every act of selling as above defined.

WHOLESALE: Any person other than a brewer or retailer engaged in the importation for sale or in the sale of beer or liquor in wholesale or jobbing quantities. (1995 Code § 12-2-1)

3-2-2: LICENSE REQUIRED:

- A. **Retail License:** It shall be unlawful for any person to engage in the business of the sale of beer or liquor at retail, in bottles or draft, within the corporate limits of the city, without first having procured a license therefor from the city as hereinafter provided. A separate license shall be required for each place of sale, and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licenses shall comply with the alcoholic beverage control act of Utah, and the regulations of the alcoholic beverage control commission. (1995 Code § 12-2-2; amd. 2003 Code)
- B. **Wholesale License:** It shall be unlawful for any person to engage in the business of selling beer or liquor at wholesale within the limits of the city without first obtaining a license therefor from the alcoholic beverage control commission of Utah, and from the city as may be required by ordinance therefor. (1995 Code § 12-2-3)

3-2-3: APPLICATION FOR LICENSE:

All applications for licenses authorized by this chapter shall be verified and filed with the city council, and shall state the applicant's name in full, that he has complied with the requirements and possesses the qualifications specified in the alcoholic beverage control act of Utah, and, if the applicant is a partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors, and must be subscribed by the applicant who must state under oath that the factors stated therein are true. Applicants must furnish such other information, including a certificate of at least five (5) resident free holders of such city to the effect that the licensee bears a good character and is a fit and proper person to be granted a license, as and when the city council shall require. (1995 Code § 12-1-6)

3-2-4: FEE FOR LICENSE:

Applications provided for in this chapter shall be accompanied by the fee hereinafter provided, which fee shall be deposited in the city treasury if the license is granted, and returned to the applicant if denied.

- A. Class A: Fee for a class A retail beer license, per annum, shall be one hundred fifty dollars (\$150.00).
- B. Class B: Fee for a class B retail beer license, per annum, shall be one hundred fifty dollars (\$150.00).
- C. Class C: Fee for a class C retail beer license, per annum, shall be one hundred fifty dollars (\$150.00).
- D. Class L: Fee for a class L retail liquor license, per annum, shall be one hundred fifty dollars (\$150.00).
- E. Seasonal: Fee for a seasonal license, per annum, shall be one hundred fifty dollars (\$150.00).
- F. Partial Year: Licenses for less than one year shall be one-sixth ($\frac{1}{6}$) of the annual license fee for each calendar month. (1995 Code § 12-1-12)

3-2-5: QUALIFICATIONS:

No person shall be granted a retail license unless he shall be qualified as provided in the alcoholic beverage control act of Utah, and under the privileges of Utah Code Annotated title 32A, chapter 10, as amended. Further, no license shall be granted to any retailer to sell beer or to any wholesaler, unless he shall be of good moral character, over the age of twenty one (21) years, and a citizen of the United States; or to anyone who has been convicted of a felony or of any violation of any law or ordinance relating to alcoholic beverages, controlled substances, drunken driving, or of keeping a gambling or disorderly house, or who has pleaded guilty to a felony or to the violation of any such laws or ordinances; or to any partnership, any member of which lacks any of the qualifications hereinbefore in this section set forth; or to any corporation, any director or officer of which lacks any of such qualifications. (1995 Code § 12-1-7)

3-2-6: RETAIL LICENSE PRIVILEGES:

Retail licenses issued hereunder shall be of the following kinds and shall carry the following privileges and be numbered numerically commencing from the number one each fiscal year, followed by the contraction of that fiscal year:

- A. Class A: Class A retail licenses shall entitle the licensee to sell beer on the premises, in original sealed containers, for consumption off the premises in accordance with the alcoholic beverage control act of Utah.
- B. Class B: Class B retail licenses shall entitle the licensee to sell beer in the original opened containers, for consumption on the premises, in accordance with the alcoholic beverage control act of Utah.
- C. Class C: Class C retail licenses shall entitle the licensee to sell beer on draft, or in original opened containers, for consumption on the premises, or in original sealed containers for consumption off the premises, in accordance with the alcoholic beverage control act of Utah.
- D. Class L: Class L retail licenses shall entitle the licensee to sell beer on draft or in the original open containers, and to sell liquor through a calibrated metered dispensing system, for consumption on the premises in accordance with the alcoholic beverage control act of Utah.
- E. Seasonal: Seasonal license shall carry the privileges of class C retail license, and shall be for a period less than one year. (1995 Code § 12-1-4)

3-2-7: ISSUANCE OF LICENSE; CONTENTS:

All licenses shall be issued by the city recorder under the seal of the city. Each license shall specify by name the person, firm or corporation to whom it is issued, the period of time for which said license is effective, and shall designate the particular place at which the business shall be conducted. All licenses shall be signed by the mayor and attested to by the city recorder. (1995 Code § 12-1-10)

3-2-8: BOARD OF HEALTH PERMIT:

No license shall be issued until the applicant therefor shall have first procured from the board of health a permit therefor, which permit shall show that the premises to be licensed is in a sanitary condition, and that the equipment used in the storage and distribution or sale of such beer, comply with all health regulations of said city or county and the state. (1995 Code § 12-1-8)

3-2-9: ZONING COMPLIANCE:

No beer or liquor license shall be granted to any applicant whose business will be located within any zone other than commercial. (1995 Code § 12-1-9)

3-2-10: TERM OF LICENSE:

All licenses issued hereunder shall take effect on approval of the city council, and expire on June 30 each year, unless sooner cancelled, except seasonal licenses, which shall be issued for any number of days determined by the city council. (1995 Code § 12-1-13)

3-2-11: TRANSFERABILITY; REFUNDS:

Licenses issued under this chapter are not transferrable. A license fee may be refunded after a license has been issued and thereafter cancelled on request of the licensee. Any refund shall be based upon good cause being shown therefor as determined by the city council after examination of all facts and conditions relative to the application for refund. For any amount refunded, there shall be charged a sum for necessary accounting and bookkeeping services equal to ten percent (10%) of the amount determined to be refunded, said charge to be deducted from the amount refunded. There shall be no refunds of fees paid for licenses which have been revoked, such fees to be forfeited to the city. (1995 Code § 12-1-11)

3-2-12: STATE PROVISIONS APPLICABLE:

All beer licenses issued by the city by this chapter shall be subject to the laws and regulations of the state, and more specifically, to the alcoholic beverage control act of the state. (1995 Code § 12-1-14)

3-2-13: INSPECTIONS:

All licensed premises shall be subject to inspection by any officer, agent or peace officer of the city or the alcoholic beverage control commission, or the state board of health, and every licensee shall, at the request of the city officer, board of health or alcoholic beverage control commission, furnish any samples of beer which he shall have for sale. (1995 Code § 12-1-16)

3-2-14: UNLAWFUL PURCHASES:

It shall be unlawful for any licensee to purchase or acquire, or to have or possess for the purpose of sale or distribution, any beer except that which he shall have lawfully purchased from a brewer or wholesaler licensed under the privileges of the alcoholic beverage control act of Utah. (1995 Code § 12-1-5)

3-2-15: REVOCATION OF LICENSE:

The city council may, with or without a hearing, at its discretion, refuse to grant any license applied for, and may revoke any license at any time, and in no such case need any cause be stated. No license shall be issued, and any license may be revoked, if the applicant or licensee does not possess or shall cease to possess all of the qualifications required by the alcoholic beverage control act of Utah, or if such applicant or licensee fails to comply with the ordinances of the city or the rules, regulations and orders of the Emery or Grand County board of health relating to health matters. All licenses shall have incorporated therein the statement that they are granted subject to revocation for cause. (1995 Code § 12-1-15)

3-2-16: LICENSE NOT VESTED RIGHT:

The issuance of a license pursuant to this chapter shall grant only a mere revocable privilege to sell beer as provided in this chapter and the laws of the state, and shall not confer any vested rights of any kind or nature upon a licensee. (1995 Code § 12-1-18)

3-2-17: CONSTITUTIONALITY:

Any section of this chapter which may be unconstitutional or contrary to the laws of the state, shall in no way nullify any other part of this chapter. (1995 Code § 12-1-19)

3-2-18: PENALTY:

It shall be unlawful for any person to violate any ordinance in this chapter, and any person convicted of violating any provision of any ordinance contained herein, shall be guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code. (1995 Code § 12-1-17; amd. 2003 Code)