

**WEST BOUNTIFUL CITY**

ORDINANCE #444-21

**AN ORDINANCE AMENDING CHAPTER 5.12, BEER LICENSES AND REGULATIONS, OF THE WEST BOUNTIFUL MUNICIPAL CODE**

*WHEREAS*, *Utah Code Ann.* §§ 10-8-42 and 10-8-84, as well as the Utah Alcoholic Beverage Control Act, *Utah Code Ann.* § 32B-1-101, *et seq.*, as amended (the “*Act*”), authorize the City to license and regulate the retail sale of beer within the City for off-premise or on-premise consumption;

*WHEREAS*, recent changes to the Act require corresponding changes to the City’s Beer Licenses and Regulations ordinance, Chapter 5.12 of the West Bountiful Municipal Code (the “*Beer License Ordinance*”);

*WHEREAS*, the City also desires to revise and clarify certain provisions of the Beer License Ordinance in furtherance of the City’s police powers for the protection of the public health, peace, safety, and welfare; and

*WHEREAS*, the City Council finds that it is in the best interest of the City and its residents to adopt certain changes to the City’s Beer License Ordinance as set forth in attached Exhibit A.

***NOW, THEREFORE BE IT ORDAINED BY THE WEST BOUNTIFUL CITY COUNCIL THAT CHAPTER 5.12 OF THE WEST BOUNTIFUL MUNICIPAL CODE BE MODIFIED AS REFLECTED IN THE ATTACHED EXHIBIT A.***

This ordinance will become effective upon signing and posting.

*[Signatures on following page.]*

ADOPTED May 18, 2021.

By:

  
Ken Romney, Mayor

Attest:

  
Cathy Brightwell, City Recorder



Voting by the City Council: Aye Nay

Councilmember Ahlstrom	<u>Absent</u>	_____
Councilmember Bruhn	<u>✓</u>	_____
Councilmember Enquist	<u>✓</u>	_____
Councilmember Preece	<u>✓</u>	_____
Councilmember Wood	<u>✓</u>	_____

## Chapter 5.12 BEER LICENSES AND REGULATIONS

### Sections:

- 5.12.005 Authority
- 5.12.010 Definitions.
- 5.12.020 License Necessary to Sell Beer at Retail.
- 5.12.030 Application for License.
- 5.12.035 Application for Single Event Permit or Temporary Beer Event Permit
- 5.12.040 Applicant Qualifications.
- 5.12.050 Review and Issuance of License.
- 5.12.060 License Fees.
- 5.12.070 License Expiration and Renewal.
- 5.12.080 Classification of Beer Retailer License.
- 5.12.090 Permit from Health Department.
- 5.12.100 Sale of Transfer of License.
- 5.12.110 Local Consent - Limited.
- 5.12.120 General Restrictions.
- 5.12.130 Inspection.
- 5.12.140 Denial, Suspension or Revocation of Beer License.
- 5.12.150 Violations/Penalties
- 5.12.160 Severability

### 5.12.005 Authority

The provisions of this chapter are enacted under authority of Sections 10-8-42 and 10-8-84 of the Utah Code, and applicable provisions of the Utah Alcoholic Beverage Control Act, *Utah Code Ann. §§ 32B-1-101, et seq.* (the "Act"). This Chapter authorizes the City to license and regulate the retail sale of beer within the City for off-premise or on-premise consumption, and is an exercise of the City's police powers for the protection of the public health, peace, safety, and welfare.

### 5.12.010 Definitions

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

**"Alcoholic Beverage"** means and includes "beer" or "liquor," as defined in this section.

**"Alcoholic Product"** means a product that contains at least 0.5% of alcohol by volume, and is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than 0.5% of alcohol by volume. Alcoholic product includes an "alcoholic beverage" as more particularly defined in this section.

**"Beer"** includes a product that contains at least 0.5% of alcohol by volume, but not more than 5% of alcohol by volume or 4% by weight; and is obtained by fermentation, infusion or decoction of any malted grain. Beer includes products known as beer, ale, porter, stout, lager, malt, or malted beverages,

but does not include flavored malt beverage. Beer may or may not contain hops or other vegetable products.

**“Brewer”** means any person engaged in manufacturing beer, heavy beer, or flavored malt beverage..

**“Commission”** means the Utah Alcoholic Beverage Control Commission.

**“Community location”** means a public or private school, a church, a public library, a public playground, or a public park.

**“Flavored malt beverage”** means a beverage that contains at least 0.5% alcohol by volume that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55. Flavored malt beverage is considered liquor for the purpose of this title.

**“Heavy beer”** means a product that contains more than 5% alcohol by volume and is obtained by fermentation, infusion, or decoction of malted grain. Heavy beer is considered liquor for the purpose of this chapter.

**“Licensed premises”** means any room, house, building, structure or place occupied by any person licensed to sell beer on such premises under this chapter; provided, that in any hotel or other business establishment an applicant for Class B, C, or D license may designate a room or portion of a building of such business for the sale of beer, which portion so specifically designated in the application for a license and the license subsequently issued shall be the licensed premises.

**“Liquor”** means, a liquid that is alcohol; an alcoholic, spirituous, vinous, fermented, malt or other liquid, or combination of liquids, a part of which is spirituous, vinous, fermented, or other drink or drinkable liquids that contain at least 0.5% of alcohol by volume suitable to use for beverage purposes. Liquor includes heavy beer, wine and flavored malt beverages. Notwithstanding the foregoing, liquor does not include beer.

**“Off-premise beer retailer”** means a beer retailer who is licensed in accordance with the, Off-premise Beer Retailer Act, *Utah Code Ann.* § 32B-7-101, *et seq.*; and engaged in the retail sale of beer to a patron for consumption off the licensed premises. “Off-premise beer retailer” does not include an on-premise beer retailer.

**“On-premise beer retailer”** means a beer retailer who is authorized to sell, offer for sale, or furnish beer under a license issued in accordance with the Retail License Act, *Utah Code Ann.* § 32B-5-101, *et seq.*, and On-premise Beer Retailer License, *Utah Code Ann.* § 32B-6-701, *et seq.*; engaged in the sale of beer to a patron for consumption on the licensed premises regardless of whether the beer retailer sells beer for consumption off the licensed premises; and operating as a tavern or in a manner that meets the requirements of *Utah Code Ann.* § 32B-6-703(2)(e)(i).

**“Premises”** means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined by law or rules adopted by the Commission.

**“Recreational Amenity”** means one or more of the following or an activity substantially similar to one of the following: a billiard parlor; bowling facility; golf course; miniature golf; golf driving range; tennis club; one of the following if owned by a government agency: convention center, fair facility, equestrian park, theater; or concert venue; or any other amenity or activity as defined in *Utah Code Ann.* § 32B-6-702.

**“Restaurant”** means a business location at which a variety of foods are prepared; at which complete meals are served; and that is engaged primarily in serving meals.

**“Retailer”** means any person engaged in the sale or distribution of beer or liquor to the consumer.

**“Sell or offer for sale”** means any transaction, exchange or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in the Act or rules adopted pursuant thereto.

**“Single event permit”** means an event permit issued by the state that authorizes the storage, sale, offer for sale, furnishing, and consumption of liquor for a period not to exceed (a) 72 consecutive hours, or (b) 120 consecutive hours, as described on the permit.

**“Tavern”** means an on-premise beer retailer who is issued a license in accordance with the Retail License Act, *Utah Code Ann.* § 32B-5-101, *et seq.*, and On-premise Beer Retail License, *Utah Code Ann.* § 32B-6-701, *et seq.*, and designated as a tavern in accordance with *Utah Code Ann.* § 32B-6-703.

**“Temporary beer event permit”** means an event permit issued by the state that allows the storage, sale, offer for sale, furnishing, and consumption of beer at an event for a period not to exceed 30 days.

#### **5.12.020 License Necessary to Sell Beer at Retail**

It is unlawful for any person to store, sell, offer for sale, furnish or permit consumption of beer for on-premise or off-premise consumption within the City without the required classification of beer license issued by the City. 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 Act and the regulations of the Commission, and every license is subject to suspension or revocation as hereinafter provided.

#### **5.12.030 Application for License**

Any person desiring a beer license from the City shall file with the city recorder the following:

- A. A written application in a form prescribed by the city;
- B. A nonrefundable beer license application fee in the amount specified in the City Fee Schedule;

- C. The applicable beer license fee in the amount specified in the City Fee Schedule for the type of license for which the person is applying that is refundable if the license is not issued;
- D. Evidence of proximity to any community location;
- E. A criminal history within thirty (30) days prior to the application in a form acceptable to the chief of police;
- F. A floor plan, site plan and boundary map where applicable, of the premises to be licensed, including any consumption area, and the area where the applicant proposes to display, keep, store, sell, offer for sale, or furnish beer;
- G. In the case of an applicant that is an entity, including a partnership, corporation, or limited liability company, proper verification evidencing that the entity is in good standing with the State of Utah and that the individual who signs the license application is authorized to sign on behalf of the entity;
- H. Any other information the City may require on the application form to sufficiently evaluate the merits of the application;
- I. If the application is for an On-premise Beer Retailer license, the following shall also be required to be submitted with the application:
  - 1. Evidence that the licensee is carrying general liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
  - 2. Evidence that the licensee is carrying dramshop insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
  - 3. A signed consent form stating that the licensee will permit any authorized representative of the Commission, City, law enforcement or health department unrestricted right to enter and inspect the premises of the licensee.

**5.12.035 Application for Single Event Permit or Temporary Beer Event Permit**

Any person desiring local consent for a single event permit or temporary beer event permit issued by the state shall file with the city recorder the following:

- A. A written application in a form prescribed by the City;
- B. A nonrefundable permit application fee in the amount specified in the City Fee Schedule;
- C. The permit fee in the amount specified in the City Fee Schedule that is refundable if the permit or consent is not issued;
- D. Evidence of proximity to any community location;
- E. A floor plan, site plan and boundary map where applicable, of the premises to be licensed, including any consumption area, and the area where the applicant proposes to display, keep, store, sell, offer for sale, or furnish beer or liquor;

- F. A criminal history dated within thirty (30) days prior to the application in a form acceptable to the chief of police;
- G. In the case of an applicant that is an entity, including a partnership, corporation, or limited liability company, proper verification evidencing that the entity is in good standing with the State of Utah and that the individual who signs the license application is authorized to sign on behalf of the entity;
- H. The times, dates, location, estimated attendance, nature, and purpose of the temporary event;
- I. A signed consent form stating that the permittee will permit any authorized representative of the Commission, City, law enforcement or health department unrestricted right to enter and inspect the premises during the temporary event; and
- J. Any other information the City may require on the application form to sufficiently evaluate the merits of the application.

#### **5.12.040 Applicant Qualifications**

Applicant qualification requirements for the issuance of a beer license from the City shall be the same as the applicant requirements set forth in Section 32B-1-304 of the Act for the issuance of a State license. The City shall not issue a beer license to any person who has been convicted of any of the crimes enumerated therein or fails to meet the qualifications set forth therein. The provisions of Section 32B-1-304 are adopted by this reference as if fully set forth herein. If the applicant is a partnership, corporation, or limited liability company, the proscriptions in that section apply if a partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the corporation, or member who owns at least 20% of the limited liability company has been convicted of an offense described in that section. Any references in that section to "commission" or "director" shall refer to the "City" and "city recorder," respectively. All applicants for a beer license shall also meet the age restrictions set forth in Section 32B-1-304, prohibiting the issuance of a license to a minor.

#### **5.12.050 Review and Issuance of License**

- A. **Staff Review.** The city recorder shall review the application and gather information regarding the application and applicant qualifications. The application and all other necessary information shall be distributed to appropriate departments of the City for their review and comment.
- B. **Police Review.** The chief of police shall cause a review to be made to determine the criminal history, if any, of the applicant, including the representatives of the applicant specified in *Utah Code Ann.* § 32B-1-304(1)(b) and (1)(c); the character of the proposed licensed premises; the nature and kind of business conducted at such place; and any other such information as the chief of police deems pertinent.
- C. **Criteria.** Before issuing a beer license under the provisions of this chapter, the city recorder shall determine that the applicant has complied with all qualifications and requirements for the applicable license and that the application is complete. The city recorder shall also determine that the person applying for the license is not disqualified under the provisions of *Utah Code*

*Ann. § 32B-1-304*, and that the application complies with the specific licensing requirements specified in this chapter for the type of license for which the person is applying.

- D. No beer license shall be issued to any person that is disqualified under the provisions of *Utah Code Ann. § 32B-1-304*, or any person who is not lawfully present in the United States.

#### **5.12.060 License Fees**

The following fees, as specified in the City's Consolidated Fee Schedule in amounts set periodically by resolution of the city council, apply to beer license applications and renewals.

- A. A non-refundable beer license application fee. This application fee will not be collected for renewal licenses.
- B. The applicable beer license fee for the type of license for which the person is applying. These fees shall be deposited in the city treasury if the license is granted and returned to the applicant if denied.

#### **5.12.070 License Expiration and Renewal**

All beer licenses issued or renewed pursuant to the provisions of this Chapter shall expire December 31 of each year unless canceled or revoked sooner in accordance with the Act or the West Bountiful Municipal Code. Single event permits and temporary beer event permits shall expire on the date indicated in the permit.

All applications for license renewal shall be filed with the city recorder prior to expiration of the license. A penalty of one-half of the annual license fee will be imposed for any application that is received after December 31 and before January 15. Failure to file a complete application by January 15 will result in immediate revocation of the license.

#### **5.12.080 Classification of Beer Retailer Licenses**

The City may issue the following classification of beer licenses for the retail sale of beer within the City for off-premise or on-premise consumption in accordance with the terms and conditions of this Chapter. No other beer retailer licenses shall be permitted or granted by the City.

- Class A. Off-premise Beer Retailer – Retail license that entitles the licensee to sell beer on the licensed premises in original containers for consumption off the premises, including but not limited to convenience stores;
- Class B. On-premise Beer Retailer – Retail license that entitles the licensee to sell beer on the licensed premises in original containers or on draft for consumption on the premises, and to sell take-out draft beer in a re-sealable container of a volume permitted by state law for consumption off the premises. Such container must be sealed at the time of purchase with a label that indicates the name of the licensee and the date and time of the purchase, including but not limited to restaurants, taverns, and recreational amenities.



- Class C. Temporary Beer Event – Local consent which authorizes the permittee to sell, offer for sale, or furnish beer for on-premise consumption at a single or temporary event and authorizes the storage, service and consumption of beer at such event, consistent with *Utah Code Ann. §§ 32B-9-204 and 32B-9-401, et seq.*

#### **5.12.090 Permit from Health Department**

No beer retailer license shall be issued for a business that serves food for consumption on the premises until the applicant has first procured from the Davis County health department a permit, which shall show that the premises to be licensed are in a sanitary condition and that the equipment used in the storage or sale of beer complies with all health regulations of the county health department and the state of Utah.

#### **5.12.100 Sale or Transfer of License**

- A. No Sale of License. A person granted a beer license under the provisions of this chapter shall not sell, transfer, assign, exchange, barter, give or attempt in any way to dispose of the license to another person whether for monetary gain or not. A beer license issued hereunder has no monetary value for the purpose of any type of disposition.
- B. No Location Transfer. A person granted a beer license under the provisions of this chapter shall not transfer the license issued pursuant to the provisions of this Chapter from one location to another.
- C. No Ownership Transfer. Except for corporate or company ownership changes to which the City has consented in writing after written notification, no ownership transfers of any license issued under the provisions of this chapter shall be permitted.
- D. Notification of Change. In addition to the ownership transfer prohibitions of this Section, all licensees shall be required to notify the City immediately in writing of any change in ownership of the licensee or persons associated with the licensee if the licensee is an entity.

#### **5.12.110 Local Consent – Limited**

- A. On-premise Beer Retailer License. The issuance of an On-premise Beer Retailer license under the provisions of this chapter shall be required as a prerequisite for any restaurant seeking a State liquor license, including, but not limited to, a State-issued Beer-Only Restaurant License, Full-Service Restaurant License, or Limited-Service Restaurant License. The issuance of an On-premise Beer Retailer license by the City shall be deemed local consent for purposes of the Act provisions requiring such consent for the issuance of any of the following State issued licenses:
  - 1. Beer-Only Restaurant License;
  - 2. Full-Service Restaurant License; and
  - 3. Limited-Service Restaurant License.
- B. Off-premise Beer Retailer License. The issuance of an Off-premise Beer Retailer license under the provisions of this chapter shall be required as a prerequisite for any person seeking a State-

issued Off-premise Beer Retailer License and will be deemed to be written consent of the local authority.

- C. Single Event or Temporary Beer Event. The issuance of written consent to a single event permit or temporary beer event permit under the provisions of this chapter shall be a prerequisite for the issuance of a State-issued single event permit or temporary beer event permit.
- D. Local Consent Form. The city administrator and chief of police, or their designees, are hereby authorized to sign and execute the local consent form for State licensing of on-premise and off-premise beer retailers as required by the State.
- E. No Other Local Consent. The City shall not grant local consent for any State issued liquor licenses within the City other than those licenses enumerated in this chapter.
- F. Compliance. Any person or licensee granted local consent under the terms and provisions of this chapter shall comply with all applicable provisions of the Act.

#### **5.12.120 General Restrictions**

No license shall be granted to sell beer in any theater or within three hundred (300) feet of any community location.

It is unlawful, a nuisance, and a basis for fines and the suspension or revocation of a beer license, to cause or permit any of the following:

- A. Selling or otherwise supplying beer to any person under the age of twenty-one (21) years, or to any person who is or reasonably appears to be intoxicated, or selling beer for consumption on the premises unless so licensed, or permitting the drinking of liquor on such premises;
- B. Selling or otherwise furnishing or disposing of beer, or allowing it to be drunk or consumed on the premises, or allowing beer to remain on that portion of the premises open to customers, patrons, or members of the public after 1:00 a.m. and before 10:00 a.m.;
- C. Failing to maintain full control of the conduct of the business upon the licensed premises, or failing to be informed of the manner in which the business is conducted and of the activities of the licensee's officers, agents, and employees in and about the licensed premises. By accepting a license, the licensee unconditionally guarantees to the City that neither the licensee nor the licensee's officers, agents, or employees will violate the terms of this Chapter;
- D. Failing to keep the licensed premises illuminated at all times while it is occupied for business;
- E. Violating any of the terms of the license issued;
- F. Nudity of any person, whether a patron, employee, or performer, in a licensed premises;
- G. Any act in or about a licensed premises contrary to the provisions of the Act, including Section 32B-1-304 and Title 32B, Chapter 4, known as the Criminal Offenses and Procedures Act;

- H. Any act in or about a licensed premises otherwise contrary to federal, state or local criminal laws; or
- I. Entrance by a minor under the age of twenty-one (21) years to a tavern or social club.

**5.12.130 Inspection**

All licensed premises shall be subject to inspection by any officer, agent, or peace officer of the City, or the Utah State Department of Alcoholic Beverage Control, or the state or county health departments, and every licensee shall, at the request of any such department(s) or persons, furnish samples of beer offered for sale.

**5.12.140 Denial, Suspension or Revocation of Beer License**

- A. A beer license application may be denied for any good cause reasonably related to the health, safety or general welfare of the residents of West Bountiful City, including the violation of any federal, state or local law (including the provisions of this chapter) and any false or misleading statement or omission in the application.
- B. A beer license may be suspended for up to thirty (30) days or revoked upon a finding that the licensee or the licensee's officers, agents or employees have violated any provision of this chapter, or any ordinance of the City that in any way relates to the operation of the business or the safety of the public or have made any false or misleading statement or omission in connection with the license application. During any period of suspension or following any revocation of a beer license, no beer may be sold from the licensed premises until the suspension is lifted or the City issues a new license.
- C. Any decision to deny, suspend or revoke a beer license shall be made by the city recorder in consultation with the chief of police. Any such decision shall be in writing and include a simple statement of the reasons therefor. The denial, suspension or revocation shall take effect after the written decision has been issued and a copy has been mailed to the applicant or licensee at the address listed in the application. If the applicant or licensee was present when the decision to deny or revoke was made, or is otherwise personally aware of the decision, the denial or revocation shall be effective when the written decision is filed in the records of the city recorder.
- D. The following mandatory minimum penalties apply with respect to each violation found within a three (3) year period commencing on the date of the first offense. At the end of the three (3) year period, the tiered offense cycle starts over.

First offense	\$500.00 fine
Second offense	\$750.00 fine plus suspension
Third offense	\$1,000.00 fine plus suspension
Fourth offense	Revocation

These mandatory minimum penalties are in addition to any other remedies provided in this chapter. Failure to pay any fine imposed under this section within fourteen (14) days shall constitute a separate offense.

- E. Any person aggrieved by a decision to deny, suspend, or revoke a beer license may appeal that decision by filing a written notice of appeal with the city recorder within fifteen (15) days of the effective date of the denial, suspension, or revocation.
- F. An appeal of a decision to deny, suspend, or revoke a beer license shall be conducted as provided in Section 2.60.010 of the West Bountiful Municipal Code.

#### **5.12.150 Violations/Penalties**

Unless otherwise expressly provided in this chapter or State law, any violation of this chapter shall be a Class B misdemeanor, punishable by fine, imprisonment, or both, as permitted by applicable laws of the State of Utah or enforced through the civil enforcement procedures set forth in WBMC Chapter 1.16 (General Penalties). Each and every day of noncompliance with the terms and provisions of this chapter shall constitute a separate violation. These penalty provisions are in addition to any of the administrative remedies provided in this chapter, such as fines and denial, suspension or revocation of a beer license.

#### **5.12.160 Severability**

The provisions of this chapter are severable. If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

**CERTIFICATE OF PASSAGE  
AND POSTING ORDINANCE**

*I, the duly appointed and acting recorder for the City of West Bountiful,  
do hereby certify that the foregoing Ordinance No. 444-21 was duly  
passed and published, or posted at three public places within the municipality  
on May 21, 2021 which public places are:*

- 1) West Bountiful City Hall,*
- 2) West Bountiful City Park Bowery, and*
- 3) Lakeside Golf Course.*

\_\_\_\_\_ DATE: \_\_\_\_\_  
*Cathy Brightwell, City Recorder*