



**CITY ATTORNEY'S OFFICE**  
MUNICIPAL BUILDING  
2101 O'NEIL AVENUE, ROOM 308  
CHEYENNE, WYOMING 82001  
TELEPHONE: (307) 637-6306 | FACSIMILE: (307) 637-6373

## **MEMORANDUM**

**To:** Honorable Mayor Patrick Collins and Members of the City Council

**From:** John Brodie, Deputy City Attorney

**Subject:** Agenda Item #11, Ordinance amending city code provisions governing alcoholic liquor and malt beverages licenses and permits with explanation for proposed substitute

**Date:** May 26, 2023

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### **I. Introduction**

Agenda Item #11 is being offered through the Office of the City Clerk in response to two pieces of legislation passed during the 2023 General Session of the Wyoming Legislature: (1) 2023 Wyo. Sess. Laws Ch. 86 (House Enrolled Act 47, *Airport liquor licenses-amendment*); and (2) 2023 Wyo. Sess. Laws Ch. 20 (Senate Enrolled Act 5, *Bar and grill liquor license phaseout*). The first piece of legislation modified the exception applicable to certain airports for retail liquor license population limitations, specifying the exception only applies to commercial service airports that sell "alcoholic liquor or malt beverages...in the terminal building and connected concourses of the airport where persons engaged in commercial air travel transfer on and off aircraft."

The second piece of legislation made many changes to the requirements and restrictions imposed on the issuance of bar and grill liquor licenses. Notably, this legislation phases out the population restriction imposed on the issuance of bar and grill liquor licenses (entirely eliminating the restriction on June 30, 2028), while also imposing the following revenue source requirements for bar and grill liquor license applicants and license renewal applicants under W.S. 12-4-413(g) and (h):

(g) An applicant for a bar and grill liquor license shall satisfy the appropriate licensing authority that not less than sixty percent (60%) of revenue from the operation of the bar and grill to be licensed will be derived from food services,

entertainment or a combination of food services and entertainment and not from the sale of alcoholic or malt beverages.

(h) When renewing a bar and grill liquor license, the appropriate licensing authority shall condition renewal upon a requirement that not less than sixty percent (60%) of gross sales from the preceding twelve (12) months operation of a licensed bar and grill be derived from food services, entertainment or a combination of food services and entertainment.

## **II. Discussion**

The purpose of the ordinance proposal is to clarify the affected city code provisions in light of the changes made by House Enrolled Act 47 and Senate Enrolled Act 5 before these changes become effective on July 1, 2023. Additional changes are being made to add consistency throughout, and to help clarify and simplify, the affected code provisions.

### **a. Proffered Substitute**

The substitute is being proffered to address an additional issue created under Senate Enrolled Act 5, which required additional time to draft and finalize beyond the May 17, 2023, introduction submission deadline for city council consideration of legislation proposals. While in large part, the statutory changes effectuated through Senate Enrolled Act 5 did not require a great deal of changes to the municipal code, the legislation did require all local licensing authorities promulgate a definition for "adult entertainment."

As stated previously, beginning July 1, 2023, for an applicant to obtain or renew a bar and grill liquor license, the applicant must demonstrate that not less than sixty percent (60%) of revenue from the operation of the business derives from "food services, entertainment or a combination of food services and entertainment." In passing Senate Enrolled Act 5, the Legislature defined "entertainment" to mean "any activity designed to provide diversion or amusement, regardless of the age required for the activity." However, the definition further stated that "entertainment" does not include gambling or "adult entertainment as defined by the local licensing authority."

The goal of the substitute is to limit the issuance of bar and grill licenses to businesses only pursuing adult entertainment—as intended by the Legislature—and to not unintentionally prohibit businesses that will positively contribute to Cheyenne's community and its economy.

ORDINANCE NO. \_\_\_\_\_

ENTITLED: "AN ORDINANCE AMENDING SECTIONS 5.12.020, DEFINITIONS, AND 5.12.030, LICENSES AND PERMITS—TYPES, OF CHAPTER 5.12, ALCOHOLIC LIQUOR AND MALT BEVERAGES, OF TITLE 5, BUSINESS LICENSES AND REGULATIONS, OF THE MUNICIPAL CODE OF THE CITY OF CHEYENNE, WYOMING."

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:

Section 1. That Sections 5.12.020, Definitions, and 5.12.030, Licenses and Permits—Types, of Chapter 5.12, Alcoholic Liquor and Malt Beverages, of Title 5, Business Licenses and Regulations, are hereby amended as set out in this ordinance.

**5.12.020 - Definitions.**

~~A. The following definitions will apply in the interpretation and enforcement of~~ As used in this chapter:

1. "Adult entertainment" means any form of dancing, exhibition or display involving male or female nudity or partial nudity for any period of time intended to gratify the sexual desires of any entertainer or patron. For the purposes of this chapter, "adult entertainment" shall also include any "sexually oriented business" as defined by Section 5.64.020 of the city code;
2. "Building" means a roofed and walled structure built or set in place for permanent use;
3. "Delivery" means the act of providing alcohol to a purchaser;
4. "Delivery employee" means a licensee's employee or contractor responsible for delivering alcohol to the purchaser;
5. "Delivery service" means the taking of orders and providing the transporting and delivery of alcoholic liquor and malt beverage products to patrons at a residence, organization or business for a fee, and **includes** a liquor licensee's process by which their employee or contractor provides alcohol to a purchaser;
- ~~1. "Delivery" means the act of providing alcohol to a purchaser.~~
- ~~2. "Delivery employee" means the licensee's employee or contractor responsible for delivering alcohol to the purchaser.~~

3. ~~"Sealed" means in its original package and unopened factory sealed (bottle of wine or spirits/case of beer), in a plastic bag, heat sealed closed, or in a container that has a breakable seal incorporated in the top.~~
4. ~~"Serve" means the act of delivering alcohol to a purchaser or delivery employee or contractor on the licensed premises.~~
6. "Operational" means offering for sale on an ongoing weekly basis to the general public alcoholic liquor and malt beverages as authorized under a license or permit issued under this chapter and W.S. 12-1-101, et seq. "Operational" shall not apply to a holder of a special malt beverage permit under Section 5.12.030(A)(15) of this chapter;
7. "Open container" means any bottle, can, container or other receptacle that contains any amount of alcoholic liquor or malt beverage that is open, has a broken or tampered seal, or the contents of which are partially removed. As used in this chapter, "open container" shall not include:
- a. Wine ~~which~~ that is resealed for a patron in compliance with the provisions of ~~Wyo. Stat. Sections~~ W.S. 12-4-410(e) and 12-4-413(f), ~~and~~
  - b. ~~"slushies" which~~ "Slushies" that are securely sealed and are unopened or untampered with for a patron by a retail liquor licensee pursuant to Section 5.12.070(B)-(2) of this chapter; ~~and or~~
  - c. ~~licenses~~ Licenses and permits issued with an approved waiver of open container prohibitions; ~~do not constitute an "open container" violation.~~

~~"Operational" means offering for sale on an ongoing weekly basis to the general public alcoholic liquor and malt beverages as authorized under a license or permit issued under this chapter and Wyo. Stat. Section 12-1-101, et seq. For purposes of this chapter, "weekly" means at least one eight hour day within a period of seven consecutive calendar days beginning on Sunday. Provisions pertaining to "operational" contained within this chapter do not apply to a holder of a special malt beverage (annual) permit.~~

8. "Restaurant dispensing area" means an area approved by the licensing authority pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-410;
9. "Room" means an enclosed and partitioned space within a building large enough for a person to enter but not a cabinet. Partitions may contain windows and doorways, but any partition shall extend from floor to ceiling;
10. "Sealed" means in its original package and unopened factory sealed (bottle of wine or spirits/case of beer), in a plastic bag, heat sealed closed, or in a container that has a breakable seal incorporated in the top;

11. "Sell" or "sale" ~~includes means~~ offering for sale, trafficking in, bartering, delivering or dispensing and pouring for value, exchanging for goods, services or patronage or an exchange in any way other than purely gratuitously. ~~Every~~ As used in this chapter, "sell" or "sale" includes the delivery of any alcoholic liquor or malt beverage made otherwise than by gift; ~~constitutes a sale.~~

12. "Serve" means the act of delivering alcohol to a purchaser or delivery employee or contractor on the licensed premises;:

13. "Weekly" means at least one eight (8) hour day within a period of seven (7) consecutive calendar days beginning on Sunday.

#### **5.12.030 - Licenses and permits—Types.**

A. The city is authorized, pursuant to ~~Wyo. Stat. Sections~~ W.S. 12-1-101, et. seq., to issue the following types of alcohol, microbrewery, winery, satellite, special event and malt beverage licenses and permits:

1. Bar and Grill Liquor License. The governing body may authorize issuance of a bar and grill liquor license to an applicant pursuant to ~~provisions of Wyo. Stat. Section~~ W.S. 12-4-413.
2. Catering Permit. The city clerk may authorize issuance of a temporary catering permit to retail and resort liquor licensees authorizing off-premises sales of alcoholic liquor and malt beverages.
  - a. On behalf of the licensing authority, the city clerk is authorized to provide written approval to eligible city liquor licensees who wish to submit an application for a temporary catering permit within the jurisdiction of another liquor licensing authority within the state of Wyoming. Written request for approval must be submitted by the eligible licensee which contains information as required by the city clerk.
3. Consumption Permit. The city clerk, with approval by the chief of police, may issue a temporary permit to applicants under the provisions of this chapter.
4. Limited Retail Liquor License. The governing body may authorize issuance of a license to a club, as defined in ~~Wyo. Stat. Section~~ W.S. 12-1-101, to provide sales and service of alcoholic liquor and malt beverages within a licensed building to its members and their guests.
5. Malt Beverage Permit. The city clerk, with approval by the chief of police, may authorize issuance of a temporary permit to any responsible person or organization

allowing malt beverages sales only at a picnic, bazaar, fair, special holiday or similar public gathering.

6. Malt Beverage Permit with Open Container Waiver. The city clerk, with approval by the chief of police, may authorize issuance of a temporary permit in conjunction with a special community-based event, waiving the city's open container restriction.
7. Manufacturer's Off-Premises Permit. The city clerk, with approval by the chief of police, may authorize issuance of a permit to the holder of a manufacturer's license, as issued by the Wyoming Liquor Division, pursuant to ~~provisions of Wyo. Stat. § W.S. 12-2-203~~, authorizing the permittee to sell product manufactured at the site identified on the manufacturer's license only for sales at meetings, conventions, private parties, dinners and other similar gatherings to promote their product. No permittee holding a manufacturer's off-premises permit shall sell or permit consumption of any of their manufactured product off the premises described in the permit. An off-premises permit shall be issued for one twenty-four-hour period, subject to the schedule of operating hours set pursuant to ~~Wyo. Stat. § W.S. 12-5-101~~ and Section 5.12.130 of this chapter. No holder of a manufacturer's license shall receive more than twelve (12) off-premises permits in any one calendar year.
  - a. In addition to the one additional license or permit authorized under ~~Wyo. Stat. Section W.S. 12-4-412(b)(iii)~~, the holder of a microbrewery or winery permit under this section may also hold a manufacturer's license under ~~Wyo. Stat. Section W.S. 12-2-203(a)~~.
8. Microbrewery Permit. The governing body may authorize issuance of a microbrewery permit to an applicant to provide for brewing and dispensing of malt beverages pursuant to ~~Wyo. Stat. Sections W.S. 12-2-201(e)~~ and 12-4-415. The holder of a microbrewery permit may also hold a malt beverage permit under ~~Wyo. Stat. Section W.S. 12-4-502(a)~~ and Section 5.12.100 of this chapter for the purpose of selling its own brewed malt beverages. An applicant may submit a written request to the governing body for approval of an outdoor fenced or enclosed area immediately adjacent to the licensed brewing site for the purpose of dispensing and consumption of its product pursuant to ~~Wyo. Stat. Section W.S. 12-4-415~~, and Sections 5.12.120(E) and 5.12.130 of this chapter.
9. Resort Liquor License. The governing body may authorize issuance of a license to an applicant for alcoholic liquor and malt beverage sales and service at a resort pursuant to ~~provisions contained in Wyo. Stat. Sections W.S. 12-4-401~~ and 12-5-201.
10. Restaurant Liquor License. The governing body may authorize issuance of a license to an applicant for sales and service of alcoholic liquor and malt beverages, as prepared and dispensed from areas approved at a restaurant by the licensing authority pursuant to ~~Wyo. Stat. Sections W.S. 12-1-101(a)(xiv)~~ and 12-4-410.

- a. Qualifying food service restaurants shall have a suitable kitchen necessary for preparing, cooking, and serving individually priced meals which are prepared and served primarily for on-premises consumption and seating/dining areas that shall be inspected and approved by Cheyenne/Laramie County Health Department, Division of Environmental Health, and the licensing authority and are subject to requirements pursuant to ~~Wyo. Stat. Sections~~ W.S. 12-1-101(a)(xiv).
  - b. No consumption of alcoholic or malt beverages shall be permitted within the dispensing areas pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-410(b).
  - c. No restaurant liquor licensee shall promote or operate the restaurant as a bar and/or lounge pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-410(d).
  - d. All sales of alcoholic or malt beverages authorized by a restaurant liquor license shall cease at the time food sales cease, or at the hours specified by Section 5.12.130(B) of this chapter if food sales extend beyond the hours specified therein.
  - e. Restaurant liquor licensees shall submit, at the time of renewal, an annual report to the licensing authority that the primary source of revenue from the operation of the restaurant to be licensed will be derived from food services and not from the sale of alcoholic or malt beverages pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-408.
  - f. Exceptions. Convenience stores whose primary function is for off-premises consumption of food sales are not eligible to obtain a restaurant liquor license.
11. Retail Liquor License. ~~The~~ In accordance with W.S. 12-4-201, the governing body may authorize issuance of a license to an applicant for direct sales and service of alcoholic liquor and malt beverages within a licensed building to patrons in a lounge or bar environment, which may include sales for off-premises consumption conducted through a separate room within the licensed building designated as a package store and/or through a drive-up facility adjoining the room as approved by the governing body.
12. Satellite Manufacturing Permit. The governing body, upon application, may authorize issuance of a permit to the holder of a manufacturer's license, as issued by the Wyoming Liquor Division, pursuant to ~~provisions of Wyo. Stat. Section~~ W.S. 12-2-203.

13. Satellite Winery Permit. The governing body, upon application, may authorize issuance of a permit to the holder of a winery permit pursuant to ~~the provisions of Wyo. Stat. Section~~ W.S. 12-4-412.
14. Special Event Permit. The city clerk, with approval by the chief of police, may authorize the issuance of a permit to a retail liquor licensee in conjunction with holding a special event in the licensed building of the licensee at which primarily persons under the age of twenty-one (21) years of age are permitted pursuant to ~~the provisions of Wyo. Stat. Section~~ W.S. 12-5-201(k).
15. Special Malt Beverage Permit. The governing body may issue an annual special malt beverage permit to any reasonable person or organization for sales of malt beverages only at public auditoriums, civic centers or events centers.
  - a. The public auditorium, civic center or events center shall be an enclosed building and shall contain an auditorium setting that seats at least two hundred fifty (250) persons and be used for public gatherings, events or entertainment. Written confirmation by the applicant must be provided with the application stating that the owner of the building authorizes the sale and consumption of malt beverages within the building for which the permit will be effective. If the applicant is not the owner of the building, a written lease agreement between the applicant and building owner must be submitted containing the authorization. As used in this section, auditorium setting means an area designated for the primary purpose of seating an audience to view or partake in an event or entertainment.
  - b. Upon application and any renewal application, the person or organization holding a special malt beverage permit must provide written confirmation to the city clerk that the owner of the building authorizes the sale and consumption of malt beverages within the building for the term in which the permit will be effective.
  - c. No permittee shall sell any malt beverages for off-site consumption outside of the building, and it shall be the responsibility of the permittee to ensure that no sales are made to nor any consumption allowed by any person under the legal drinking age within the licensed building.
  - d. No transfer of permit ownership or building location shall be allowed.
  - e. Provisions pertaining to "operational," as defined in Section 5.12.020, contained within this chapter do not apply to a holder of a special malt beverage (annual) permit.
16. Special Malt Beverage Permit for Events at Rodeo Arenas. Pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-507, the city clerk shall issue a special malt beverage permit for



the sale of malt beverages upon submission of a reasonable plan only at events conducted on the grounds of an indoor or outdoor rodeo with a total seating capacity of over seven thousand five hundred (7,500).

- 17. Winery Permit. The governing body may authorize issuance of a permit to an applicant for the manufacturing and dispensing of wines pursuant to ~~Wyo. Stat. Section~~ W.S. 12-4-414.
- 18. Winery-Off-Premises Permit. The city clerk, with approval by the chief of police, may authorize issuance of a permit to the holder of a Winery permit, pursuant to ~~provisions of Wyo. Stat. §~~ W.S. 12-4-414(g), authorizing the permittee to sell product manufactured at the site identified on the winery permit only for sales at meetings, conventions, private parties, dinners and other similar gatherings to promote their product. No permittee holding a winery off-premises permit shall sell or permit consumption of any of their manufactured product off the premises described in the permit. An off-premises permit shall be issued for one twenty-four-hour period, subject to the schedule of operating hours set pursuant to ~~Wyo. Stat. §~~ W.S. 12-5-101 and Section 5.12.130 of this chapter. No holder of a Winery permit shall receive more than twelve (12) off-premises permits in any one calendar year.

Section 2. Sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or otherwise unlawful, such declaration shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases.

Section 3. This ordinance shall be in full force and effect upon approval and publication.

**FIRST READING:** \_\_\_\_\_

**SECOND READING:** \_\_\_\_\_

**THIRD AND FINAL READING:** \_\_\_\_\_

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PATRICK COLLINS, MAYOR

(SEAL)

ATTEST:

\_\_\_\_\_  
KRISTINA F. JONES, CITY CLERK

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