

## **Chapter 5.12 – Beer–Wine–Liquor <sup>1,2,3</sup>**

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### **5.12.010 Definitions.**

For the purpose of this chapter the following terms shall be construed to have the meaning herein given: "alcoholic beverage," means any beverage containing alcohol which is a product of distillation of any fermented liquor, or synthetic ethyl alcohol, including beer, wine, spirits, or any liquid containing alcohol, beer, wine or spirits. (Ord. 2013-C, 2013)

### **5.12.020 License–Required.**

It shall be unlawful for any person or licensee to sell, keep for sale, or dispense any alcoholic beverage without first obtaining the appropriate license or permit required by law. (Ord. 2013-C, 2013)

### **5.12.030 License–Number Permitted Within Municipality.**

The number of liquor licenses issued and operative shall be limited to six within the municipality. (Ord. 1969- 2 §1, 1969).

### **5.12.040 Applications.**

Prior to the issuance of a license, as herein provided, the applicant shall file with the City Clerk an application, in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises (in existence or to be constructed in accordance with plans and specifications approved by City) where the alcoholic beverages are to be sold. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths and shall be accompanied with the license fee herein required. In addition to setting forth the qualifications required by other provisions of this Chapter, the application must show:

1. A detailed description of the premises for which a license is sought, its location, the street address, and name of any managers, agents or employees.

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2. If the premises to be licensed are not owned by the applicant, then a certified copy of a document showing that the owner consents to the sale of alcoholic beverages on such premises.
3. If during the period of any license issued hereunder any change shall take place in any of the requirements of this Section, the licensee shall forthwith make a verified report of such change to the City Clerk.
4. Such application shall be accompanied with the license issued by the Director of the Department of Law Enforcement of the State for the premises and for the time for which the application is made, which license shall be returned to the applicant after examination by the City Clerk.
5. The application shall be accompanied with the license issued by the Board of County Commissioners for the premises and for the time for which the application is made, which license shall be returned to the applicant after examination by the City Clerk.

(Ord. 2013-C, 2013)

**5.12.050 Qualifications.**

- A. No person shall sell or dispense alcoholic beverages at retail until licensed in accordance with the provisions of this Chapter, and no retailer's license shall be issued to any applicant, or such license transferred to any person including the executor, administrator or trustee in bankruptcy of the estate of the holder of a retail license, when that person:
  1. Is under the age of nineteen (19) years;
  2. Is not the bona fide owner of such business;
  3. Is not a citizen of the United States, or has not been a bona fide resident of the State for at least thirty (30) days next preceding the date of application for a license; provided, that if the applicant is:
    - i. A partnership, all members thereof shall be citizens of the United States and have been residents of the State for at least thirty (30) days preceding the date of application for a license; or
    - ii. A corporation or association, it must be organized under the laws of the State or qualified under the laws of the State to do business in the State and the principal officers and the members of the governing board must be citizens of the United States and residents of the State for at least thirty (30) days next preceding the date of application for such license;
  4. The Licensee or any of its employees, officers or members, or members of the governing board or body, has been convicted or paid any fine, or has received a deferred sentence or withheld judgment, or has suffered the forfeiture of a bond for failure to appear, or has completed any sentence of confinement:
    - i. That within three (3) years immediately preceding the date of filing the application the applicant has not been convicted of the violation of any law of the State of Idaho, any other state, or of the United States, regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquors, or, within said time, suffered the forfeiture of a bond for failure to appear in answer to charges of any such violation;

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- ii. That within five (5) years immediately preceding the date of filing the application the applicant has not been convicted of any felony or paid any fine or completed any sentence of confinement therefor within said time;
  - iii. That within three (3) years next preceding the date of filing said application the applicant has not had any license provided for herein, or any license or permit issued to the applicant pursuant to the law of this State, or any other state, or of the United States, to sell, manufacture, transport or possess alcoholic beverages or intoxicating liquors, revoked.
5. Has engaged in the operation, or interests therein, or any of its employees, officers or members of its governing board or body has been so engaged in the operation, or interests therein, of any house or place for the purpose of prostitution or who have been convicted of any crime or misdemeanor opposed to decency or morality;
  6. Has had a license revoked by this City, the State, or any city and county of this State; was a member of a partnership or association whose license has been revoked by this City, the State, or any city and county of this State; was an employee, officer or member of the governing board, or one of the principal stockholders of a corporation licensed to sell alcoholic beverages at retail and whose license has been revoked by this City, the State or any city and county of this State.
- B. The affirmative showing required with respect to qualifications of an applicant shall also be required to be made with the respect to each partner of a partnership applicant and to each incumbent officer, director or member of the governing board of a corporation or association applicant, and to each person then employed by an applicant whose duties include the serving or dispensing of alcoholic beverages.

(Ord. 2013-C, 2013)

**5.12.060 Continuance of Qualifications.**

A retailer licensee must continue throughout the license period to have all of the qualifications and none of the disqualifications provided in this Chapter. (Ord. 2013-C, 2013)

**5.12.070 Payment–Fees.**

Each application shall be accompanied by the required license fees.

All licenses for the retail sale of alcoholic beverages within the City shall be issued for the term of July 1<sup>st</sup> of the current year through June 30<sup>th</sup> of the subsequent year. Licenses shall terminate at midnight on ~~December 31 of the year in~~ July 1<sup>st</sup> of the subsequent year for which such license is issued, unless application for renewal has been made. If application for renewal has been made, the current license shall remain in force until the City Clerk has acted on the application for renewal and has given notice of the action taken.

License fees, to be collected by the Clerk, shall be in an amount established by the Arco City Council, listed on the most current License Fee Schedule, on file with the City Clerk.

(Ord. 2013-C, 2013: Prior code: Ord. dated 12-14-81: Ord. 1975-5 §7, 1975: §5-9-5)

**5.12.080 Renewal.**

Renewal of a license shall be on forms prescribed and furnished by the Clerk. Renewal forms shall be submitted thirty (30) days prior to the expiration of the current license. The required license fee and an affidavit verifying that the information contained in the original application is unchanged must accompany a renewal form. (Ord. 2013-C, 2013)

**5.12.090 License; Transfer.**

A license may be transferred, but the transferee, including any executor, administrator, or trustee in bankruptcy of the estate of the retailer shall not be authorized to retail alcoholic beverages thereunder until the transferee shall have filed under oath an application therefore containing the same information required in an application for a license, and if the transferee possesses the qualifications and none of the disqualifications of a retailer as provided in this Chapter, the Council shall approve such transfer and the Clerk shall amend the license to reflect the transfer.

Each such license shall be accompanied with a transfer fee of ten percent (10%) of annual license fee. Application to transfer a license from one authorized location to another shall be made to the Council on forms prescribed and furnished by the Clerk. Each application for transfer of location shall be accompanied by a transfer fee of ten percent (10%) of annual license fee. (Ord. 2013-C, 2013)

**5.12.100 Regulations–Hours of Sale.**

Every licensee must conform to all regulations and laws of the state of Idaho and the provisions of this chapter. Alcoholic beverages shall not be sold by any person except one duly licensed. Full and unobstructed view of the inside of the premises where said alcoholic beverages are sold shall always be maintained by the licensee and all premises shall be adequately lighted and subject to periodic sanitary inspection. (Ord. C-307 §1, 1967: Prior code: §5-10-9(part)).

It is unlawful for any licensed owner(s) or his employees, to permit any persons under the age of nineteen (19) years to offer, sell, serve, possess, or dispense alcoholic beverages to any person, likewise it is unlawful to offer, sell, serve, or dispense alcoholic beverages to any person under the age of twenty-one (21) years.

It is unlawful for any person to sell beer and wine between the hours of two (2:00) a.m. and six (6:00) a.m. any day. It is unlawful for any person to sell liquor by the drink between the hours of two (2:00) a.m. and ten (10:00) a.m. any day. Further, liquor by the drink may be sold on Sunday, Memorial Day and Thanksgiving Day. It is unlawful for persons under the age of twenty-one (21) years to frequent, loiter in, or about or patronize any establishment that offers liquor by the drink.

**5.12.110 Gambling Prohibited**

No gambling of any kind or character shall be operated upon any such premises and no gambling devises shall be maintained thereon. (Ord. C-307 §2, 1967. prior code §5-10-9 (part)).

**5.12.120 Consumption On and Off Premises.**

Retailers holding valid licenses for the retail sale of liquor may sell wine for consumption on or off the licensed premises. Retailers holding a valid on-premise wine license may sell wine for consumption on the premises only. Retailers who do not possess a valid license for the retail sale of liquor or retailers who do not have a valid on-premise wine license shall not permit consumption of wine on the licensed premises and may sell the wine only in its original unbroken container. Wine sold for consumption on or off the licensed premises may be sold only during hours and on the days beer can be sold. (Ord. 2013-C, 2013)

**5.12.130 Police; Access to Premises.**

All police officers of the City shall have the right at any time to enter in and upon any such licensed premises, and it shall be unlawful to refuse any officer of the police force of the City admittance to or access to such premises for the purpose of police control, regulation and inspection of such premises. (Ord. 2013-C, 2013)

**5.12.140 License–Revocation authority–Appeals.**

The governing body shall retain the right at all times to revoke and cancel any license issued under this chapter for just cause. When any license is revoked, the licensee shall have the privilege of appearing before the governing board to appeal such revocation. (Ord. 1975-5 §8, 1975: prior code §5-9-8).

If any licensee or employee of any licensed establishment violates any of the provisions of this chapter, or is convicted of the violation of any of the provisions of Title 23, Chapter 9, Idaho Code, as amended, the governing body is authorized and empowered to revoke the license issued to said licensee; provided, however, that in the event it is brought to the attention of the governing body that a violation has taken place, before revoking such license, the governing body shall cause notice to be served upon the licensee, setting forth in general terms the violation or violations claimed to have been committed, and such notice shall provide a time for hearing thereon by the governing body, which date of hearing shall not be less than five days nor more than ten days from the date of the service of said notice, and upon or following said hearing, the governing body, if they shall find that the provisions of this chapter, or the provisions of the state of Idaho have been violated, shall revoke such license theretofore issued and no refund of any unused portion of the license fee shall be made to the licensee. A revocation by the Commissioner of Law Enforcement of the state of Idaho of any license theretofore issued said licensee shall automatically revoke the license issued by the municipality, and no refund of any fee therefore paid shall be made. (Ord. 1975-5 §12, 1975: prior code §5-10-7).

**5.12.150 Penalty.**

Any person violating any of the provisions of this Chapter declared an infraction shall be assessed a fixed penalty of One Hundred Dollars (\$100.00) excluding court costs and fees. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100) and for which no period of incarceration may be imposed. There is no right to a trial by jury of a citation or complaint for an infraction and such trials shall be held before the court without a jury.

A second and any subsequent conviction for the same violation of the provisions of this chapter within five years shall constitute a misdemeanor, punishable by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail not exceeding six (6) months, or both.

A separate offense shall be deemed committed on each day during or which a violation occurs or continues.

Any person violating any of the provisions of this Chapter declared a misdemeanor shall be deemed guilty of a misdemeanor and upon conviction thereof can be fined in an amount not exceeding three hundred dollars (\$300), or be imprisoned for a period not exceeding six (6) months or be both so fined and imprisoned. . (Ord. 2013-C, 2013)

----- **NOTES** -----

- (1) For statutory provisions requiring a municipal license as a condition precedent to the retail sale of beer within a city, see Idaho Codes §23-1009 and §23-1016.  
For statutory provisions allowing a municipal to require liquor licenses as a condition precedent to the retail sale of liquor by the drink within the city, see Idaho Code §23-916
- (2) For general statutes and laws regarding alcoholic beverages, see Idaho Code-Title 23
- (2) This chapter has been editorially amended to reflect the provisions of 2013-C, 2013