

BILL NO. 21-239

AN ORDINANCE AMENDING CHAPTER 4, ALCOHOLIC BEVERAGES, ARTICLE II. ADMINISTRATION AND ENFORCEMENT SECTION 4-52 AND ARTICLE III. LICENSES, DIVISION 1 OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI TO REVISE THE PROVISIONS RELATING TO THE ADMINISTRATION OF LIQUOR LICENSES BY THE CITY.

WHEREAS, it is the desire of the City of Lee's Summit to have laws designed to ensure the public health and safety as affected by intoxicating liquor; and,

WHEREAS, Chapter 4 of the Code of Ordinances of the City of Lee's Summit regulates the sale and distribution of alcoholic beverages within the City of Lee's Summit; and,

WHEREAS, the Director of Liquor Control has reviewed the existing ordinances and the processes for issuing, renewing and regulating liquor licenses and brings forth recommendations designed to improve service for applicants and bring efficiencies to administration; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That Chapter 4, Alcoholic Beverages. Article II, Administration and Enforcement Section 4-52 of the Code of Ordinances for the City of Lee's Summit shall be amended by repealing that Section in its entirety and enacting in lieu thereof a new section of like number and subject matter to read as follows:

Sec. 4-52. Duties of Director of Liquor Control.

- A. *Prescribing forms.* The Director of Liquor Control shall prescribe all forms of applications, licenses, and permits in compliance with the provisions of this chapter, and such other forms as are necessary to carry out the provisions of same.
- B. *Approving applications pursuant to chapter.* It shall be the duty of the Director of Liquor Control to approve or disapprove, all applications submitted in conformity with and by virtue of this chapter.
- C. *Records, reports.* It shall be the duty of the Director of Liquor Control to keep a record of all licenses and permits issued and the suspension and revocation thereof. The Director of Liquor Control shall make a full and complete report to the Council at the end of each fiscal year.
- D. *Inspection of places of business.* The Director of Liquor Control shall have the duty of regularly inspecting all places of business where liquor is sold, consumed, or kept for sale, to maintain periodic checks on all places licensed pursuant to this chapter, thereby ensuring licensees' full compliance with the requirements of all ordinances, rules and regulations and to determine wholesomeness and orderly manner in which a licensed alcoholic beverage establishment is maintained and operated.

SECTION 2. That Chapter 4, Alcoholic Beverages, Article III. Licenses, Division 1. - Generally of the Code of Ordinances for the City of Lee's Summit shall be amended by repealing

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Section 4-79 in its entirety and amending Sections 4-77, 4-78, 4-80, 4-82, 4-89, 4-90, 4-91, 4-92, and 4-94 to read as follows:

Sec. 4-77. Qualifications.

- A. *Individuals.* No person shall be granted a license under this article unless such person will be actively engaged in the control and management of the particular alcoholic beverage or C.O.L. establishment for which a license is sought. Such person must be at least twenty-one (21) years of age, of good moral character, not have been convicted of a felony, and be a qualified legal voter and taxpaying citizen of the State. No such person shall be granted a license under this article who has had a previous license revoked, or who has been convicted of a violation of the provisions of any law applicable to the manufacture or sale of alcoholic beverages or who employs in his business any person whose license has been revoked, or who has been convicted of violating the provisions of any such law since the date aforesaid.
- B. *Partnerships.* No license provided for in this article shall be issued to any partnership unless all members of the partnership are persons who would be eligible for a license as individuals under the provisions of this article, and no license shall be issued to any partnership that has been the holder of a license that has been revoked.
- C. *Corporations.* No license provided for in this article shall be issued to a corporation except in conformity with the following:
 - 1. All officers and directors of such corporation must be persons of good moral character.
 - 2. The managing officer of the corporation is a person who is eligible for a license as an individual under the provisions of this article.
 - 3. Such corporation shall not have been the holder of a license that has been revoked. Any person may be designated by a corporation as its managing officer if he meets the qualifications for a license to an individual, and has been a resident of the State for thirty (30) days.
- D. *Right of possession or occupancy of premises.* Applicants for licenses under this article must be in possession of the premises for which the license is sought, or have the legal right to occupy the same, before any license shall be issued.

State law reference(s)—Qualifications for State licenses, RSMo 311.060, 312.040.

Sec. 4-78. Application—Generally.

- A. *Form.* Applicants for a license under this article may procure the proper forms by written request to the Director of Liquor Control setting forth in such request the specific type and nature of license sought and the location desired.
- B. *Identification of applicant.* Upon receipt of the application in addition to answering all other questions thereon, the applicant shall state his name and address if a person, or if a firm, partnership or association, the name and address of each member of the firm, partnership or association so applying, or, if the applicant is a corporation and requests a license for intoxicating liquor by the drink, the names and addresses of all its officers, members of its

board of directors, all stockholders and ownership interests shall be stated; the requirement as to stockholders shall be dispensed with if the stock in the corporation is publicly held.

- C. *Information required.* The following information shall be required in the application:
1. The place of birth of the applicants and if the applicant is a naturalized citizen, the date and place of naturalization;
 2. Whether or not the applicant has been convicted of a felony;
 3. Whether or not any distiller, wholesaler, wine maker, brewer, or supplier, or coin-operated, commercial, manual or mechanical amusement devices or the employees, officers or agents thereof, have any financial interest in the retail business of the applicant for the sale of alcoholic beverages, or C.O.L., and whether or not the applicant, either directly or indirectly, will borrow or accept from any such persons equipment, money, credit, or property of any kind except ordinary commercial credit for liquor sold;
 4. A complete description of the plans, specifications and fixtures in the applicant's proposed place of business, if the application is for a retail license; provided, however, that this shall apply only when application is for a new location or a change in the plans or specifications within a previously established location, in addition to the cost value of inventory other than intoxicating liquor at the proposed place of business;
 5. A statement that the applicant will not violate any of the ordinances of the City, the laws of the State or of the United States, in the conduct of the business;
 6. Whether or not the proposed location, place or premises, is within three hundred (300) feet of a school or church;
 7. The type of license for which application is made;
 8. If applicant is not a corporation, the names and business addresses of the applicant's employers for a period of five (5) years prior to the application;
 9. A comprehensive and informative statement disclosing the true ownership and management of the business; and
 10. Any further reasonable information required by the Director of Liquor Control regarding the location, place or premises for which a license is sought.
- D. *Photographs, fingerprints required.* The application shall be accompanied by a recent photograph of the individual signing same, together with a recent picture of the exterior and interior of the premises. All applicants shall be fingerprinted. If the applicant is a partnership, all partners shall be fingerprinted, as well as the managing director of a corporation. The Director of Liquor Control in his discretion, may make similar requirements of the officers, directors, and shareholders holding more than a ten (10) percent interest in such corporation.
- E. *False statements.* It shall be unlawful for any person in obtaining or attempting to obtain a license under this article to make any materially false statement in the application for such license.
- F. *Incomplete information.* It shall be unlawful for any person to fail to make a complete disclosure of all pertinent and material information required in the application for a license under this article.

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- G. *Full, true and complete answers required.* No license shall be granted hereunder unless the applicant renders full, true and complete answers to all questions contained on such application, and should an applicant make, or cause to be made, any false statements of a material matter in such application, the same shall be deemed cause for suspension or revocation by the Director of Liquor Control of any license issued pursuant to such application.
- H. *Application for original package license.* If an application sought is for an original package license, an affidavit by the individual owner or, if a partnership, all of the partners, or, if a corporation, the managing officer of the corporation, must be submitted therewith and contained therein the type of business presently engaged in or in conjunction with which the license shall be used, and further, stating that the applicant has, and at all times keeps in the applicant's place of business, a stock of goods having an invoice value of at least one thousand dollars (\$1,000.00), exclusive of fixtures and intoxicating liquors.

(Code 1988, § 4-78)

Sec. 4-79. Same—Priority.

Repealed

Sec. 4-80. Same—Investigation.

- A. The Director of Liquor Control shall supervise investigation of each application received for a license under this article, the character, background and associates of the applicant together with the suitability of the location and surrounding conditions of the proposed premises.
- B. The Director of Liquor Control may at any reasonable time, or upon application for renewal, request that the Fire Chief, the Director of Development Services, and the Director of Public Works make investigations of licensed premises and the equipment and furnishings thereon to determine if the premises are in compliance with all the requirements of the ordinances of the City within the jurisdiction of such officers.
- C. It shall be within the discretion of the Director of Liquor Control to request an investigation by any or all departments an investigation in connection with renewals of existing licenses.
- D. Upon completion of such investigation, each department shall return to the Director of Liquor Control a written report of same stating therein their respective findings.

(Code 1988, § 4-80)

Sec. 4-82. Issuance; restrictions on issuance; hearing upon denial.

- A. *Generally.* If an application for a license under this article is approved by the Director of Liquor Control and payment of the license fee made in the form of a bank draft, United States or express money order, certified check or cashier's check payable to the City for the correct amount of the license fee, the Director of Liquor Control shall grant to the applicant a license to operate and conduct business at the specific location in the City for the period as set forth in the license certificate.
- B. *Form, contents.* All licenses granted under this article shall be signed by the Director of Liquor Control and attested by the City Clerk with the seal of the City affixed thereon. Every

license shall set forth the type of license granted, and shall particularly describe the premises at which the approved alcoholic beverages may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of alcoholic liquor at any place other than that described therein.

- C. *Possession of licensed premises required.* No license shall be issued unless the licensee is in present possession of the premises described in such licensee's application.
- D. *One licensee per premises.* Only one (1) licensee, as provided for by this article, shall be allowed for any single premises at any given time.
- E. *Sales-by-drink and C.O.L. licenses.* A license shall not be issued under this article for a new location or for the expansion of existing premises until there has been compliance with the fire, health and building code and Unified Development Ordinance (UDO) of the City.
- F. *Use of licensed premises as dwellings.* No license shall be issued for the sale of alcoholic beverages or C.O.L. in or upon any structure occupied in whole or in part as a dwelling unless such dwelling is equipped with a separate entrance and unless there is no means of entrance or exit from the licensed premises to the dwelling section of the structure. This provision shall not apply to single rooms used by night watchmen as places of periodic rest. It shall be unlawful for any licensee to violate the provisions of this subsection during the terms of the license.
- G. *Denial, right of hearing.* If an application for a license under this article is denied by the Director of Liquor Control, the applicant shall have thirty (30) days to request an appeal hearing under the terms of Section 4-92.

(Code 1988, § 4-82)

Sec. 4-89. Sale or change in ownership or management.

- A. No person holding a license under this article shall make any change in the ownership of the business without first filing with the Director of Liquor Control, in writing, notice of intention to do so, with an affidavit listing the names and addresses of the names of the prospective transferee or transferees; nor shall such person make any change in the management or control of such business without first notifying the Director of Liquor Control, in writing, and by affidavit listing the names and residential addresses of any person who may have an interest in such business or take part in the management and control thereof, whether directly or indirectly and as a condition precedent for such transfer shall secure, in writing, the Director of Liquor Control's permission to do so.
- B. Whenever a corporation holding a license under the provisions of this article makes application for a change of managing officers, a charge of thirty-five dollars (\$35.00) shall be made for each such application for the purpose of defraying the costs of investigation of each prospective managing officer, such sum payable to the City.
- C. Any application for a sale or change in ownership or management shall be processed when received. The Director may refuse to approve the application by the purchaser of the business when such licensed business is under citation by the City or State Department of Liquor Control, and the matter has not yet been finally adjudicated.

(Code 1988, § 4-89)

Sec. 4-90. Transfer of location of licensed establishment.

- A. A license may, subject to the approval of the Director of Liquor Control, be transferred to any other part of the building containing the licensed premises if the premises sought to be licensed meets the requirements of this article.
- B. The Director must first approve such a transfer and the application for permission to transfer must be in writing, together with twenty-five dollars (\$25.00) to cover investigation costs, and shall set forth:
 - 1. The name and address of the licensee;
 - 2. The address and legal description of the premises to which removal is sought, together with the name and address of the landlord;
 - 3. An affidavit by such licensee that he, she or it has not, since the license was granted, violated any provisions of the liquor control ordinances of the City; and
 - 4. An affidavit containing any changes in the information contained in the original application or that there have been no changes.
- C. Any application for a transfer of location shall be processed when received. The Director may refuse to approve of any transfer of the business of a licensee when such licensee is under citation by the City or the State Department of Liquor Control, and the matter has not yet been fully adjudicated.

(Code 1988, § 4-90)

Sec. 4-91. Renewals.

- A. *Sales-by-drink, restaurant, and C.O.L. licenses.* Each person holding a license for the sale of alcoholic beverages by the drink, a restaurant license, or a C.O.L. license who desires that such license be renewed, shall file with the Director of Liquor Control an application for license renewal on or about May 1 and not later than May 15 of each year. Failure of a licensee to file such renewal application not later than May 15 of each year, may be considered abandonment or forfeiture of the current license upon expiration of such license.
- B. *Package and wholesaler's licenses.* Persons desiring renewal of licenses to sell alcoholic beverages in the original package and licenses to manufacture or sell at wholesale alcoholic beverages, shall file such application on or about May 1 and not later than May 15 of each year. Failure of a licensee to file such renewal application not later than May 15 of each year, may be considered abandonment or forfeiture of the current license upon expiration of such license or permit.
- C. *Other licenses.* Any person holding a license issued under this article that is not a sale-by-the-drink, restaurant, C.O.L., package sales, or wholesaler's license, may renew such person's license as per the terms of renewal regulations issued by the Director of Liquor Control.
- D. *Contents of application.* The application for renewal shall disclose in affidavit form the following information along with any other information the Director of Liquor Control deems necessary:

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1. Licensee shall state in affidavit form any changes in the information contained in the application not previously reported, or an affidavit stating there have been no changes in the information contained in the application.
- E. *Refusal to renew.* If any affidavit contains information that does not justify such renewal or if the Director has other information that the applicant has not met all the other requirements of this chapter, the Director may refuse to renew the license. In the event of such refusal, the applicant shall be given a hearing before the Council in the same manner as provided in Section 4-92 of this Code for suspension or revocation proceedings.
- F. *Renewal.* Renewals of existing licenses may be granted by the Director of Liquor Control. (Code 1988, § 4-91; Ord. No. 7247, § 3, 10-4-2012)

Sec. 4-92. Suspension and revocation.

- A. *Generally.* The Director of Liquor Control may, in addition to other penalties provided by ordinance, suspend or revoke any license issued under this article.
- B. *Scope of authority.* The Director shall suspend or revoke a license whenever it shall be shown or whenever the Director has knowledge that:
1. A licensee under this article has not at all times maintained an orderly place;
 2. Such licensee or any employee, agent, or servant of such licensee has violated any of the provisions of this chapter;
 3. The license held by such person was obtained through materially false statements in the application for such license or renewal thereof;
 4. The licensee failed to make a complete disclosure of all pertinent information in the application for such license or renewal thereof;
 5. The licensee, since the issuance of such license, has ceased to be the person actually engaged in the active control and management of the particular establishment for which the license was issued;
 6. The operation of a duly licensed liquor establishment, as contemplated herein, is discontinued or abandoned for a period of thirty (30) days or more; provided, however, that the Director shall first give five (5) days' written notice to the licensee of such establishment by causing same to be served upon the licensee or left at the licensee's last known address that such license be declared abandoned and forfeited; or
 7. Anything has occurred that would render the licensee or licensed premises ineligible or unsuitable for a license under the provisions of this article;
 8. The failure of any employee to secure a proper permit, as required by this chapter, shall be grounds for suspension or revocation of the retail liquor license unless it can be shown by the retail licensee that the licensee had no actual knowledge of such violation and did not contribute thereto.
- C. *Notice of suspension or revocation.* The Director of Liquor Control shall notify the licensee in writing of the intended action and the reasons therefor, and of the right to request an appeal hearing in regard thereto. The notice shall be served upon the person to whom the license is issued or by leaving a copy at the premises covered by the license or by mailing such notice to the person to whom the license issued at such person's last known address. The action indicated in the written notice shall be final unless the licensee shall file a

written request for hearing within ten (10) days of the notice with the Director of Liquor Control.

- D. *Hearing procedure.* The licensee's request for a hearing to appeal the decision of the Director of Liquor Control shall come before the City Council. The City Council shall within twenty (20) days after receipt of the request, notify the licensee of the date, time and place for the hearing. Notice shall be given in the same manner as the notice of suspension or revocation. The licensee shall have the full right to be represented by counsel, to produce witnesses and cross examine all witnesses who may appear against the licensee at any hearing on suspension or revocation of a license hereunder. Subpoenas may be issued by the Council for any witness whose presence is desired at any hearing or proceeding before the Council to suspend or revoke a license, and such subpoenas may be served by any member of the Police Department. The City Council shall conduct the hearing and enter a decision to suspend or revoke a license or approve or disapprove an application, renewal, transfer, or change in management or control of the business for a license. The decision shall include a finding of facts and conclusions of law in accordance with the rules and procedures adopted by the City Council. The method of judicial review of any decision of the Council shall be provided in RSMo. Chapter 536.
- E. *Cash bond prerequisite to hearing.* Should the licensee request that the hearing be reported or transcribed, before the hearing on suspension or revocation of a license hereunder shall be commenced, the holder of the license in question shall post with the Director a cash bond in the amount of one hundred dollars (\$100.00) which shall be retained by the City until a final determination has been reached, and upon ascertaining the City's costs of such hearing, the Mayor shall instruct the Director of Finance to assess the City's costs of such hearing from the cash deposit and place same in the general funds of the City, returning to the licensee the remaining amount, if any; provided, however, that if the costs of such hearings exceed the amount of cash deposit, such additional costs shall be borne by the licensee.
- F. *Effect of suspension or revocation on license fee.* There shall be no refund of any license fee upon a final decision of the Director of Liquor Control or should a majority of the members of the Council vote to suspend or revoke any license hereunder.
- G. *Licenses subject to suspension by proclamation; time limit.* All licenses issued under this article are granted upon the express condition that licensees hereunder shall suspend the sale of intoxicating liquor or for a period not to exceed forty-eight (48) hours whenever so ordered by proclamation of the Mayor or Director of Liquor Control in instances of public disturbances, riots, strikes, emergencies, catastrophes, acts of providence or for reasons giving rise to public necessity.

Sec. 4-94. Suspension or closing order violations prohibited.

It shall be unlawful for a licensee to fail to maintain a "closed place" during the time of any suspension or closing order. In addition, the license in question may be subject to further suspension or revocation by the Director of Liquor Control.

SECTION 3. That it is the intention of the City Council, and is it hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Lee's Summit, Missouri.

SECTION 4. That all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 5. That should any section, sentence or clause of this ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 6. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2021.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2021.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*