

CITY OF DOVER

ORDINANCE NO. 119

AN ORDINANCE OF THE CITY OF DOVER, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, REPEALING CITY OF DOVER ORDINANCE NO.13 IN ITS ENTIRETY AND ESTABLISHING NEW REGULATIONS AND LICENSING REQUIREMENTS FOR ALCOHOLIC BEVERAGE CONTROL; PROVIDING DEFINITIONS; REQUIRING A CITY ALCOHOLIC BEVERAGE LICENSE; ESTABLISHING THE APPLICATION PROCESS; PROHIBITING ISSUANCE OF A LICENSE TO WHOLESALERS AND MANUFACTURERS; DEFINING THE QUALIFICATIONS AND PROVIDING FOR INVESTIGATION OF APPLICANTS; PROVIDING FOR ISSUANCE OF LICENSE; PROVIDING LICENSEE REQUIREMENTS; RESTRICTING PREMISE LOCATIONS; PROVIDING FOR RIGHT OF ENTRY; PROVIDING LICENSE CONTENT; PROVIDING FOR LICENSE RENEWAL AND TRANSFER; PROVIDING FOR ISSUANCE OF AN ALCOHOLIC BEVERAGE CATERING PERMIT; SETTING LICENSE FEES AND PROVIDING FOR AMENDMENT OF FEES BY RESOLUTION; SETTING GENERAL LICENSE RESTRICTIONS FOR RETAILERS; PROHIBITING OPEN CONTAINER IN MOTOR VEHICLE; PROVIDING FOR REVOCATION AND/OR SUSPENSION OF LICENSE AND SETTING PROCEDURES; ESTABLISHING THAT MISREPRESENTATION FOR THE PURPOSE OF OBTAINING ALCOHOL IS A MISDEMEANOR; PROVIDING FOR VIOLATION & PENALTY; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Dover City Council has determined certain rules and regulations be set into place for alcoholic beverage sales within the City Limits of Dover to promote and protect the health, safety and general welfare of its citizenry.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DOVER, IDAHO, AS FOLLOWS:

SECTION 1. Definitions.

- a. **"Alcoholic Beverage"** shall mean any liquor, spirits, wine, beer, ale or other liquid containing more than one-half (1/2) of one (1%) percent of alcohol by volume, which is fit for and intended for beverage purposes.
- b. **"Liquor by the Drink"** shall include all intoxicating liquids or solids, excluding beer and wine, consumed or dispensed alone or mixed with or combined with some other substance suitable for consumption, including but not limited to, vodka, brandy, rum, gin, and whiskey.
- c. **"Beer"** shall mean any alcohol beverage obtained from the fermentation of sugar, barley, hops, malt, yeast, and similar ingredients, which shall contain no more than four (4%) percent of alcohol by weight.
- d. **"Wine"** shall mean any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which shall contain no more than fourteen (14%) percent alcohol by volume.
- e. **"Person"** shall mean an individual, firm, partnership, association, corporation or any group or combination acting as a unit.
- f. **"City"** shall refer to the corporate limits of the City of Dover.

- g. **"Off Premises Sales"** shall include all sales, transfers, distribution and dissemination of beer and wine by a person or establishment with the intent and for the purpose that said substance shall not be consumed on the premises of the person or establishment selling, distributing, transferring or dispensing the same.
- h. **"On Premises Sale"** shall include all sales, transfers, distribution or dissemination of beer, wine and/or liquor by the drink by a person with the intent that said substance shall be consumed on the premises of the person or establishment selling, distributing, transferring, or dispensing the same.
- i. **"Interdicted person"** means a person to whom the sale of any alcoholic beverage is prohibited under the laws of the state.
- j. **"Licensee"** shall mean any person(s) to whom a license is issued under the provisions of this Ordinance.
- k. **"Licensed Premises"** means the building in which the sale of beer, wine and/or liquor by the drink at retail is authorized. In the case of an Alcoholic Beverage Catering Permit, "licensed premises" shall mean the tent, booth, roped area, etc. that will be used as the designated area for alcohol sales.

SECTION 2. License Required. It shall be unlawful for any person to sell, trade, barter or dispose of alcoholic beverages at retail or retail by the drink within the City for a consideration without first procuring a license from the City and paying the required fees set forth in this Ordinance.

SECTION 3. License Application. Application for license for the sale, barter, trade or distribution of alcoholic beverages at retail within the City shall be in writing, signed and sworn by the applicant upon an application form furnished by the City Clerk. Applications shall include the following:

- a. The name and place of residence of the applicant, length of residence within the State of Idaho; if applicant is a partnership, the names, places of residence and length of residence within the State of Idaho of each partner; and if the applicant is a corporation, the date and place of incorporation, the location of its principal place of business in Idaho, and the names and places of residence of its officers, directors or members and the person who manages or will manage the business;
- b. The address of the location of the proposed business and the name of the owner of the premises for which the license is sought; and
- c. The information required to show that the applicant meets the qualifications required by this Ordinance, and such other information as may be prescribed and required by City Council.
- d. At the time application is filed the applicant shall also present copies of a License to sell beer, wine and/or liquor by the drink, whichever is applicable, obtained from both the State and the County, and a copy of the premises layout submitted with the State Application.

SECTION 4. Issuance Prohibited to Wholesalers and Manufacturers. No retailer's license to sell, trade, barter and/or dispose of alcoholic beverages shall be issued to any person holding a wholesale or manufacturers' license.

SECTION 5. Qualifications and Investigation.

- a. An applicant for a license shall possess all of the qualifications necessary to obtain a License from the Director of Law Enforcement of the State of Idaho, as prescribed by the laws of the State of Idaho, and maintain such qualifications throughout the period for which such license is issued. The possession of a License regularly issued by the Department of Law Enforcement and Bonner County, Idaho shall be prima facie evidence of the applicant's qualifications to receive a license hereunder.
- b. The application shall affirmatively show that:
 - i. The applicant is the bona fide owner of the business which will be engaged in the sale of beer, wine and/or liquor by the drink at retail;
 - ii. The condition of the place or building wherein it is proposed to sell alcoholic beverages conforms to all laws and regulations of the State of Idaho, the County and the Ordinances of the City applicable thereto relating to public health, safety and to the zoning ordinances of the City;
 - iii. The individual applicant, or at least one (1) partner of a partnership applicant, is a citizen of the United States; or, with respect to a corporation or association, that it is qualified to do business within the State of Idaho and that the person(s) who is or will be the manager of the corporation's or association's business is a citizen; provided further, that such individual applicant or at least one (1) of the partners of the partnership applicant shall be a bona fide resident of the State of Idaho for at least thirty (30) days immediately prior to the application;
 - iv. The applicant or at least one of the partners of a partnership, is not less than twenty-one (21) years of age;
 - v. The applicant has not been convicted of any felony or paid any fine or completed any sentence of confinement therefore within five (5) years immediately preceding the date of filing an application; and
 - vi. The applicant has not been convicted of any violation, had revocation of any license provided for herein, or any license or permit issued to the applicant pursuant to the laws of the State of Idaho relating to the importation, transportation, manufacture or sale of alcoholic beverages within three (3) years immediately preceding the date of filing an application.
- c. All applications prior to submittal to City Council for approval shall first be reviewed by the Bonner County Sheriff Department, who will make a recommendation concerning whether the applicant is qualified by setting forth any prior criminal record of the applicant, if any, and recommending whether the license should be granted or whether any conditions should be imposed upon the granting of the license.
- d. All applications received by the City Clerk shall be presented to the Mayor and City Council at their next regular meeting for approval, rejection and/or further

consideration. The City Council shall grant or deny the application within thirty (30) days of the time it is filed with the City Clerk.

SECTION 6. Issuance of License. Upon filing the application, showing evidence of qualifications and by payment of the required fee(s) hereinafter set forth, the City Clerk shall, upon approval of the City Council, issue to the applicant a license to sell the designated alcoholic beverage within the City, but only in accordance with the provisions of this Ordinance and Chapter 9 of Title 23 of the Idaho Code, as each may be amended from time to time.

- a. Licenses will be for a period of no longer than one (1) year. Licenses will be issued on January 1 of each year and shall expire at two o'clock (2:00) a.m. December 31 of that year. All approved applications after January 1st of any year, will be charged a full year's license fee and will not be pro-rated.
- b. Licenses shall specify a certain room or building designated for the purpose of sale, barter and/or disposal of alcoholic beverages. These premises shall not be changed or moved without the consent of City Council. Licensed premises shall be limited to the area designated in the premises layout submitted with the application, which may not be expanded without submitting an amended application and obtaining approval of the City Council.
- c. All licenses shall be posted in a conspicuous place on the premises and shall be kept so posted during the full period of time for which issued and said licenses shall not be sold, transferred or assigned without the written consent of City Council.
- d. No person shall be granted more than one (1) license in one (1) year. No partnership, association or corporation holding a license under this Ordinance shall have as a member, officer or stockholder or any person who has any financial interest of any kind in, or is a member of, another partnership or association, or is an officer of another corporation holding a license in the City for the same year.
- e. If City Council determines that the contents of the application are true, that such applicant is qualified to receive a license, that his premises are suitable for the carrying on of the intended business, and that the requirements of this Ordinance have been met and complied with, a license shall be issued.
- f. Otherwise, the applicant shall be denied and the license fee returned. Denial of a license shall be stated in writing and shall include:
 - i. The statutes or ordinances and standards used in evaluating the application;
 - ii. The reason for the denial; and
 - iii. The action, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

SECTION 7. Licensee' Requirements. Upon approval and issuance of licensing, each licensee shall at all times during which beer, wine and/or liquor by the drink is being sold, served, dispensed, given away, otherwise disposed or consumed upon the licensed premises:

- a. Keep a sign conspicuously posted stating the legal drinking age of the State of Idaho and that no minors will be served.

- b. Keep each room and/or area of a licensed premise where alcoholic beverages are sold sufficiently lighted with illumination and to the extent that objects and persons are clearly distinguishable from one end of the room to the other.
- c. Keep and maintain agents and employees as necessary to provide for the safety and security of patrons. This requirement is intended to provide additional supervisory security and safety measures during the licensee's hours of operation. Failure to have sufficient security personnel may be grounds for the revocation of the license granted hereunder.
- d. Nothing herein is intended to limit the rights, duties and obligations of the City Police and/or Bonner County Sheriff Department in keeping the peace.

SECTION 8. Premises Location Restrictions. No license shall be issued to any applicant to sell any alcoholic beverages for consumption on the premises where any part of the room or other place for such sale or consumption is:

- a. Within a radius of three hundred (300) feet of any part of the building within which any public school activities are conducted; nor
- b. Within a radius of one hundred fifty feet (150) feet of any room within which the regular religious or Sunday school services of a duly organized and established sect are; nor
- c. Within a radius of one hundred fifty (150) feet of any hospital.

SECTION 9. Right of Entry of Premises.

- a. Any duly authorized police officer of the City, County or State shall have the right at any time to make an examination of the premises of any licensee to ascertain whether the laws of the State and the provisions of this Ordinance are being complied with, and it is unlawful to refuse such officer the right of admittance or access to such premises.
- b. The Panhandle Health District shall have the right at all times to enter in and upon any licensed premises for the purpose of the regulation and inspection of such premises, and it shall be unlawful to refuse any such authorized person(s) the right of admittance or access to such premises.

SECTION 10. Contents of License.

- a. All licenses issued shall be signed by the Mayor and shall name the person(s) or business to whom issued, the type of license approved, and includes a specific description of the premises where sale is authorized.
- b. The City Clerk shall keep a list of all licenses issued, stating the number, name, and type of business for which license was issued, together with the amount paid.

SECTION 11. License Renewal.

- a. Application for renewal of a license to sell alcoholic beverages shall be on the same form as the application for the initial license.
- b. If all of the information in the application for renewal provided by the licensee is the same as provided for the initial license, the City Clerk may issue the renewal without the application being submitted to Council.

SECTION 12. Transfer of License.

- a. Application for transfer of a license to sell beer, wine and/or liquor shall be on the form provided by the City Clerk. Upon receipt of such application, along with a transfer fee in an amount to be set by Council by Resolution, the City Clerk shall submit said application and the original application to the Mayor and City Council. The City shall make the same investigation and determination with respect to the transferee as required in this Ordinance
- b. If the City Council determines that all conditions required of a licensee under the provisions of this Ordinance have been met by the proposed transferee, City Council shall note its approval thereof upon such license. No license shall be transferred to any applicant that does not meet the requirements for a license.
- c. Nothing in this action shall be construed to permit the transfer of a license to premises other than the premises originally designated in the license.
- d. In the case of receivership, assignment, bankruptcy or incompetence of the licensee business may be carried on under the license by the duly appointed, qualified and acting receiver, assignee, trustee in bankruptcy, guardian, executor or administrator of the licensee; provided, that such receiver, assignee, trustee, guardian, executor or administrator shall file with the City Clerk a duly certified copy of his appointment and secure the written consent of City Council.

SECTION 13. Alcoholic Beverage Catering Permit. Holders of a State and County Liquor License to sell alcoholic beverages to be consumed on the premises may serve and sell beer, wine and/or liquor by the drink off the licensed premises with an Alcoholic Beverage Catering Permit issued by the City. Any licensee desiring to sell off the licensed premises may apply to City Council for an Alcoholic Beverage Catering Permit to do so.

- a. The Temporary Alcoholic Beverage Permit shall be limited to authorization to sell beer, wine and/or liquor by the drink, or any combination thereof, based upon the type of State and County License(s) which the applicant already possesses.
- b. Alcoholic Beverage Catering Permits shall not exceed three (3) consecutive days.
- c. A non-refundable filing fee shall accompany the application for an Alcoholic Beverage Catering Permit along with a copy of the State and County Liquor Licenses issued to applicant.

- d. Application shall be made and filed with the City Clerk on a form supplied by the City Clerk at least twenty (20) days prior to the next regularly scheduled City Council meeting.
- e. The application shall provide for:
 - i. The name and address of the applicant;
 - ii. The number of the applicant's state liquor, beer or wine license;
 - iii. The dates and hours during which the permit is to be effective;
 - iv. The name of the organization, groups or person(s) sponsoring the event;
 - v. The address of the event to be held with a description of the area within the event or location where the alcoholic beverages are to be served.
- f. City Council, taking into account the public health and welfare, the interests of adjoining property owners, noise, traffic and vehicular and pedestrian safety, may issue a temporary license for a specified event and for a specified period of time and under such conditions and restrictions as the City Council may deem prudent under the circumstances.

SECTION 14. License Fees. . The establishment of fees for liquor, beer and wine licenses and permits in all of the categories and descriptions set forth herein shall be amended and/or modified by Resolution of the City Council.

Provided further, any person desiring to sell alcoholic beverages from more than one (1) of the above listed categories must obtain a license and pay the required fee for each category desired.

SECTION 15. General License Restrictions.

- a. Retailers who do not possess a valid license for the sale of any alcoholic beverages on premises, shall not permit consumption of alcoholic beverages on the licensed premises and may sell beer and/or wine for consumption off premises in their original unbroken, sealed containers only.
- b. Retailers holding a valid license for alcoholic beverages on the premises shall not sell any alcoholic beverages for consumption off the premises without first obtaining a license permitting such sale.
- c. No licensee authorized to sell liquor by the drink, shall keep for sale, dispense, give away or otherwise dispose of any liquor in its original containers for off premises consumption. Only beer and/or wine may be sold in their original containers for consumption off premises.
- d. It is unlawful to permit anyone under twenty-one (21) years of age to consume any alcoholic beverages.
- e. It is unlawful to sell, give away or in any way dispose of any alcoholic beverages to any person under twenty-one (21) years of age.
- f. No alcoholic beverage of any kind shall be sold to an interdicted person.

- g. No alcoholic beverage of any kind shall be sold to any person actually, apparently or obviously intoxicated.
- h. No liquor by the drink of any kind shall be sold on the day of a general election until after the polls close.
- i. No liquor by the drink of any kind shall be sold on Christmas between the hours of two o'clock (2:00) a.m. through ten o'clock (10:00) a.m. the following day.
- j. No alcoholic beverage of any kind shall be sold and/or consumed on the premises at any time between the hours of two o'clock (2:00) am and six o'clock (6:00) am.
- k. No liquor by the drink of any kind shall be sold and/or consumed on the premises at any time between the hours of two o'clock (2:00) am and ten (10:00) am
- l. Any patron present on the licensed premises after the sale of alcoholic beverages has stopped as provided above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverage already sold.
- m. It shall be unlawful to permit any person to remove from the premises, any alcoholic beverage in any open container.
- n. It is unlawful to sell, serve, give away, dispense, consume or carry any alcoholic beverages in open containers on or in any public street, highway, alley, lane, sidewalk, public or private parking lot, or any school properties within the City, unless otherwise authorized or permitted by the City through a special events permit and temporary license.
- o. In the event the laws of the state of Idaho mandate any different minimum age for either the consumption of alcoholic beverages, or the licensee requirements for the sale thereof, such provisions shall automatically be adopted and replace the above referenced ages.
- p. It shall be unlawful for any licensee to conduct or permit to be conducted, played or carried on any game played with cards, dice or other device for money, checks, credit or other consideration of value upon any licensed premises.
- q. No licensee, employee or customer shall bring any alcoholic beverage for the purpose of consumption into the licensed premises, unless it is in its original unbroken, unsealed container and from the wholesaler for resale by the licensee at the designated licensed premises.

SECTION 16. Prohibition of Open Container in Motor Vehicles. No person(s) shall have in his or her possession an open container containing alcoholic beverages within or on a motor vehicle, including motorcycles, while parked or standing on a public street in the City, or while such vehicle is in motion.

SECTION 17. Revocation or Suspension of License. The revocation or suspension of the State License by the Director of Law Enforcement, or the Bonner County License, shall be deemed prima facie evidence for revocation of or suspension of the license issued herein.

- a. The City Council shall retain the right at all times to suspend, revoke, or refuse to renew any alcoholic beverage license:
 - i. If licensee has made any false statements in the application for a license, or did not have or has not retained the qualifications for a license;
 - ii. If licensee or an employee of licensee is in violation of any of the provisions of Title 23, Idaho Code;
 - iii. If licensee or an employee of licensee is convicted of a violation of any provisions of Title 23, Idaho Code;
 - iv. If licensee or an employee of licensee is in violation of any of the provisions of this Ordinance; and
 - v. For any conduct or act of the licensee or his employees, or any conduct or act permitted by him or them adjacent thereto, tending to render such business or such premises as a public nuisance or a menace to the health, peace, safety or general welfare of the citizens, or otherwise causing such business to be construed as disorderly or disreputable.
- b. The City Council may elect to suspend a license to sell any alcoholic beverage rather than to revoke the license if the licensee violates any or fails to comply with any of the provisions of the Idaho Code relating to retail sales of alcoholic beverages or rules and regulations promulgated in accordance with those provisions or violates or fails to comply with this Ordinance.
- c. Prior to the effective date of the suspension, the affected licensee may request that a monetary payment be allowed in lieu of the license suspension. If the City Council determines that such payment be consistent with the purpose of the laws of the State of Idaho and the City and is in the public interest, the Council shall establish a monetary amount not to exceed Five Thousand Dollars (\$5,000.00). Upon payment of the amount established, the suspension shall be cancelled.
- d. The licensee may reject the payment amount and instead be subject to the suspension.

SECTION 18. Hearing for Revocation or Suspension. If City Council for any reason deems revocation or suspension of the license appropriate, the licensee shall be afforded a hearing before City Council together with the right of representation at licensee's expense and choosing.

- a. The City Clerk shall provide written notice to the licensee of said hearing setting forth the time, place and date for said hearing which shall be at least five (5) days from the date first notified of City Council's decision to revoke or suspend. Only after such hearing is held or waived by the licensee, shall the license in question be suspended or revoked.
- b. Upon such suspension or revocation, no refund of any unexpired portion of the license fee shall be made to the licensee.

- c. A certified copy of such suspension or revocation shall immediately be forwarded to the State Director of Law Enforcement and the Bonner County Sheriff Department by the City Clerk.

SECTION 19. Purchase by Unqualified Person. Any person under the age of twenty-one (21) years or other person who knowingly misrepresents his qualifications for the purpose of obtaining alcoholic beverages from any licensee shall be equally guilty with such licensee and shall upon conviction thereof be guilty of a misdemeanor.

SECTION 20. Violation and Penalty. Any person who violates any of the provisions of this Ordinance or fails to comply with any of the terms and conditions hereof shall be guilty of a misdemeanor and upon conviction, thereof shall be fined not more than One Thousand Dollars (\$1,000.00) or sentenced to not more than six (6) months in the County Jail, or both. A violation of any of the provisions of this Ordinance by any agent, employee, servant or other person in any way acting in behalf of the licensee shall be presumed to be a violation by the licensee.

SECTION 21. Severability. The provisions of this Ordinance are hereby declared to be severable and if any provision of this Ordinance or the application of such provision to a person or circumstance is declared to be invalid for any reason such declaration shall not affect the validity of the remaining portions of this Ordinance.

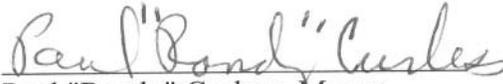
SECTION 22. Effective Date. This Ordinance shall be in full force and effect upon passage and publication provided by law.

Upon suspension of the rules and a motion and second to approve the foregoing the following vote was recorded:

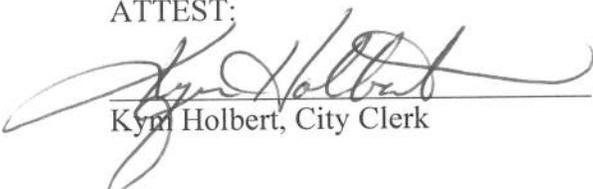
Councilman Janish	Aye
Councilman Darling	Aye
Councilwoman Burge	Aye
Councilwoman Becker	Absent

PASSED AND ADOPTED BY THE DOVER CITY COUNCIL AND APPROVED BY THE MAYOR THIS 9th DAY OF JUNE, 2011.

CITY OF DOVER,
BONNER COUNTY, IDAHO


Paul "Randy" Curless, Mayor

ATTEST:


Kym Holbert, City Clerk