

## **CHAPTER 3 BEER**

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4-3-1: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

**BEER:** Any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water and which contains not more than four percent (4%) alcohol by weight.

**DISTRIBUTOR:** A person who is employed by or is an agent of a retailer to sell, serve or dispense beer.

**LICENSE:** A license issued by the City Council authorizing a licensee to sell beer at retail.

**LICENSEE:** A qualified person to whom a license for the retail sale of beer is issued under the provisions of this Chapter.

**PREMISES:** The building, room or place in which the retail sale of beer by a licensee is authorized under this Chapter.

**RETAILER:** A person to whom a beer license has been issued. (Ord. 2148, 8-4-94; Ord. 2492, 6-12-03)

4-3-2: LICENSE REQUIRED: Except as otherwise provided in this Chapter, no person shall sell or dispense beer at retail within the City without first obtaining a license from the City as required by this Chapter.

4-3-3: LICENSE FEES: An annual license fee for the retail sale of beer for consumption on or off the premises and an annual license fee for retail sale of bottled or canned beer for consumption only off the premises shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-2014)

4-3-4: APPLICATION FOR LICENSE:

(A) Each applicant for a license for the retail sale of beer shall file with the City Clerk a written application that states the following:

- (1) The name and residential address of the applicant.
- (2) The street address of the premises where beer is to be sold.
- (3) The name of the owner of the premises for which the license is sought.
- (4) That the applicant, if an individual, is at least nineteen (19) years old.
- (5) That the applicant has not been convicted of a felony or any crime involving moral turpitude.
- (6) The names and addresses of four (4) references as to the good moral character of the applicant.
- (7) That the applicant holds a current, valid license for the retail sale of beer, issued by the County Commissioners of Bonneville County, Idaho.
- (8) That the applicant agrees to abide by the terms and conditions of this Chapter, and any laws, ordinances, rules or regulations subsequently promulgated by the State, Bonneville County or the City regarding the retail sale of beer within the City.
- (9) Any other information the Clerk requires to determine that the applicant possesses the qualifications and has none of the disqualifications for a license, as provided in this Chapter and in Sections 23-1010 and 23-1016, Idaho Code, as amended.

(B) On receipt of a written application conforming with subsection (A) of this Section and payment of the license fee, the City Clerk shall immediately forward the application to the Chief of Police for review, investigation and recommendation. If the Chief of Police recommends denial of the license application, the Chief shall notify the applicant of the recommendation and state the date, time and place of the next City Council meeting at which the recommendation will be considered. The notice shall be in writing and shall be mailed to the applicant at the address in the application no later than seven (7) days prior to the date of the City Council meeting.

(C) At the date, time and place stated in the notice, the City Council shall consider the application and hear testimony and evidence from any interested person. No license application shall be denied unless the written notice required by subsection (B) of this Section has been given and the applicant has been given an opportunity to testify and present evidence in support of the issuance of the license. All applications for a retail beer license or any transfer or renewal of a retail beer license shall be granted or denied within sixty (60) days from the date the application was delivered to the City Clerk.

(D) If the Council denies an application for a retail beer license, or any renewal or transfer of a retail beer license, the Council shall specify in writing:

- (1) The statutes, ordinances and standards used in evaluating the application;
- (2) The reasons for denial; and
- (3) The actions, if any, the applicant could take to obtain the license, transfer or renewal.

(E) The City Clerk shall keep a transcribable verbatim record of all proceedings concerning applications for beer licenses, or their transfer, renewal or revocation, pursuant to the provisions of this Chapter. If an application for a license, transfer or renewal is denied, or if a license is revoked, the transcribable verbatim record shall be kept for a period of not less than six (6) months after a final decision. Upon request and within the time provided for retention of the record, persons may have the record transcribed at their expense. (Ord. 2565, 11-9-04)

4-3-5: PROHIBITED LICENSES: No license for retail sale of beer shall be issued to any person holding a wholesaler's or manufacturer's license issued by the State.

4-3-6: LICENSE FOR DESIGNATED ADDRESS ONLY: A license for the retail sale of beer shall be granted only for the place designated in the application. The place of business shall not be changed or moved without the consent the Council.

4-3-7: LOCATION RESTRICTIONS:

(A) No license shall be issued for any premises that is within three hundred (300) feet of any public school, church, or any other place of worship. Such distance shall be measured in a straight line between the nearest entrance to the licensed premises and the nearest property line of such school, church or place of worship.

(B) No person shall sell or dispense beer for consumption on the premises at any place within three hundred feet of any public school, church or other place of worship, measured in a straight line between the nearest entrance to such place and the nearest property line of such school, church or place of worship. Notwithstanding the foregoing, nothing herein shall prohibit the sale or dispensing of beer for consumption on the premises at a public school, church or other place of worship pursuant to a permit issued under Section 4-3-16 of this Chapter to an applicant which owns or operates such school, church or place of worship.

(C) The provisions of subsections (A) and (B) above shall not apply to any premises that met the qualifications of such subsection at the time the premises were first licensed, but thereafter fail to meet such location restrictions because of the construction or commencement of use of such public facility or place of worship subsequent to such first licensing.

(D) The City Council may for good cause grant a variance to the provisions of Sections (A) or (B) above. Prior to granting such variance, the City Council shall hold a public hearing after giving written notice to the owners or occupants of all properties located within three hundred (300) feet of the exterior boundaries of the proposed licensed premises, measured in the manner set forth above. Such notice shall be given at least fifteen days prior to the date of the hearing. Notice shall be deemed to have been given upon its personal delivery to such owner or occupant or upon its deposit in the United States mail, addressed to the owner at the address last shown on the Bonneville County property tax rolls. (Ord. 2385, 8-10-00; Ord. 2866, 3-10-11)

4-3-8: POSTING OF LICENSE: All licenses for the sale of beer shall be posted in a place conspicuous to the public at the licensed premises at all times when the premises are open for business.

4-3-9: TRANSFER OF LICENSE; TRANSFER FEE: No license may be transferred to another person who has not obtained approval of the City Council after making an application containing the information required by Section 4-3-5. If a transferee has all of the qualifications and none of the disqualifications for a license to sell beer at retail, the City Council shall approve the transfer and the City Clerk shall re-issue the license in the name of the transferee. The fee to transfer a license for the retail sale of beer for consumption on or off the premises, and a license for the retail sale of bottled or canned beer only for consumption off the premises shall be in an amount set from time to time by Resolution of the Council. The license for the transferring license shall be surrendered to the City Clerk before such transfer may be made. (Ord. 2964, 8-14-2014)

4-3-10: RIGHT OF ENTRY: Any police officer shall have the right at any time to enter and examine the premises of any licensee or of any place where beer is sold at retail to ascertain

the alcoholic content of any beer kept for sale on the premises or to ascertain compliance with the laws of the State and the City. It shall be unlawful to refuse any police officer admittance to the premises for such purposes.

4-3-11: SALE TO MINORS PROHIBITED:

(A) No person under twenty-one (21) years of age shall sell, purchase, possess or consume any beer. This restriction shall not apply to persons at least nineteen (19) years old who sell, dispense, deliver or possess beer in the course of their employment by a licensee under this Title.

(B) No person shall give, sell or deliver beer to any person under the age of twenty-one (21).

(C) No person under the age of twenty-one (21) shall represent to any retailer or distributor or to any agent or employee of a retailer or distributor that he or she is twenty-one (21) years or more of age, when in fact he or she is under the age of twenty-one (21) years, for the purpose of inducing the retailer or distributor, or his agent or employee, to sell, serve or dispense beer to such person.

(D) No person shall represent to any retailer or distributor or to any agent or employee of a retailer or distributor that any other person is twenty-one (21) years or more of age, when in fact the other person is under the age of twenty-one (21) years, for the purpose of inducing the retailer or distributor, or his agent or employee, to sell, serve or dispense beer to such other person.

4-3-11(A): DISPENSING TO INTOXICATED PERSON: Any person who (1) sells, gives, or dispenses any beer to another person who is intoxicated or apparently intoxicated, or (2) who allows such sale or delivery to be made by any employee or agent under his or her control, shall be guilty of a misdemeanor and shall be subject to suspension of any license issued under Chapters two through four inclusive of this Title. (Ord. 2846, 10-14-10)

4-3-12: CONDUCT OF BUSINESS: Every person licensed under this Title to sell beer at retail shall at all times conduct a quiet and well-lighted, orderly place of business.

4-3-13: COVERING WINDOWS ON STREET LEVELS UNLAWFUL: Street level windows adjacent to any public street in premises owned or controlled by any person licensed under this Title to sell beer at retail shall not be covered by curtains, paint or any substance that obscures or tends to obscure the view into the premises from the street. (Ord. 2385, 8-10-00; Ord. 2447, 5-9-02; Ord. 2804, 3-12-09; Ord. 2818, 7-23-09)

4-3-14: HOURS OF SALE - RETAIL SALES: It shall be unlawful for any person in any place licensed to sell beer for consumption off the premises, to sell or dispense beer or to permit the consumption of beer on the premises between the following hours:

(A) 1:00 a.m. and 7:00 a.m. of any day; and

(B) 1:00 a.m. Christmas Day and 7:00 a.m. of the day following such holiday.

4-3-15: HOURS OF SALE - BY THE DRINK:

(A) It shall be unlawful for any person in any place licensed to sell beer for consumption on the premises, whether for pleasure or profit, to sell, offer to sell or dispense beer for consumption on the premises or to permit the consumption of beer on the premises between the following hours:

(1) 1:00 a.m. and 7:00 a.m. of any day;

(2) 1:00 a.m. on Christmas and 7:00 a.m. of the day following such holidays.

(Ord. 2385, 8-10-00; Ord. 2818, 7-23-09; Ord. 2847, 10-14-10)

4-3-16 BEER SOLD OR DONATED FOR BENEVOLENT, CHARITABLE OR PUBLIC PURPOSES - PERMIT REQUIRED:

(A) Notwithstanding the provisions of Section 4-3-2 of this Chapter, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of beer or kegs of beer to a person which has not been issued any license for the sale of alcoholic beverages in this state, for benevolent, charitable or public purposes if a permit has been issued to the person or nonprofit entity as provided in subsection (B) of this Section.

(B) Upon delivery to the City Clerk of a properly completed application in accordance with the provisions of this Chapter and following receipt of an affirmative recommendation from the Chief of Police, the City Council may issue to a Qualified Organization a permit authorizing the sale or dispensing of beer at an event sponsored by such qualified organization if the City Council is satisfied that the proceeds, after deducting reasonable expenses incurred, will be donated for a benevolent, charitable or public purpose.

(C) Any permit issued to an applicant who desires to conduct a charitable event within the City shall be subject to the following conditions:

(1) Except as otherwise provided in subsections (2) and (3) of this section, all events shall be conducted within a confined area constructed and operated in accordance with the terms and provisions of this subsection. The applicant shall designate in his or her application an area not to exceed one thousand two hundred fifty (1,250) square feet in which all beer will be sold, dispensed, possessed and consumed. Such area shall be completely surrounded by a fence, barricade, or other physical barrier to pedestrian traffic, except for one (1) opening not to exceed six (6) feet in width. Such defined premises shall be at such location as may be

approved by the Chief of Police or his or her designee, which location shall be specified on the permit. Such defined area shall be considered to be the "premises" for the purposes of Section 4-3-17 (B)(5) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain in a conspicuous location at all times, a sign with large letters no less than two (2) inches high bearing the following legend: "No Open Container of Beer May Be Possessed or Transported Beyond the Fenced Area," or such other legend which adequately apprises customers of the prohibitions set forth in section 4-3-17, City Code. Beer shall not be sold, conveyed or dispensed between the hours of 9:00 o'clock p.m. and 10:00 o'clock a.m. of the following day. Failure to construct or maintain such fence, barrier or sign, or failure to comply with such hours of operation, shall be grounds for summary revocation of such permit. The Chief of Police or City Council may establish additional conditions or restrictions as reasonably necessary to protect the public health and safety, or alternatively may waive or modify the conditions and restrictions herein provided such waiver or modification does not jeopardize the public health and safety.

(2) Charitable events may, with the prior approval of the Chief of Police, be conducted in or upon a public street, subject to the terms and conditions of this subsection. Beer may be dispensed at an event conducted in a public street and within an area comprised of no more than one (1) street on one (1) side of a City block, excluding any intersections thereof, provided it is dispensed only between the hours of 5:00 o'clock p.m. and 9:00 o'clock p.m. on any permitted day of the week. Beer shall not be sold on Sundays or legal holidays at such events. Such street area shall be considered to be the "premises" for the purposes of Section 4-3-17(B)(5) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain at all times in a conspicuous location at each end of such street area, a sign with large letters no less than two (2) inches high bearing the following legend: "No Open Container of Beer May Be Possessed or Transported Beyond this Point" or such other legend which adequately apprises customers of the prohibitions set forth in section 4-3-17, City Code. Failure to construct or maintain such fence, barrier or sign shall be grounds for summary revocation of such permit.

(3) Charitable events may be conducted within the confines of (a) the public plaza located at the corner of Park and B Street, or (b) the Tautphaus Park Zoo, which plaza or Zoo shall be considered to be the "premises" for the purpose of sections 4-3-17(B)(5) and 8-3-4(C) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain in a conspicuous location within such plaza or Zoo at least two (2) signs with large letters no less than two inches (2") high bearing an appropriate legend which adequately

apprises the customer of the prohibitions set forth in section 4-3-17, City Code. Failure to construct or maintain such sign shall be grounds for summary revocation of such permit. For the purposes hereof, the term "Zoo" shall consist of that area bounded by the perimeter fence of the Idaho Falls Tautphaus Park Zoo, but in no event closer than thirty (30) feet measured perpendicularly to such fence. Events conducted within the Zoo shall be subject to the further condition that all net proceeds derived from such event shall be used for the benefit of or donated to the Tautphaus Park Zoo.

(D) Permits issued under subsection (C)(1), (2) or (3) above, shall not exceed a period of greater than three (3) consecutive days. No Qualified Organization shall conduct more than two (2) events within the Green in any calendar year. Nothing herein shall authorize or allow the issuance of any permit to sell or dispense beer in any park in violation of Section 8-3-4, City Code.

(E) The form of the application shall require the following information:

- (1) The names, mailing addresses and telephone numbers of the sponsors of the event, the tax identification number of the sponsor or sponsors and satisfactory evidence that the sponsor is a Qualified Organization;
- (2) Quantities and types of beer products to be used at the event;
- (3) Names of the dealer or wholesaler from whom the beer is to be received;
- (4) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense beer on behalf of the permittee;
- (5) Dates and hours of operation for which the permit is desired.
- (6) The location of the event and a description of the premises where beer will be sold, dispensed or conveyed;
- (7) Such other information directly related to the event and the applicant that the City Clerk or Chief of Police may require.

(F) For the purposes hereof, a "Qualified Organization" shall mean any benevolent, charitable or public organization or person to whom a permit has been issued by the Director of the Idaho Department of Law Enforcement pursuant to the provisions of Idaho Code Section 23-1007(A).

(G) Within ninety (90) days after the conclusion of the event, the permittee shall submit an accurate and complete report to the City Clerk showing the disposition of funds from the event in accordance with the provisions of this Chapter.

(H) The Clerk shall collect a fee in an amount set from time to time by Resolution of the Council for each permit issued, provided however permits issued pursuant to section 4-3-16(C)(2) may be issued for multiple events conducted within a calendar year, provided that such events are separated by a period of at least six (6) days. Such multiple event permit fee shall be in an amount as set from time to time by Resolution of the Council. In the event an applicant seeks a permit to sell beer and wine at the same location, the combined permit fee shall be in an amount set from time to time by Resolution of the Council.

(I) Should the Chief of Police or City Council determine that an applicant, permittee or its representative is violating any provision of this Chapter, or has in the past violated any law pertaining to the dispensing or sale of beer by a licensed retailer relating to hours of sale, relating to restrictions concerning age provided in Section 23-1013, Idaho Code or under this Chapter, or has failed in the past to submit such information as may have been requested by the City Clerk such permit may be summarily suspended by the Chief of Police prior to hearing, or may be denied or canceled pending a hearing.

(J) A licensed retailer may, on behalf of the permittee, receive or store beer to be used at the event and may dispense such beer to attendees of the benevolent, charitable or public purpose event for which the permit was issued. (Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2492, 6-12-03; Ord. 2650, 06-08-06; Ord. 2809, 4-23-09; Ord. 2836, 4-22-10; Ord. 2866, 3-10-11; Ord. 2964, 8-14-2014))

#### 4-3-17: POSSESSION OF OPEN CONTAINERS PROHIBITED:

(A) Any person who is in possession of an open container of beer within the City of Idaho Falls shall be guilty of a misdemeanor.

(B) Notwithstanding the foregoing, nothing herein shall prohibit the possession of an open container of beer:

- (1) Within a fully enclosed, privately-owned building or upon a private parking lot adjacent or appurtenant to such building provided such parking lot is located more than two hundred (200) feet away from the premises of any licensed liquor vendor. Such distance shall be measured at the shortest distance between the exterior boundaries of such parking lot and licensed premises.
- (2) Within any private residence or upon the yard thereabout, or within any apartment, duplex, condominium, boarding house or other structure lawfully used as a permanent residence, or within any

common area or area designated exclusively for and appurtenant to such residential occupancy.

- (3) Within any area for which a liquor catering permit has been lawfully issued under the provisions of this Chapter.
- (4) Within any area included within or being a part of the premises at which a licensee is authorized to sell or dispense beer by the drink under the provisions of this Code.
- (5) Within any building or upon any premises for which a permit has been issued under the provisions of Section 4-3-16 of this Chapter.
- (6) Within an area directly adjacent to a restaurant, at tables provided for dining, between the hours of 10:00 a.m. and 11:00 p.m. “Restaurant” is defined as an eating establishment which offers for sale food to the public. A restaurant must also have the appropriate license to sell the type of alcohol they offer to the public, including an approved site plan as part of its State alcohol permit. If the adjacent area includes a public sidewalk, the size of the tables and seating must allow sufficient room for public ingress and egress, including being compliant with all ADA laws and regulations for sidewalk use under Idaho Falls City Code 8-8-9. All consumption of alcohol in this adjacent area must be done at the table, and the customer cannot carry the alcohol away from the table.

- (7) Within a Permitted Event alcohol sales and consumption area.

(Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2900, 05-10-12; Ord. 3044, 10-12-15)

4-3-18: EXPIRATION OF LICENSE:

Licenses issued under this Chapter shall expire at midnight on December 31 of the calendar year for which they are issued. (Ord. 2438, 1-10-02)