

CHAPTER 4 WINE

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

DIRECTOR: The director of the Idaho Department of Law Enforcement

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

RETAILER: A person to whom a retail wine license or wine-by-the-drink license has been issued.

RETAIL WINE LICENSE: A license issued by the Director authorizing a person to sell wine at retail for consumption off the licensed premises. The term also means a license issued by the City authorizing a person to sell wine at retail for consumption off the licensed premises only.

WINE: Any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

WINE-BY-THE-DRINK: A license to sell wine by the individual glass or open bottle at retail for consumption on the premises. (Ord. 2492, 6-12-03)

4-4-2: **LICENSE REQUIRED:** Except as otherwise provided by this Chapter, no person shall sell wine at retail for consumption off the premises or by the individual glass or open bottle

for consumption on the premises within the City, without first obtaining a license under this Chapter or a liquor by the drink license issued under Chapter 2 of this Title. A person who holds a valid current wine-by-the-drink license issued by the City may sell on the licensed premises wine at retail for consumption off the premises without obtaining a retail wine license from the City.

4-4-3: **LICENSE FEES:** The fee for a retail wine license shall be in an amount set from time to time by Resolution of the Council. The fee for a wine-by-the-drink license shall be in an amount set from time to time by Resolution of the Council. License fees shall be paid in advance for each calendar year or any portion of a calendar year without proration. (Ord. 2964, 8-14-2014)

4-4-4: **APPLICATION FOR LICENSE:**

(A) Each applicant for a retail wine license or wine-by-the drink license shall submit a written application on a form furnished by the Clerk, and they shall provide the same information required in Idaho Falls City Code § 4-3-4. (Ord. 2565, 11-9-04)

(B) To determine the suitability of prospective applicants for a license, the Chief of Police shall require a first time applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to § 67-3008, Idaho Code, and congressional enactment Public Law 92-544, the Chief of Police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police, Bureau of Criminal Identification, for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Chief of Police is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants for a license under this section. As required by state and federal law, further dissemination of other use of the criminal history information is prohibited. Fingerprinting shall not be required for a license renewal. (Ord. 2440, 2-15-02)

4-4-5: **QUALIFICATIONS:** An applicant for a retail wine license or wine-by-the-drink license shall possess all qualifications necessary to obtain a license from the Director. Licensees shall maintain qualifications throughout the period for which their license is issued. Possession of licenses regularly issued by the Director and Bonneville County shall be prima facie evidence of the applicant's qualifications to receive a license under this Chapter.

4-4-6: **ISSUANCE OF LICENSE:** When the applicant for a retail wine license or wine-by-the-drink license has produced evidence as required by Section 4-4-5 above and paid the required license fee, the City Clerk shall submit the application to the City Council within thirty (30) days after the application is filed. Upon approval of the Council, the Clerk shall issue the license to the applicant.

4-4-7: **EXPIRATION AND TRANSFER OF LICENSE:** Licenses issued under this Chapter shall expire at midnight on December 31 of the calendar year for which they are issued.

The procedure for the transfer of a retail wine license or a wine-by-the-drink license shall be the same as provided in Idaho Code Section 23-1317, as amended, upon application to the City Clerk. The fee for transfer of a retail wine license or wine-by-the-drink license shall be in an amount set from time to time by Resolution of the Council. The license of the transferring licensee shall be surrendered to the City Clerk before such transfer may be made. (Ord. 2964, 8-14-2014)

4-4-8: CONSUMPTION ON PREMISES: Retailers who do not possess a valid City license for the retail sale of liquor by the drink or wine-by-the-drink shall not permit consumption of wine on the licensed premises.

4-4-9: LOCATION RESTRICTIONS:

(A) No wine-by-the drink license shall be issued to any person to operate at any place 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. No person shall sell or dispense wine for consumption on the premises at any place within three hundred (300) feet of any public school, church or other place of worship, similarly measured in a straight line. This restriction shall not apply to any duly licensed premises that at the time of first licensing did not come within the restricted area, but subsequent to such first licensing came therein because of the construction or commencement of use of such public facility or place of worship subsequent to such first licensing. (Ord. 2385, 8-10-00)

(B) The City Council may for good cause shown grant a variance to the provisions of this section. 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. Notwithstanding the foregoing, nothing herein shall prohibit the sale or dispensing of wine for consumption on the premise at a public school, church or other place of worship pursuant to a permit issued under Section 4-4-11 of this Chapter to an applicant which owns or operates such school, church or place of worship. (Ord. 2385, 8-10-00; Ord. 2867, 3-10-11)

4-4-10: AGE RESTRICTION ON SALE OR PURCHASE:

(A) No person under twenty-one (21) years of age shall sell, purchase, possess or consume any wine provided, however, that any person who is nineteen (19) years of age or older may sell, serve, possess and dispense wine in the course of employment in any place, as defined in section 23-942, Idaho Code, or other place where wine is lawfully present, so long as such place is the place of employment for such person under twenty-one (21) years of age.

- (B) No person shall give, sell or deliver wine to any person under the age of twenty-one (21) years.
- (C) No person under the age of twenty-one (21) shall represent to any retailer or distributor that he or she is twenty-one (21) years or more of age, when in fact he or she is under such age for the purpose of inducing the retailer or distributor, to sell, serve or dispense wine to such person.
- (D) No person shall represent to any retailer or distributor that any other person is twenty-one (21) years or more of age, when in fact that other person is under such age for the purpose of inducing such retailer or distributor to sell, serve or dispense wine to such other person.
(Ord. 2975, 12-11-14)

4-4-10(A): DISPENSING TO INTOXICATED PERSON: Any person who (1) sells, gives, or dispenses any wine 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)

4-4-11: WINE SOLD OR DONATED FOR BENEVOLENT, CHARITABLE OR PUBLIC PURPOSES - PERMIT REQUIRED:

(A) Notwithstanding the provisions of Section 4-4-2 of this Chapter, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of wine 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 wine 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 square feet (1250 ft²) in which all wine 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 feet (6') 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 4-4-12 (B)(5) of this Code and the applicant shall not sell or dispense wine 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 inches (2") high bearing the following legend: "No Open Container of Wine May Be Possessed or Transported Beyond the Fenced Area," or such other legend which adequately appraises customers of the prohibitions set forth in Section 4-4-12, City Code. Failure to construct or maintain such fence, barrier or sign 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. Wine 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. Wine 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 4-4-12(B)(5) of this Code and the applicant shall not sell or dispense wine 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 inches (2") inches high bearing the following legend: "No Open Container of Wine May Be Possessed or Transported Beyond this Point," or such other legend which adequately appraises customers of the prohibitions set forth in Section 4-4-12, City Code. 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.

(3) Charitable events may be conducted within the confines of i) the public plaza located at the corner of Park and B Street, or ii) the Tautphaus Park Zoo, which plaza or Zoo shall be considered to be the "premises" for the purpose of Sections 4-4-12(B)(5) and 8-3-4(C) of this Code and the applicant shall not sell or dispense wine 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 appraises the customer of the prohibitions set forth in Section 4-4-12, 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 feet (30') 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 subsections (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 wine 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 wine products to be used at the event;
- (3) Names of the dealer or wholesaler from whom the wine is to be received;
- (4) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense wine 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 wine will be sold, dispensed or conveyed; and
- (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 23-1336.

(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 4-4-11(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 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 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 wine 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 wine to be used at the event and may dispense such wine 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. 2867, 3-10-11; Ord. 2964, 8-14-14)

4-4-12: POSSESSION OF OPEN CONTAINERS PROHIBITED:

(A) Any person who is in possession of an open container of wine 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 wine:

- (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 wine 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 4-4-11 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. 2916, 02-28-13; Ord. 3044, 10-12-15)

4-4-13: HOURS OF SALE - RETAIL SALES: It shall be unlawful for any person in any place licensed to sell wine for consumption off the premises, to sell or dispense wine or to permit the consumption of wine 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. on Christmas Day and 7:00 a.m. of the day following such holiday.

4-4-14: HOURS OF SALE - BY THE DRINK:

(A) It shall be unlawful for any person in any place licensed to sell wine for consumption on the premises, whether for pleasure or profit, to sell, offer to sell or dispense wine for consumption on the premises or to permit the consumption of wine 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. 2447, 5-9-02; Ord. 2804, 3-12-09; Ord. 2818, 7-23-09; Ord. 2847, 10-14-10)

