

ORDINANCE NO. 558**AN ORDINANCE TO ESTABLISH A PROCEDURE FOR LIQUOR LICENSE REVIEW AND COUNCIL RECOMMENDATION TO THE OREGON LIQUOR CONTROL COMMISSION.**

WHEREAS, the City of Madras recently received a copy of the Oregon Liquor Control Commission's Guide to Liquor Licensing for Local Governments; and

WHEREAS, upon making a review of the document it was discovered that the City of Madras had not been charging the appropriate fees in accordance with ORS 471.210; however, had been charging the fees as established by resolution and passed by City Council during various public meetings; and

WHEREAS, ORS 471.210(4) contains provisions which allows a governing body of a city or county, following public notice and hearing, to adopt an ordinance, rule, or resolution prescribing licensing guidelines to be followed in making recommendations on license applications and in allowing opportunity for public comment; and

WHEREAS, if said guidelines are approved by the commission as consistent with commission rules, after public notice and hearing, the governing body may adopt an ordinance, rule or regulation establishing a system of fees that are reasonable and necessary to pay expenses of processing the written recommendation; and

WHEREAS, this ordinance has been prepared to bring the City of Madras into compliance with ORS 471.210.

NOW, THEREFORE, the City of Madras ordains as follows:

SECTION 1: TITLE AND PURPOSE

This ordinance shall be known and may be cited as the "Liquor License Review Ordinance," and may also be referred to herein as, "this ordinance".

The purposes of this ordinance are to establish the principle criteria which shall be considered by the Council, and its designees, the City Administrator and City Police Chief, in making recommendations to the Oregon Liquor Control Commission, concerning the granting, denying, modifying, changing, or renewing of all liquor licenses for premises within the City limits and to establish a process, to be utilized for the investigation of such license applicants for the purpose of making recommendations that are fair, effective, and efficient.

This ordinance is necessary to ensure that all premises licensed to sell and dispense liquor in any form meet the high expectations of this community, that all such businesses are conducted in a lawful manner that does not unreasonably disturb the peace and tranquility of this City and its neighborhoods.

SECTION 2: DEFINITIONS

For the purposes of this ordinance, the following definitions shall apply:

1. City Administrator - As used in this ordinance, City Administrator means the person holding the position of City Administrator or any officer or employee of the City of Madras, delegated or assigned any or all of the tasks of the City Administrator herein.
2. Application - The written request to the City Administrator to grant, modify, or renew a liquor license.
3. Commission - The Oregon Liquor Control Commission.
4. Special Retail Beer License (SRB) - A temporary dispenser license, issued by the Commission, pursuant to ORS 472 and OAR 845-04-025(2) and (5) for the purposes of serving beer or other malt beverage in exchange for some financial consideration and as part of a picnic, convention, fair, civil, or community enterprise or similar special event, such as a spectator sports event, musical concert, or festival and for which approval by the City must be obtained.
5. Special Retail Wine License (SRW) - A temporary dispenser license, issued by the Commission, pursuant to ORS 472 and OAR 845-04-025(2) and (5) for the purpose of serving wine or similarly regulated fermented beverage in exchange for some financial consideration and as part of a picnic, convention, fair, civic or

community event, musical concert, or festival and for which approval from the City must be obtained.

SECTION 3: **LICENSE APPLICATION**

1. Any person or business, requesting a City recommendation to the Commission on a liquor license application, shall make application upon suitable forms, furnished by the Oregon Liquor Control Commission.
2. The application shall be accompanied by the appropriate fee, as established from time to time by City resolution. Such fee shall be non-refundable.

In no case shall the fees be greater than those fees contained in ORS 471.210(4) (\$100 for an original application, \$75 for a change-in-ownership, change in location, or change in privilege application and \$35 for a renewal or temporary application).

3. If the applicant for a Special Retail Beer and Special Retail Wine or combination thereof can demonstrate that it is organized and operating as a non-profit organization, no application fee to the City shall be required.

SECTION 4: **CITY ADMINISTRATOR'S DUTIES**

The City Administrator shall maintain a record of all applications. The City Administrator shall instruct the City Police Chief to coordinate and conduct an investigation of each application for the purpose of determining what recommendation shall be made by the City Administrator to the Council or in the case of Special Retail Beer and Special Retail Wine licenses, to the Commission. The investigation may include those subjects contained in the ordinances of the City of Madras as well as the statutes of the State of Oregon.

The City Administrator may require the applicant to supply relevant additional information to determine the qualifications of the applicant. Upon completion of the review and for all applications except Special Retail Beer and Special Retail Wine licenses, the City Administrator shall determine and advise the applicant and the commission what the recommendation of the City shall be in accordance with the standards and criteria, and procedures contained in this ordinance.

SECTION 5: **HEARING PROCEDURE**

1. For all applications for which Council approval is required under this ordinance, and where the City Administrator and City Police Chief recommends approval of an application, the matter will be scheduled as a consent agenda item at the next regular Council meeting.
2. Prior to City Council consideration of a liquor license application, a Councilor may review such application and the investigation materials gathered by the City Administrator, but only to the extent that disclosure of such application and investigation materials is not prohibited by law. Upon the request of a Councilor, a member of the public, or where the City Administrator's or City Police Chief's recommendation is adverse to the application, by the applicant, a public hearing will be scheduled.
3. Notice of Public Hearing before the Council shall be given in the following manner:
 - a) The notice shall contain the business name of the applicant, the location of the business, the nature of the license applied for, and the time and location at which the hearing will take place.
 - b) Notice will be mailed to the applicant or applicant's agent at the address shown on the application not less than seven (7) days before the date set for the hearing.
4. The Public Hearing shall be conducted as follows:
 - a) The City Administrator shall present the City Administrator's report. Any other written or oral evidence which is supportive of the City Administrator's recommendation may also be presented at this time.
 - b) The applicant may present evidence and/or witnesses in support of the application.
 - c) Interested members of the public shall be given an opportunity to present evidence or testimony bearing upon the application, whether such evidence is supportive or adverse to the application.

- d) The applicant shall be afforded an opportunity to rebut evidence presented in opposition to the application.
 - e) Any relevant evidence shall be admitted, if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of their serious affairs, regardless of the existence of any law or rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Evidence of past transactions and occurrences shall not be excluded solely on the basis of having occurred in the past and may be relied upon by the Council in making its recommendation. However, irrelevant and unduly repetitious evidence shall be excluded.
5. In the case of Special Retail Beer and Special Retail Wine license applications, after due consideration of all pertinent information, the City Administrator and/or City Police Chief shall make a recommendation. The recommendation shall be based on substantial evidence relative to the criteria in this ordinance, ORS Chapters 471 and 472 and the public health, safety, and welfare.

The City Administrator and City Police Chief may attach reasonable conditions upon the recommendation, which conditions shall be consistent with the purposes of this ordinance. Where the City Administrator and City Police Chief recommends approval of an application, the applicant shall be notified of the recommendation. Where the City Administrator's and City Police Chief's recommendation is for denial or otherwise adverse to the applicant, it may be appealed to the City Council in accordance with the procedures provided in this section.

SECTION 6: STANDARDS AND CRITERIA

The Council shall make its recommendation for approval, denial, or modification of the liquor license application based on the Council's evaluation of the relevant standards and criteria, as set forth herein. The applicant shall be held strictly accountable for the conditions of the premises. The Council may recommend against the applicant if any of the following conditions exist:

- 1. The application is incomplete

2. The applicant neglects or refuses to provide, in a timely manner, any information reasonably required by the City Administrator, City Police Chief, or the City Council.
3. The applicant provides false or misleading information to the City Administrator, City Police Chief, the City Council, or to any City employee.
4. The applicant does not possess a current City Business License.
5. The Planning District in which the applicant proposes to locate the business does not allow such business either as a permitted or conditional use.
6. The record of the applicant shows a violation(s) of criminal law(s) or ordinance(s) connected in time, place, and manner with a liquor establishment.
7. The applicant has maintained or allowed to exist an establishment which creates or is a public nuisance under the ordinances of the City or laws of the State, or in which any violations of the provisions of the City ordinances or Federal or State law relating to minors, gambling, obscenity, controlled substances, prostitution, or alcoholic beverages, or Chapters 163, 164, 165, or 166 of Oregon Revised Statutes have occurred, or which creates an increase in disorderly or violent acts, litter, noise, vandalism, vehicular, or pedestrian traffic congestion, or other locational problems in the reasonable proximity of such premises.
8. The applicant's premises are not maintained in reasonable repair, both interior and exterior, and kept clean and free of litter, rubbish, and dirt.
9. In the case of an application for a new license or for an increase in liquor selling or dispensing privilege, there are sufficient licensed premises in the locality set out in the application and the license is not demanded by public interest or convenience.
10. The licensing of the premises would not be in the best interest of the community because of a history of illegal activities, altercations, noisy conduct, or other disturbances in or around the premises.

11. The applicant has demonstrated an unwillingness or inability to cooperate with City agencies and/or neighbors in resolving community disputes relating to a licensed establishment.
12. The applicant's premises place unreasonable, excessive demand on City services, including law enforcement.

SECTION 7: **RECONSIDERATION OF APPLICATIONS**

1. If Council makes a recommendation that is other than favorable on any license application, future recommendations on any new application for the same location by the same or substantially the same applicant will be based on the previous findings unless new information is provided by the applicant.
2. If the City Administrator reasonably believes that the conditions which caused the Council to make a recommendation, other than a favorable recommendation, have substantially changed and no court or administrative appeal of such license is pending, then the City Administrator may reconsider and/or resubmit such application to the Council.

SECTION 8: **PENALTY**

Violation of any of the terms of this ordinance is punishable by a fine not to exceed \$500.

SECTION 9: **EMERGENCY CLAUSE**

It is hereby determined and declared that existing conditions are such that it is necessary for the immediate preservation of the peace, health, general welfare, and safety of the City of Madras that an emergency be declared to exist; therefore this ordinance shall be in full force and effect immediately upon and after its passage by the Council and approval by the Mayor of the City of Madras, Oregon.

Passed by the Council and approved by the Mayor May 27, 1997.