

STATE OF COLORADO
COUNTY OF SUMMIT
TOWN OF FRISCO

ORDINANCE 89-28

AN ORDINANCE REPEALING RESOLUTION 78-11, CHAPTER 53 OF THE TOWN CODE ENTITLED "ALCOHOLIC BEVERAGES" AND REPLACING IT WITH A NEW CHAPTER 53 "ALCOHOLIC BEVERAGES".

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT CHAPTER 53 OF THE TOWN CODE ENTITLED "ALCOHOLIC BEVERAGES" IS REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

Section 1.

ALCOHOLIC BEVERAGES

53-1 APPLICABILITY

In addition to any other rules or laws which may be applicable, these rules shall govern all proceedings before the Liquor Licensing Authority of the Town of Frisco.

53-2 Designation of Authority and assistant.

- A. The liquor and beer licensing authority for the Town of Frisco shall be the Town Council ("Council"). As such, the Town Council shall be known as the "Liquor Licensing Authority" or in these rules as the "Authority."
- B. The Town Clerk ("Clerk") shall assist the Authority by receiving all applications, coordinating with other town officers and departments when relevant, and exercising discretion in scheduling public hearings.

53-3 Filing of Application; Fees.

- A. All applications for liquor and malt beverage licenses, including new, renewal, or any licensing changes shall be filed with the Clerk.
- B. The following shall be filed:
 - (1) A state license application form, (DR-8404) which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.
 - (2) All other applicable State Department of Revenue Forms pertinent to the type of License requested shall be filled out and completed in all material detail.
 - (3) An application fee paid to the Town. The application fee shall be collected to cover the costs of the preliminary investigation made by the Town, administrative checks, publication and posting costs and other necessary and incidental expenses. The amount of the application fee shall vary according to the nature of the application as follows:

- (a) New licenses: three hundred fifty dollars (\$350.)
 - (b) Renewals: no charge
 - (c) Change of location: one hundred fifty dollars (\$150.)
 - (d) Change of ownership: one hundred fifty dollars (\$150.)
- (4) A license fee shall be paid to the Town. This fee is in addition to the application fee and is assessed annually:
- (a) Retail Liquor Store: twenty-two dollars and fifty cents (\$22.50).
 - (b) Liquor Licensed Drug Store: twenty-two dollars and fifty cents (\$22.50).
 - (c) Beer and Wine License: twenty-two dollars and fifty cents (\$22.50).
 - (d) Hotel/Restaurant License: forty-eight dollars and seventy-five cents (\$48.75).
 - (e) Tavern License: forty-eight dollars and seventy-five cents (\$48.75).
 - (f) Club License: fifteen dollars (\$15.00.).
 - (g) Arts License: fifteen dollars (\$15.00).
 - (h) Racetrack License: forty-eight dollars and seventy-five cents (\$48.75).
 - (i) Three point two (3.2%) beer (on and off the premises): twenty-two dollars and fifty cents (\$22.50).
 - (j) Extended hours (for licenses so permitting): thirty dollars (\$30).
 - (k) Temporary liquor licenses issued between the expiration of an old license and the issuance of a new license: one hundred dollars (\$100).
- (5) A license fee payable to the State Department of Revenue shall be filed with the application. The amount shall be as stated on Colorado Liquor License Application Form DR-8404, (as revised).

53.4 **Application Forms.**

All applications for new licenses shall be made on forms provided by the State of Colorado Department of Revenue. In addition, the Authority may require the following information:

- A. A description of the kind of business and the nature of the proposed establishment.
- B. The boundaries of the neighborhood intended to be served.

- C. The name and address of the person managing or in charge of the establishment after the license has been issued, a copy of the management agreement, if any, and the names of other liquor or beer establishments managed by that person.
- D. The date of issuance in Colorado of any other (previous or existing) liquor license to the applicant or, if a partnership or corporation, to its members and/or to the manager. Where hotel restaurant licenses belonging to nationally recognized hotel/restaurant chains, only Summit County licenses need be listed.
- E. The date when any other previous fermented malt beverage licenses or liquor licenses in Colorado were either suspended, revoked or previously denied.
- F. Evidence showing that the proposed location will not violate any Town of Frisco's zoning laws as prohibited by Section 12-47-138(c), CRS.
- G. Evidence showing all financial assistance to the applicant for the proposed outlet (for example, but not limited to, copies of documents governing contract for purchase, promissory notes, shares of stock, mortgages, leases, insurance binders, recorded and unrecorded security interests and assignments of any of the above).

53-5

Hearing Date.

Upon receipt of a complete application, the Clerk shall notify the Liquor Licensing Authority at its next meeting of the filing of the application and set a hearing date not sooner than thirty (30) days after the receipt of the application. This procedure shall apply to hearings concerning applications for new licenses, applications for change of location, and any other requests for which the Town Clerk determines a Public Hearing is necessary.

53-6

Notice of Hearing.

When the Clerk has set the date for the hearing, notice shall be given of the time and place of the hearing in the following manner:

- A. Posting a sign and publishing public notice not less than ten (10) days prior to the date of the hearing on the application.
- B. The information required for the posting and publication of notice shall be supplied by the applicant at the time of filing the application.
- C. The size of the sign and information contained on it shall be in compliance with State Statute, Section 12-47-136, CRS.

53-7

Investigation.

- A. The Police Department shall gather the evidence for the preliminary investigation as required by state law and as more particularly itemized below. At least five (5) days prior to the date of the public hearing, the Police Department shall make known its findings, in writing, to the Authority, as well as to the applicant and, upon request, to other interested parties as they are defined by state law. The investigation by the Police Department on behalf of the authority shall be with regard to the following matters:

- (1) Whether within two (2) years next preceding the date of the receipt of the application a licensing authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood and the desire of the inhabitants were satisfied by the existing outlets.
- (2) That it satisfactorily appears that the applicant is or will be entitled to possession of the premises for which the application is made under a lease, rental agreement or other arrangement for possession of the premises, or by virtue of ownership thereof.
- (3) That the sale of liquor or beer as contemplated by the application at the premises sought to be licensed is not in violation of the zoning, fire, building and other applicable laws of the Town of Frisco.
- (4) That the building wherein the license is sought to be exercised is located more than two hundred fifty (250) feet from any public or parochial school or the principal campus of any college, university or seminary. For the purposes of measuring the distance between the building wherein the license is sought to be exercised and said public or parochial school or the principal campus of any college, university or seminary, a measurement shall be made from the nearest property line of the land used for the above school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access.
- (5) The number and type of outlets of a nature similar to the applicant's within one (1) mile in any direction of the proposed location.
- (6) A report of all pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. This report shall specify any financial interests, including notes, mortgages, leases, etc., in other licenses. This report shall include reports from appropriate criminal justice agencies of the applicant's criminal history record, if any, and shall include all partners, principals or stockholders holding over ten percent (10%) of the outstanding and issued stock.
- (7) Such other matters as the Liquor Licensing Authority shall direct.

B. Not less than five (5) days prior to the date of hearing upon the application, a copy of the Police Department's written report containing findings into the matters investigated above shall be mailed by certified mail with return receipt requested to the applicant. The original may be filed as a public record in the Clerk's office.

53-8

Petitions; Filing of Reports.

The report and investigation as herein required and all other petitions, remonstrances, surveys or statements in writing offered by the proponents, opponents or others interested in any application for a licensed outlet shall be filed in the office of the Clerk prior to the day on which the hearing upon the application shall be held before the Authority.

53-9

Public Hearing.

- A. On the date scheduled, a public hearing shall be held on the application. Such hearing may be recessed from time to time, not to exceed thirty (30) days, upon the request of any party in interest (as defined by the State Liquor Code) or upon motion of the Authority.
- B. All hearings before the Authority shall be public and shall be conducted in accordance with these rules and so as to ascertain facts affecting the substantial rights of the parties to the proceedings. Requirements of proof shall be similar to, to the extent practicable, to those in civil nonjury cases in the district courts. This means modified rules of evidence and the right to cross examine is applicable.
- C. Applicants or other interested parties, such as a resident of the neighborhood under consideration of the owner or manager of a business located in the neighborhood under consideration, may appear in person or be represented by counsel.
- D. Subject to the Authority's right to limit the presentation of evidence tending to be repetitious, irrelevant, speculative or conjectural, any interested party, as defined by the State Liquor Code, may introduce evidence with regard to the following matters:
 - (1) Reasonable requirements of the neighborhood and the number and type of existing outlets.
 - (2) Any other pertinent matters affecting the qualifications of the applicant for the conduct and the type of business proposed.
 - (3) Any other evidence which would indicate that the building or location proposed for the operation of the license is not suited for the intended purpose.
- E. All testimony shall be sworn. The Clerk shall have the power to administer oaths and issue subpoenas on behalf of the Authority.

53-10

Decision.

- A. At the conclusion of the presentation of all the evidence, the authority shall enter its decision or may take the application under advisement for a maximum of thirty (30) days, during which time it shall consider all the evidence.

- B. Motion. When the decision is made, the motion may be made orally or in writing. The Town Attorney may be requested to prepare a written motion for subsequent presentation. The motion should contain such findings of facts and conclusions of law as are relevant and necessary to support the decision and should address:
 - 1. The neighborhood under consideration.
 - 2. The desires of the inhabitants.
 - 3. The needs of the neighborhood for the outlet.
 - 4. The qualifications of the applicant.
- C. Vote. Upon making of the motion and the reasons therefor, a vote shall be taken with the above, including the ayes and nays, and entered into the minutes of the Authority.
- D. The decision of the Authority shall be sent to the State Licensing Authority, along with a copy of the application and such other supplementary materials as may be required by the State Licensing Authority or requested by the parties.
- E. A written copy of any denial with the reason therefor, shall be sent by certified mail, return receipt requested, to the applicant at the address shown on the application and to any other party in interest upon request.
- F. Although the license may be approved by both local and state licensing authorities, no license shall be issued by the Clerk until the building in which the business is to be conducted is ready for occupancy, with such furniture, fixtures and equipment in place as is necessary, and then only after inspection of the premises has been made by the town building official to determine that the applicant has complied with the drawings and plans and specifications submitted upon the application.
- G. Where an approved license is for a facility which has not been constructed and placed in operation within two (2) years of approval of the application or construction has not commenced within one (1) year of such approval, the license may be revoked or denied upon application for renewal.

53-11

Issuance of Licenses.

All licenses applied for shall be issued in accordance with the laws of the State of Colorado and the Town of Frisco and shall not be issued until it has been established that:

- A. Upon issuance of a license from the State, a Local License shall be granted to the applicant with the warning that should the personal qualifications of anyone listed as a holder of that license be found to be unfavorable, both State and Local licenses shall be rescinded and no refund given.

- B. The applicant retains or will be entitled to possession of the premises for which the application is made under the lease or by virtue of ownership thereof and that the use of the premises at the proposed location does not violate the zoning laws or any laws of the Town of Frisco or the State of Colorado.
- C. After approval of an application by the Authority and after the building in which the license is sought to be exercised has been made ready for occupancy with such furniture, fixtures and equipment as is necessary to comply with the provisions of these rules and the laws of the State of Colorado, an inspection of the premises has been made to determine that the applicant has complied in every material detail with the plans and specifications submitted at the time of the filing of the application.

53-12

License Renewals.

- A. All applications for renewal of liquor licenses shall be on forms provided by the State Licensing Authority and must be submitted in duplicate to the Town Clerk no later than thirty (30) days prior to the license expiration date, together with the required license fees.
- B. Upon receiving the renewal application, the Clerk shall assemble the file of the applicant, which file shall contain all of the various town departments' records regarding the applicant or the premises dating back for a period of at least one (1) year. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises comply with the provisions of the statutes and applicable regulations, that the character of the applicant continues to be satisfactory and that such license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the inhabitants. If these presumptions apply, the application shall then be presented to the Authority at their next meeting..
- C. If there is evidence that the presumptions given in Subsection B above do not apply, the Clerk shall immediately notify the licensee(s), in writing, of the objections to approving the renewal applications and that a public hearing will be held not less than ten (10) nor more than thirty (30) days after the date of such notice to determine if there is cause to deny said renewal application. The hearing shall be only after notice of the hearing has been conspicuously posted on the premises for a period of ten (10) days. Said hearing shall be conducted in the same manner as provided for hearings on revocation or suspension of the type of license involved.

53-13

Change in Location.

- A. Before the location of a license is changed, the licensee shall submit an application on forms provided by the State Licensing Authority, in duplicate, to the Clerk for such change. An application fee of one hundred fifty dollars (\$150.) shall accompany the application.
- B. All applications for a change in the location of a licensee shall be filed with the Clerk and shall be subject to applicable sections of this chapter, except that the character of the applicant shall not be considered.

- C. The Authority shall not transfer such license in less than thirty (30) days after the application has been made, and then only after no less than ten (10) days' notice of the hearing has been given.

53-14

Change in Ownership.

- A. All applicants for the issuance of a license by reason of transfer of ownership of the business or of possession of the licensed premises shall file an application on forms provided by the State Licensing Authority (DR-8404). Such application shall be accompanied by an application fee of one hundred fifty dollars (\$150).
- B. The Police Department shall conduct an investigation of the character of the applicant, including, when applicable, the partners or major shareholders.
- C. If, in the discretion of the Clerk, no hearing is necessary, the Clerk shall recommend approval of the change as an item on the Council's agenda.
- D. If the Clerk should determine that a hearing is appropriate, then the Authority shall hold a public hearing. Public notice shall be conspicuously posted on the licensed premises for a period of ten (10) days. Notice shall be given the applicant at least ten (10) days prior to the hearing. The Authority shall consider only the character of the applicant, and the applicant shall not be required to submit information, except as it concerns character and ability to conduct the business concerned according to law.

53-15

Suspension and Revocation of License.

- A. Upon commencement of suspension and revocation proceedings, the Authority shall set a time and place for the hearing of the matter. Summary suspension shall be solely heard and decided by the Authority.
- B. The Clerk shall give the licensee timely notice of the time, place and nature thereof, the authority and jurisdiction under which the hearing is to be held, the violations asserted and/or the good cause generally asserted as the grounds. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the town by the licensee at least forty-eight (48) hours prior to the hearing.
- C. The Authority shall conduct the hearing, or a hearing officer(s) appointed by the authority may hold a separate hearing without the authority's presence. The hearing officer(s) may be a Councilmember or Municipal Judge or a special committee of the Authority to conduct such hearing.
- D. The Clerk of the hearing officer(s) shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances.
- E. In all such proceedings, the Police Department shall conduct the investigation, and the Town Authority shall act on behalf of the town during the hearing. The Authority may appoint special counsel to conduct the investigation and/or act on behalf of the town.

- F. All hearings before the Authority, or the hearing officer(s), if any, shall be recorded stenographically or by an electronic recording device.
- G. If the evidentiary hearing is before a hearing officer(s), a summary of the evidence shall be prepared, and the hearing officer(s) shall make recommendation, in writing, to the Authority within five (5) days after the close of the hearing. A copy of this summary and recommendation shall be transmitted to the licensee. At the next regular Council meeting following the receipt of such summary and recommendation, the Authority shall consider the same. In its discretion the Authority may reject the hearing officer's recommendation or may refer the matter back for further proceedings or may adopt the recommendation, with or without modification, or may order a new hearing, either before the original hearing body or person or before the entire Authority, or a committee or member thereof.
- H. In the event of revocation, suspension or cessation of business, no position of the license or application fee shall be refunded.
- I. The Board of Trustees hereby authorizes the adoption of optional fine procedures as outlined in Colorado CRS 12-47-110 as a method of disciplining retail liquor licensees who violate state and town liquor codes.

53-16

Review of Decision; Preparation of Transcript.

Any person seeking review of the Authority's decision regarding an application or any other matter shall apply to the District Court for review within thirty (30) days after the date of the decision and shall pay to the Town of Frisco the cost of preparing a transcript of the proceedings before the town whenever such transcript is demanded by the person seeking the review or furnished by the Town of Frisco pursuant to an order of court. For this purpose, the cost of preparing the transcript, other than that portion pertaining to testimony, shall be the sum of twenty-five dollars (\$25.). Regarding the cost of preparing a transcript of testimony before the Liquor Licensing Authority, the same shall be charged at rates ordinarily charged by certified shorthand reports.

53-17

Evidence of Operation; Refusal to Comply.

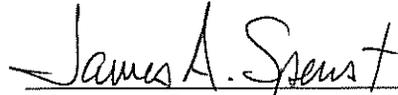
The owner, licensee or operator of any establishment licensed by the Authority shall, upon request of the Clerk or her authorized agent, furnish to the town within thirty (30) days satisfactory evidence to demonstrate whether the establishment is operating as a hotel and restaurant license, tavern license or beer and wine outlet, as said terms are defined by state law. Such evidence shall consist of accounting records for a period of time to be specified by the Clerk, showing separately the gross receipts from the sales of food items and intoxicating liquors. It shall be unlawful for any owner, licensee or operator of any licensed establishment to refuse to comply with the request of the Clerk as herein required, and failure or refusal to do so shall be grounds for revocation of the license.

Section 2, Severability

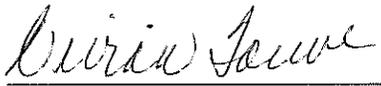
If any part of this Ordinance shall be held unconstitutional or invalid, the remainder of this Ordinance shall continue in full force and effect, it being the legislative intent that this Ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein.

SECOND READING, ADOPTED AND ORDERED PUBLISHED AND POSTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THIS TWENTY-FIRST DAY OF NOVEMBER, 1989.

TOWN OF FRISCO:


James A. Spens, Mayor

ATTEST:


Vivian Touve, Town Clerk