

Ordinance No. 2019-14

AN ORDINANCE AMENDING CHAPTERS 5.16, 5.20 AND 5.21 OF THE FRUITA MUNICIPAL CODE MAKING CONFORMING CHANGES TO REFLECT AMENDMENTS TO THE COLORADO BEER AND LIQUOR CODES, INCLUDING THE ELIMINATION OF 3.2% BEER, AND ELECTING THE LOCAL OPTION FOR ISSUANCE OF SPECIAL EVENT PERMITS THEREUNDER.

WHEREAS, Prior to July 1, 2016, Colorado liquor laws strictly limited the ability of retail establishments to sell various alcohol beverage products in sealed containers for off-premises consumption by, among other provisions, only allowing retail establishments to obtain a fermented malt beverage retailer's license under the "Colorado Beer Code" that authorized the sale of beer with a maximum alcohol content of 3.2% alcohol by weight or 4% alcohol by volume; and

WHEREAS, in 2016, the general assembly enacted Senate Bill 16-197, which dramatically altered the landscape of the off-premises retail liquor industry by, among other things, eliminated, as of January 1, 2019, the maximum alcohol content of beer sold by fermented malt beverage retailers; and

WHEREAS, in 2018, pursuant to HB 18-1025, the General Assembly relocated the Colorado Liquor Code to Title 44; and

WHEREAS, §44-5-107(5), C.R.S. allows local licensing authorities to elect not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval for a special event permit; and

WHEREAS, the City desires to conform to the provisions set forth in Senate Bill 16-197 and House Bill 18-1025 and make the local election with respect to special event permits; and

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. That Section 5.16.010 of the Fruita Municipal Code and Ordinance 172, S2, 1954 be deleted in its entirety.

Section 2. That Section 5.20.010 of the Fruita Municipal Code and Ordinance 329, S1, 1975 be amended as follows:

5.20.010 DEFINITIONS. For purposes of the special occupational tax upon liquors, the following shall mean:

A. "ALCOHOLIC BEVERAGE" MEANS FERMENTED MALT BEVERAGE OR MALT, VINOUS, OR SPIRITUOUS LIQUORS; EXCEPT THAT "ALCOHOL BEVERAGE" SHALL NOT INCLUDE CONFECTIONERY CONTAINING ALCOHOL WITHIN THE LIMITS PRESCRIBED BY SECTION 25-5-410 (1)(i)(II), C.R.S.

B. "FERMENTED MALT BEVERAGE" MEANS BEER AND ANY OTHER BEVERAGE OBTAINED BY THE FERMENTATION OF ANY INFUSION OR

DECOCTION OF BARLEY, MALT, HOPS, OR ANY SIMILAR PRODUCT OR ANY COMBINATION THEREOF IN WATER CONTAINING NOT LESS THAN ONE-HALF OF ONE PERCENT ALCOHOL BY VOLUME; EXCEPT THAT "FERMENTED MALT BEVERAGE" SHALL NOT INCLUDE CONFECTIONERY CONTAINING ALCOHOL."

C. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products, or any combination thereof in water, containing NOT LESS THAN 0.5% ~~more than 3.2 % of alcohol by weight~~ VOLUME.

BD. "Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things, brandy, rum, whiskey, gin, POWDERED ALCOHOL, and every other liquid or solid patented or not, containing 0.5% alcohol BY VOLUME and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as ~~above~~ provided IN PARAGRAPH B AND D HEREIN, shall not be construed to be FERMENTED malt, MALT or vinous liquors, but shall be construed to be spirituous liquors.

CE. "Vinous liquor" includes wine and fortified wines CONTAINING NOT LESS THAN 0.5% AND not exceeding 21 % of alcohol by volume and ARE PRODUCED BY ~~shall be construed to mean alcoholic beverages obtained~~ by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. FOR THE PURPOSE OF SIMPLIFYING THE ADMINISTRATION OF THIS CHAPTER, SAKE IS DEEMED A VINOUS LIQUOR.

~~D. "3.2 % beer" means malt liquor as above defined containing not more than 3.2 % of alcohol by weight.~~

F. "Operator" means any person licensed by law to sell ALCOHOLIC BEVERAGES ~~3.2 % beer, malt, vinous, or spirituous liquors, other than medicinal liquors, for beverage purposes~~ at retail, and who is engaged at any time during the calendar year in such operation in the city.

Section 3. That Section 5.20.020 of the Fruita Municipal Code and Ordinance 1983-13, S4 and Ordinance 1983-49, S4 be repealed and reenacted to read as follows:

5.20.020 BUSINESSES CLASSIFIED. THE BUSINESS OF SELLING AT RETAIL ANY ALCOHOLIC BEVERAGE IS DEFINED AND CLASSIFIED AS SUCH OCCUPATION FOR THE PURPOSES OF THIS CHAPTER.

Section 4. That Section 5.20.025 of the Fruita Municipal Code and Ordinance 1983-13, S5 be amended as follows:

5.20.025 DECLARATION OF POLICY AND PURPOSE. The city council finds, determines and declares that considering the nature of the business of selling at retail ALCOHOLIC BEVERAGES ~~3.2 % beer, malt, vinous and spirituous liquors~~ for beverage purposes, and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the city; and a proper, just and equitable distribution of tax burdens within the city, and all other matters proper to be considered in relation thereto, the classification of said business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the city.

Section 5. That Section 5.20.030 of the Fruita Municipal Code and Ordinance 1989-11, S4 be amended as follows:

5.20.030 TAX LEVIED. There is levied and assessed for the year 1990 and for each year thereafter, an annual occupation tax on the business of selling ALCOHOLIC BEVERAGES ~~3.2 % beer, malt, vinous or spirituous liquors~~ in the city as said occupation has been defined in Section 5.20.020 in the amount of three hundred and fifty dollars (\$350.00).

Section 6. That Section 5.20.060 of the Fruita Municipal Code and Ordinance 330, S1, 1975 be amended as follows:

5.20.060 LICENSE SUSPENSION AND REVOCATION - APPLICABILITY OF PROVISIONS. The provisions of Section 5.20.070 shall apply to all licenses to sell at retail any ALCOHOLIC BEVERAGES ~~malt, vinous or spirituous liquors, or fermented malt beverages~~ in the city of Fruita.

Section 7. That Section 5.20.070(G) of the Fruita Municipal Code and Ordinance 330, S2, 1975 be amended as follows:

G. Every licensee whose license has been suspended by the council shall, if ordered by the council, post two notices in conspicuous places, one on the exterior and one on the interior of his premises, for the duration of the suspension. The notices shall be twenty-four inches in length and fourteen inches in width, and shall be in the following form:

"NOTICE OF SUSPENSION
ALCOHOLIC BEVERAGE LICENSES ISSUED
For These Premises Have Been
Suspended by Order of the
LOCAL LICENSING AUTHORITY
For Violation of the ~~Fermented
Malt Beverage Act~~
COLORADO BEER CODE / Liquor Code ~~of 1935~~

Section 8. That Section 5.20.070(H) of the Fruita Municipal Code and Ordinance 330, S2, 1975 be amended as follows:

H. The temporary suspension of a license without notice pending any prosecution, investigation, or public hearing as provided for by the provisions of ~~C. R. S., 1973~~, 44-3-601, C.R.S. shall be for a period not to exceed fifteen days.

Section 9. That Section 5.20.080(D) and (F) of the Fruita Municipal Code and Ordinance 1993-06, S1 be amended as follows:

D. The following standards for the issuance of optional premises licenses are adopted pursuant to section ~~12-47-135.5~~ 44-3-310 C.R.S., as amended. The standards adopted herein shall be considered in addition to all other standards applicable to the issuance of licenses under the Colorado Liquor Code for an optional premises license.

1. Eligible Facilities. An optional premises may only be approved when that premises is located on or adjacent to an outdoor sports and recreational facility which is defined as a facility which charges a fee for the use of such facility. There are no restrictions on the minimum size of an eligible facility. The type of outdoor sports and recreational facilities which may be considered for an outdoor premises license include the following:
 - a. Country Club
 - b. Golf Courses and driving ranges
2. Number of optional premises. There are no restrictions on the number of optional premises which any one licensee may have on his outdoor sports or recreational facility. However, any applicant requesting approval of more than one optional premises shall demonstrate the need for each optional premises in relationship to the outdoor sports or recreational facility and its guests.

F. Advance notification required. Pursuant to Section ~~12-47-135 (6)~~ 44-3-310(3) and ~~Section 12-47-135 (7)~~ 44-4-310(4) C.R.S., as amended, no alcoholic beverages may be served on the optional premises until the licensee has provided written notice to the state liquor enforcement division and City Council forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice must contain the specific days and hours on which the optional premises are to be used.

Section 10. That Section 5.20.090(A), (A)(4), (A)(5)(b), (n) and (p) of the Fruita Municipal Code and Ordinance 2011-17, S1 be amended as follows:

A. The City hereby authorizes Tastings to be conducted by retail liquor store or liquor-licensed drugstore licensees in accordance with this section and pursuant to Section ~~12-47-~~ 44-3-301, C.R.S., as the term “Tastings” is defined IN said Section ~~12-47-44-3-103~~. It is unlawful for any person or licensee to conduct Tastings within the City unless authorized

in accordance with this section. Tastings shall not be authorized until the following prerequisites are fully satisfied, as determined by the City:

4. Tastings shall be subject to the limitations set forth in ~~12-47-44-3-301~~ (10)(c), C.R.S., as amended from time to time. Compliance with the limitations and requirements set forth in Section ~~12-47-44-3-301~~ (10)(c), C.R.S. shall be a term and condition of any Tasting Permit, whether expressly set forth in the Tasting Permit or not.
5. Tastings, once approved, shall be subject to the following limitations:
 - b) The alcohol used in Tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to ~~12-47-44-3-403~~, C.R.S. at a cost that is not less than the lain-in cost of such alcohol.
 - n) A violation of a limitation specified in this subsection ~~(10)~~ or of section ~~12-47- 44-3-801~~ by a retail liquor store license or a liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the Tasting.
 - p) Nothing in this subsection shall affect the ability of a Colorado winery licensed pursuant to section ~~12-47-44-3-402~~ or ~~12-4744-3-403~~ to conduct a tasting pursuant to the authority of section ~~12-4744-3-402~~ (2) or ~~12-4744-3-403~~ (2) (e).

Section 11. That Section 5.21.010(A) of the Fruita Municipal Code and Ordinance 2016-02, S1 be amended as follows:

- A. Purpose: It is the purpose of this Chapter to authorize the creation of Entertainment Districts within which, through its Local Licensing Authority, the City may allow the establishment of common consumption areas as provided for in C.R.S. ~~12-47-44-3-301~~(11) and establish application procedures and regulations concerning common consumption areas.

Section 12. That Section 5.21.020(B) of the Fruita Municipal Code and Ordinance 2016-02, S1 be amended as follows:

- B. "Entertainment District" shall mean an area within the City that is designated by Resolution of the City Council as an Entertainment District in accordance with section ~~12-47-44-3-301~~ (11) (b) C.R.S., as amended consisting of no more than one hundred (100) acres and containing at least twenty thousand (20,000) square feet of premises licensed as a tavern, hotel and restaurant, brew pub, beer and wine, manufacturer that operates a sales room pursuant to section ~~12-47-44-3-402~~(2) or (6) C.R.S., beer wholesaler that operates a sales room pursuant to section ~~12-47-44-3-407~~ (1) (b) (I) C.R.S., or vintner's restaurant at the time the district is created.

Section 13. That the Fruita Municipal Code be amended by the addition of Section 5.20.100 as follows:

Section 5.20.100 Special Event Permits. PURSUANT TO SECTION 44-5-107(5), C.R.S., THE CITY COUNCIL, ACTING THROUGH THE LOCAL LICENSING AUTHORITY, ELECTS NOT TO OBTAIN THE STATE LICENSING AUTHORITY'S APPROVAL OR DISAPPROVAL OF APPLICATIONS FOR SPECIAL EVENTS PERMITS PURSUANT TO C.R.S. TITLE 44, ARTICLE 5. THE CITY COUNCIL HEREBY AUTHORIZES THE ISSUANCE OF SPECIAL EVENT PERMIT FOR THE SALE, BY THE DRINK ONLY, OF ALCOHOL BEVERAGES BY THE CITY, ORGANIZATIONS, AND POLITICAL CANDIDATES IN ACCORDANCE WITH THIS CHAPTER AND C.R.S. TITLE 44, ARTICLE 5. NO ALCOHOLIC BEVERAGES SHALL BE SOLD AT ANY SPECIAL EVENT UNTIL A SPECIAL EVENT PERMIT IS OBTAINED FROM THE CITY.

Section 14. That Section 5.21.080(F) of the Fruita Municipal Code and Ordinance 2016-02 S1 be amended as follows:

F. Violates any provision of C.R.S. ~~42-4744-3-910~~, "Common Consumption Areas," as amended.

Section 15. Severability. If any part, section, subsection, clause or phrase of this ordinance is for any reason to be held invalid, such decision shall not affect the validity of the remaining portions of this ordinance, and the City Council, hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences or clauses or phrases be declared invalid.

PASSED AND ADOPTED BY THE Fruita City Council
THIS __ DAY OF _____ 2019

ATTEST:

City of Fruita

Margaret Sell, City Clerk

Lori Buck, Mayor Pro Tem