ORDINANCE NO. 2014-21

AN ORDINANCE OF IVINS CITY, UTAH, AMENDING CHAPTER 5.04 OF THE IVINS CITY CODE ENTITLED "ALCOHOLIC BEVERAGES"

WHEREAS, the Utah Legislature overhauled the Alcoholic Beverage Control Act in 2010 and continued to pass amendment thereto in each of the years following from 2011 through 2013; and

WHEREAS, in doing so, the State has mostly preempted local authority regarding the regulation of alcohol, with the exception of local authority consent on retail alcohol sales and some licensing authority regarding beer sales; and

WHEREAS, the Ivins City Council desires to update Chapter 5.04 of the Ivins City Code entitled "Alcoholic Beverages" to conform to the recent changes in State law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF IVINS CITY, STATE OF UTAH:

SECTION 1. Chapter 5.04 of the Ivins City Code is hereby deleted in its entirety and amended to now read as follows:

CHAPTER 5.04

ALCOHOLIC BEVERAGES

PART 1 (Previously Approved by Council)

POLICY; LICENSE TYPES; AUTHORITY OF CITY TO REGULATE; ZONING

5.04.101 POLICY: It is the policy of Ivins City to permit the operation of establishments serving alcoholic beverages in a manner consistent with the provisions of Title 32B of the Utah Code, as amended from time to time, entitled "The Alcoholic Beverage and Control Act" (the "Act"). It is also the policy of Ivins City to place the primary responsibility for maintaining order and preventing breaches of the peace within establishments selling and serving alcoholic beverages on the owners and managers of those establishments. (Ord. 2014-21, 2014)

5.04.102 STATE STORE: This state license only requires the state to consult with the local authority and is only allowed in the following zoning districts: community commercial (C-1) and commercial with light manufacturing (CLM). (Ord. 2014-21, 2014)

5.04.103 LICENSES REQUIRING THE CITY'S CONSENT:

(1) Resort Licenses, including Resort Sublicenses. This license is only allowed in the resort commercial (RC) zoning district.

(2) Full-service Restaurant License. This license is only allowed in the following zoning districts: community commercial (C-1); neighborhood commercial (NC); resort commercial (RC); commercial professional and research (CPR); and resort mixed use (RMU).

(3) Limited-service Restaurant License. This license is only allowed in the following zoning districts: community commercial (C-1); neighborhood commercial (NC); resort commercial (RC); commercial professional and research (CPR); and resort mixed use (RMU).

(4) Club License. This license is only allowed in the following zoning districts: community commercial (C-1); and resort commercial (RC).

(5) Airport Lounge License. Ivins City has no airport nor is an airport a permitted or conditional use in the City. As a result, there is no zoning district in which this license is allowed.

(6) On-Premise Banquet License. This license is only allowed in the following zoning districts: community commercial (C-1); resort commercial (RC); and resort mixed use (RMU).

(7) On-Premise Beer Retailer License, including Taverns. This license is only allowed in the following zoning districts: community commercial (C-1); and resort commercial (RC).

(8) Reception Center License. This license is only allowed in the following zoning districts: community commercial (C-1); resort commercial (RC); and resort mixed use (RMU).

(9) Beer-only Restaurant License. This license is only allowed in the following zoning districts: community commercial (C-1); neighborhood commercial (NC); resort commercial (RC); commercial professional and research (CPR); and resort mixed use (RMU).

(10) Event Permits. This license is only allowed in the following zoning districts: community commercial (C-1); and resort commercial (RC).

(11) Special Use Permits. Zoning is limited to the site for the primary commercial or religious use as authorized by the City.

(12) Package Agencies. Zoning is only allowed in the commercial with light manufacturing (CLM) zoning district.

(13) Liquor Warehousing License. This license is only allowed in the commercial with light manufacturing (CLM) zoning district.

(14) Beer Warehousing License. This license is only allowed in the commercial with light manufacturing (CLM) zoning district.

(15) Manufacturing Licenses. This license is only allowed in the commercial with light manufacturing (CLM) zoning district. (Ord. 2014-21, 2014)

5.04.104 LICENSES ISSUED BY THE CITY:

(1) Off-Premise Beer Retailer License. This license is only allowed in the following zoning districts: community commercial (C-1); neighborhood commercial (NC); and resort commercial (RC).

(2) Temporary Beer Event Permit. This license is only allowed in the following zoning districts: community commercial (C-1); and resort commercial (RC). (Ord. 2014-21, 2014)

PART 2

REGULATION OF CITY ISSUED LICENSES

5.04.201 OFF-PREMISE BEER RETAILER LICENSE:

(1) Permitted Sales. An off-premise beer retail license shall entitle the licensee to sell beer on the premises described therein in original containers, not to exceed one quart, for consumption off the premises.

(2) Applicability. An off-premise beer retail license may be issued by the City to a general food store or a convenience store.

(3) Beer Sales As Percent Of Sales: Each off-premise beer retail licensee shall maintain at least seventy percent (70%) of its total monetary gross receipts from the sale of products other than beer.

(4) Bonding Requirements: Each applicant for an off-premise beer retailer license shall post a cash or corporate surety bond in the penal sum of one thousand dollars ($1,000.00), payable to the City, which the licensee has procured and must maintain for so long as the license is in effect. The bond shall be in a form approved by the City Attorney, conditioned upon the licensee's faithful compliance with this chapter. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect. A bond filed by the licensee may be forfeited if the license is revoked.

(5) Prohibited Actions. It shall be unlawful for any person to sell or provide beer for consumption off the premises without first having obtained an off-premise beer retail license from the City. It shall also be unlawful for an off-premise beer retail licensee to permit the consumption of beer or other alcoholic beverages on the licensed premises.

(6) Employment of Minors. An off-premise beer retail licensee may employ persons eighteen (18) years of age through twenty (20) years of age to transact the sale of or handle beer in its sealed original containers, provided they are under the supervision of a person at least twenty one (21) years of age and who is on the premises. Said licensee may also employ persons sixteen (16) years of age through seventeen (17) for the handling of beer, exclusive of transactions, in its sealed original containers, provided they are under the supervision of a person at least twenty one (21) years of age and who is on the premises. Said activity is limited to locating or transporting beer upon the premises.

(7) Record Requirements. An off-premise beer retail licensee shall maintain records which shall disclose the gross sale of beer each year. Such records shall be available for inspection and audit by an authorized City employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required record, or failure to submit such records for inspection and audit, shall be cause for suspension or revocation of an off-premise beer retail license.

(8) Shoplifting Controls. An off-premise beer retail licensee shall make every reasonable effort to limit the potential for theft of alcoholic beverages from licensed premises. A clear, unobstructed view of all portions of the interior shall be available at all times from a point within the licensed

premises at or near the main public entrance. An alcoholic beverage inventory shrinkage record shall be kept by the licensee and made available at any time upon request to the Public Safety Director or other City staff for inspection or audit. (Ord. 2014-21, 2014)

5.04.202 TEMPORARY BEER EVENT PERMIT:

(1) Operational Restrictions: Each temporary special event permittee shall abide by all of the operational restrictions set forth in the Act.

(2) Bonding Requirements: Each applicant for a temporary special event permit shall post a cash or corporate surety bond in the penal sum of five hundred dollars ($500.00), payable to the City, which the licensee has procured and must maintain for so long as the permit is in effect. The bond shall be in a form approved by the City Attorney, conditioned upon the permittee's faithful compliance with this chapter, the act, and the rules and regulations of the commission. No part of any cash or corporate bond so posted may be withdrawn during the period the permit is in effect. A bond filed by the permittee may be forfeited if the permit is revoked.

(3) Duration Of Permit: The duration of any temporary special event permit granted hereunder shall not exceed thirty (30) days. The sale of beer under a series of permits issued to the same person may not exceed a total of ninety (90) days in any one calendar year. (Ord. 2014-21, 2014)

PART 3

CITY CONSENT AND LICENSING APPLICATION PROCESSES

5.04.301 LOCAL CONSENT: All applications for the City to sign a Local Consent as part of a State Alcohol Application shall be governed as follows:

(1) Local Consent Application Requirements.

(a) Name, current address and telephone number of the applicant.

(b) Applicant's business name and entity type (individual/sole proprietor, corporation, partnership, limited liability company), business address and business telephone.

(c) Mailing address (if different from the business address) for official correspondence, licensing renewal, etc.

(d) A copy of applicant's current business license issued by Ivins City.

(e) A completed copy of applicant's full state application for the type of license desired, including a scaled 8 ½" x 11" site plan or floor plan highlighting areas for storage, sale and consumption. (Ord. 2014-21, 2014)

5.04.302 APPLICATION FOR OFF-PREMISE BEER RETAILER LICENSE: All applications for the City to issue an Off-Premise Beer Retailer License or a Temporary Beer Event Permit shall be governed as follows:

(1) License Application Requirements.

(a) Name, current address and telephone number of the applicant.

(b) Applicant's business name and entity type (individual/sole proprietor, corporation, partnership, limited liability company), business address and business telephone.

(c) Mailing address (if different from the business address) for official correspondence, licensing renewal, etc.

(d) Federal tax identification number, state sales tax number, state payroll withholding number, and Department of Workforce Services number.

(e) BCI criminal background check.

(f) The type of beer license desired.

(g) A scaled 8 ½" x 11" site plan or floor plan highlighting areas for storage, sale and consumption, as applicable.

(h) A copy of applicant's current business license issued by Ivins City.

(i) Evidence of proximity to any community location identified in Section 32B-1-202 of the Act.

(j) A statement verifying that the applicant meets all of the requirements of this Chapter and the Act.

(k) A signed statement that the applicant has read, understands and will comply with all laws, ordinances, rules and regulations that are currently in force or that may be amended from time to time by the State, Washington County Health Department and the City relating to alcoholic beverages.

(l) A signed consent form granting any authorized representative of the City, including law enforcement, the unrestricted right to enter the licensed premises during business hours.

(m) A sworn statement signed by the applicant that all the facts included in the application are true.

(2) Business Entities: If the applicant is a partnership, limited liability company, association or corporation, the applicant shall provide the above information with respect to any shareholder owning more than twenty percent (20%) of the business entity and each partner, limited liability company member, association member, corporate officer or director, although the application need only be signed by a single partner, manager, member or officer. If the establishment for which the applicant seeks a license will be managed or operated by a person other than the applicant, the City shall also require that the agent, manager or operator submit an application for the purpose of a background investigation, and, if the manager or operator does not meet the requirements of this Chapter, the City may deny the applicant's request for a license.

(3) Application Fee. The fee for reviewing and processing an application for consent or licensing shall be as set forth on the City's Consolidated Fee Schedule. (Ord. 2014-21, 2014)

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PART 4

APPROVAL PROCESS; TERM OF LICENSE; RENEWAL

5.04.401 LOCAL CONSENT REVIEW AND DECISION: An application for the City to sign a Local Consent as part of a State Alcohol Application shall be reviewed administratively by the City's Technical Review Committee (TRC). The TRC shall review the application to make certain it is complete, that the required fee has been paid, and that there is nothing that would prevent the City from signing the Local Consent. Within ten (10) business days of the City's receipt of an Application for Local Consent, the City Manager shall either execute the Local Consent form, provided as part of applicant's packet of documents for the state, or shall issue a refusal to execute the Local Consent stating the reasons therefor. (Ord. 2014-21, 2014)

5.04.402 LICENSE APPLICATION REVIEW AND DECISION: An application for a City Off-Premise Beer Retailer License shall be reviewed initially by the City's Technical Review Committee (TRC). The TRC shall, within ten (10) business days of the City's receipt of the application, make a recommendation to the City Council. The City Council shall place the item on its next regularly scheduled meeting agenda to decide whether or not to issue the requested license. In the event the final decision is a denial, then the body shall also state the grounds for such denial. (Ord. 2014-21, 2014)

5.04.403 GROUNDS FOR DENIAL OF AN APPLICATION: In the event of a denial of the requested license by the City Council, the City Attorney shall prepare, and cause to be served upon the applicant, a letter of denial upon a finding of any of the following grounds:

(1) The application was incomplete.

(2) The application fee was not paid.

(3) The premise to be licensed does not comply with the applicable zoning regulations and/or building codes applicable at the time of application.

(4) The applicant did not meet the licensee qualifications.

(5) The applicant misrepresented or concealed information required to be provided with the application.

(6) The proposed premise did not meet health codes and the applicant did not provide reasonable assurances that it would be brought into compliance upon approval of the application.

(7) The applicant holds other licenses under this Chapter that are not in good standing or on which such licensed premises have occurred in violation of the requirements of this Chapter or the Act.

(8) The applicant did not hold a current Ivins City business license. (Ord. 2014-21, 2014)

5.04.404 TERM OF LICENSE; RENEWAL:

(1) Term. An Off-Premise Beer Retailer License issued by the City, no matter when issued, shall expire December 31 of each year.

(2) Renewal. On or before November 1 of each year, applicant must submit an application and fee for renewal of their City license. All renewal applications must disclose if any of the information on the original license application has changed and, if so, must update all information that has changed before a renewal license can be issued.

(a) If no information has changed and there have been no violations of this Chapter, the City's Business License Official shall issue the renewal.

(b) If information has changed, or there have been violations of this Chapter within the past license term, then the renewal application shall go through the same approval process as for approval of an initial license.

(c) If an applicant fails to meet any of the requirements for renewal, the City shall issue a revocation of the City license. (Ord. 2014-21, 2014)

PART 5

LICENSEE REQUIREMENTS; VIOLATIONS; PENALTIES; APPEAL

5.04.501 LICENSEE REQUIREMENTS:

(1) Display of License**.** Every licensee shall display a copy of the license or permit obtained from the City in a prominent place on the premises. Every licensee shall also display any licenses or permits obtained from the state as may be required in the Act.

(2) Illumination. Licensed premises shall be kept illuminated at all times while occupied or open for business. Outdoor and signage illumination must conform to City Code.

(3) Employee Requirements. Any employee handling alcoholic beverages must be twenty-one (21) years of age or older, unless otherwise specified in the Act. Servers of alcohol must wear a unique identification badge showing the employee's first name, initials, or a number assigned by the employer. Employees may not consume or be under the influence of alcoholic beverages while on duty.

(4) Training. The City may revoke or refuse to renew a license if any individual who manages operations, supervises servers or serves an alcoholic beverage fails to complete and pass an alcohol training and education seminar as required by the Act or fails to provide evidence of that training as part of the application for a license or for a renewal. (Ord. 2014-21, 2014)

5.04.502 VIOLATIONS: It shall be a violation of this Chapter for any licensee, employee or agent of any licensee to cause or permit to be caused on his or her premises any of the following:

(1) To sell any alcoholic beverages if unlicensed or after a licensed has been denied, suspended or revoked.

(2) To sell any alcoholic beverages to any person who is intoxicated or under the influence of any intoxicating beverage.

(3) To fail to have the license issued under this Chapter or the Act displayed in a prominent place on the premises.

(4) Except as specifically provided in the Act, minors may not sell, dispense, or furnish alcohol. All licensees may prohibit minors from entering the premises at their discretion by posting a sign at the entrance stating that minors are not permitted inside.

(5) To sell beer except in the manner for which a license has been issued pursuant to the provisions of this Chapter and/or the Act.

(6) To advertise the sale of alcoholic beverages except under such regulations established by the Utah alcoholic beverage control commission and as provided in the City Code.

(7) To refuse entry on the premises any authorized person to perform an inspection under this Chapter or the Act.

(8) Acts or conduct on the licensee's premises which are considered contrary to the public welfare and morals, as defined by the Act, are prohibited. Licensees may not engage in or permit any form of gambling on the premises. A licensee may not knowingly allow a person on the licensed premises to sell, distribute, possess, or use a controlled substance or use, deliver or possess with the intent to deliver drug paraphernalia. It is the responsibility of the licensee to maintain proper order and decorum within their establishment by taking appropriate action to prohibit disorderly or prohibited conduct on the premises by any patron or employee. Failure of the licensee to do so may subject the licensee to possible revocation of the license. (Ord. 2014-21, 2014)

5.04.503 INSPECTIONS: All licensed premises shall be subject to inspection by any officer, agent or peace officer of the City, the alcoholic beverage control commission, or the Utah department of health. At any time during which licensees are open for the transaction of business and upon presentation of credentials, said officer shall immediately be admitted onto the premises and permitted without hindrance or delay to inspect completely the entire premises and all books and records of the licensee. Every licensee shall, at the request of the Utah Department of Health, furnish samples of the beer offered for sale. (Ord. 2014-21, 2014)

5.04.504 PENALTY: Any person committing any violation of this Chapter shall be guilty of a Class B misdemeanor and, upon conviction, subject to the penalty applicable to a Class B misdemeanor. Any person violating the Act shall be subject to the penalties of the Act. (Ord. 2014-21, 2014)

5.04.505 GROUNDS FOR SUSPENDING OR REVOKING A LICENSE:

(1) The applicant no longer holds a current Ivins City business license.

(2) The applicant no longer meets the licensee qualifications, requirements or restrictions or no longer meets the licensing requirements of this Chapter or the Act.

(3) The applicant failed to disclose any material changes in status on the renewal application, including but not limited to a change in license status with the state.

(4) The proposed premise no longer meets health codes and the applicant has not provided reasonable assurances that it will be brought into compliance upon approval of the application.

(5) The applicant holds licenses under this Chapter that are no longer in good standing or on which a violation of the requirements of this Chapter or the Act have occurred.

(6) It is discovered that the applicant committed a violation of this Chapter or the Act.

(7) It is discovered that the applicant attempted to transfer the license to another person or entity in violation of the Act. (Ord. 2014-21, 2014)

5.04.506 PROCESS FOR SUSPENDING OR REVOKING A LICENSE: Upon the City's Technical Review Committee making a finding of a ground for suspending or revoking a license, the City Attorney shall prepare, and cause to be served upon the licensee, written Notice of Intent to Suspend or Revoke the licensee's license and shall specify therein the grounds for such suspension or revocation. If the Notice of Intent is served by mail it shall be deemed served after five (5) days from date of mailing.

(1) Request for Hearing. After a Notice of Intent to Suspend or Revoke has been issued to a licensee, the licensee has ten (10) business days from date of service, or deemed service, within which the licensee may submit a written Request for Hearing before the body that issued the initial license for the purpose of determining the sufficiency of grounds to suspend or revoke the license. If no written Request for Hearing is received by the City within the time allowed, then the City Attorney shall prepare, and cause to be served upon the licensee, a written letter of suspension or revocation, as the case may be, which shall include direction to the licensee to immediately cease and desist all alcohol activities until such time as a new license is obtained. In the event a licensee does submit a timely Request for Hearing, the body that issued the initial license shall hold a hearing and make specific findings as to whether or not there are sufficient grounds for suspending or revoking a license and, if sufficient grounds are found to suspend or revoke the license, shall order such suspension or revocation and direct licensee to immediately cease and desist from all alcohol activities until such time as a new license is obtained. (Ord. 2014-21, 2014)

5.04.507 APPEAL: In the event a licensee does file a timely written Request for Hearing, following which an order suspending or revoking licensee's license is issued, the licensee may file with the City Recorder a written Appeal within ten (10) days of the entry of the adverse order. In the event a timely Appeal is filed, then the matter shall be set for hearing before the City's Administrative Law Judge pursuant to Title 2, Chapter 5 of the Ivins City Code. (Ord. 2014-21, 2014)

SECTION 2. Severability. If any section, clause or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Effective Date: This Ordinance shall become effective immediately upon adoption by the City Council.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS ____ DAY OF _____, 2014 BY THE FOLLOWING VOTE:

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	AYE	NAY	ABSTAIN	ABSENT
George E. Elwell, Jr.	_____	_____	_____	_____
Cheyne McDonald	_____	_____	_____	_____
Lesley Mendenhall	_____	_____	_____	_____
Steven Roberts	_____	_____	_____	_____
Ron Densley	_____	_____	_____	_____

_____
Chris Hart, Mayor

ATTEST:

_____
Kari Jimenez, City Recorder