

ORDINANCE NO. 802

AN ORDINANCE AMENDING TROUTDALE MUNICIPAL CODE TITLE 5, BUSINESS LICENSES AND REGULATIONS, BY ADOPTING A NEW CHAPTER 5.10, LIQUOR LICENSES.

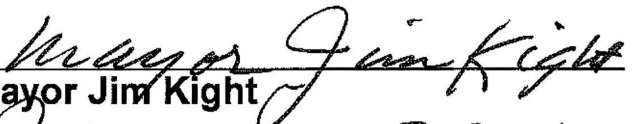
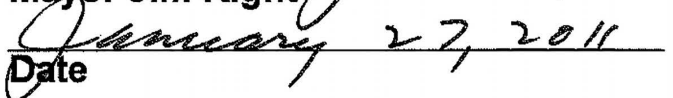
THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Oregon Liquor Control Commission (OLCC) requires that every applicant for issuance or renewal of a liquor license seek written recommendation from its local governing body.
2. The OLCC allows governing bodies to adopt liquor license issuance review guidelines consistent with the Oregon Liquor Control Act.
3. It is in the public interest that the city amend the Municipal Code to establish guidelines specifying the procedure for city review of liquor license applications and renewals.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Troutdale Municipal Code Title 5, Business Licenses and Regulations, is amended by adding Chapter 5.10, Liquor Licenses, as set forth in Attachment A.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Mayor Jim Kight

Date


Debbie Stickney, City Recorder

Adopted: January 25, 2011
Ordinance #802

Troutdale Municipal Code 5.10

**Chapter 5.10
LIQUOR LICENSES**

Sections:

- 5.10.010 Purpose.**
- 5.10.015 Delegation of Authority**
- 5.10.020 Forms.**
- 5.10.030 Temporary Licenses.**
- 5.10.040 Regular Licenses.**
- 5.10.050 Investigation.**
- 5.10.060 City Manager Recommendation.**
- 5.10.065 City Manager Review.**
- 5.10.070 City Council Review.**
- 5.10.080 Contents of Public Hearing Notice.**
- 5.10.090 Publication of Public Hearing Notice.**
- 5.10.100 Public Hearing Procedures.**

5.10.010 Purpose.

These sections establish criteria for recommending to the Oregon Liquor Control Commission (OLCC) that it grant, deny, modify or renew liquor licenses for businesses within the City. This process is intended to make fair, effective, and efficient recommendations. These sections are necessary to ensure that premises licensed to sell or dispense liquor meet community expectations, and that such businesses are conducted in a lawful manner that does not unreasonably disturb the peace and tranquility of the City and its neighborhoods.

5.10.015 Delegation of Authority

The City Council hereby delegates to the City Manager or designee (hereinafter, "City Manager") the authority granted to the City Council pursuant to ORS 471.166 to investigate and review applications for the issuance of all liquor licenses and renewals of liquor licenses, and to make recommendations to the Oregon Liquor Control Commission.

5.10.020 Forms.

Applicants for OLCC licenses shall provide the City Manager with the appropriate OLCC license application forms. The City Manager may require additional information appropriate for conducting the investigations required for City recommendations.

5.10.030 Temporary Licenses.

The City Manager is authorized to approve applications for temporary OLCC licenses such as special events, special beer and special wine licenses. Such applications may be processed administratively after the fee established by City Council has been paid. The City Manager may make an unfavorable recommendation to the OLCC if the City Manager finds that the applicant does not meet the criteria established by TMC 5.10.060. Either the applicant or City Manager may refer an application to the City Council for a public hearing.

5.10.040 Regular Licenses.

The City Manager accepts new applications for regular OLCC liquor licenses only when the following conditions are met: (1) all required forms are properly completed and in order. (2) the applicant has obtained a city business license; and (3) the processing fee established by City Council resolution has been paid. For purposes of this Chapter, a "regular license" means any license that the OLCC may issue for an annual period. Notice of renewal applications are received directly from OLCC.

5.10.050 Investigation.

The City Manager shall coordinate an investigation of each application to determine the appropriate recommendation to the OLCC. The City Manager shall provide a copy of each application to the appropriate city departments for investigation and report. Reports from these departments must be included with the City Manager's unfavorable recommendation.

5.10.060 City Manager Recommendation.

(1) The City Manager may make an unfavorable recommendation on any application based upon the following guidelines:

- (a) Is the applicant in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess;
- (b) Has the applicant made false statements to the city or OLCC in connection with the application;
- (c) Is the applicant incompetent or physically unable to carry on the management of the establishment proposed to be licensed;
- (d) Has the applicant been convicted of violating any of the alcoholic liquor laws of this state, general or local, or been convicted at any time of a felony;
- (e) Has the applicant maintained an unsanitary establishment or not maintained the premises in accordance with the building code and fire code of the city and the state;
- (f) Is the applicant of good repute and moral character;
- (g) Does the applicant have a good record of compliance with the alcoholic liquor laws of this state and the rules of OLCC when previously licensed;
- (h) Is the applicant the legitimate owner of the business proposed to be licensed, or do other persons have ownership interests in the business that have not been disclosed;
- (i) Has the applicant demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed;
- (j) Is the applicant able to read or write the English language or to understand the laws of Oregon relating to alcoholic liquor or the rules of the OLCC;
- (k) Has the applicant maintained the premises in accordance with the building code and fire and life safety code of the city and the state;
- (l) Does the applicant seek licensing of premises not consistent with city land use designations;

- (m) Has the applicant demonstrated an unwillingness or inability to cooperate with the city or neighbors to resolve driving under the influence of intoxicants concerns or community disputes related to a licensed establishment; or
- (n) Is there any other specific reason consistent with the purposes of these provisions that the City Manager concludes warrant an adverse recommendation based upon public health, safety, welfare, convenience, or necessity.
- (o) Does the applicant comply with ORS 471.313(4) and (5) and OAR 845-005-0320, 325, 326, and 355.

(2) The City Manager may make an unfavorable recommendation on any application if there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for refusal of a license under this section, where so related to the sale or service of alcohol, includes but is not limited to, obtrusive or excessive noise, music or sound vibrations, public drunkenness, fights, altercations; harassment, unlawful drug sales, alcohol or related litter, trespassing on private property, and public urination. Histories from premises currently or previously operated by the applicant may be considered when reasonable inference may be made that similar activities will occur as to the premises proposed to be licensed. The applicant may overcome the history by showing that the problems are not serious or persistent or that the applicant demonstrates a willingness and ability to control adequately the premises proposed to be licensed and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

(3) The City Manager's unfavorable recommendation must be supported by reliable factual information which includes but is not limited to personal observations of activities in or around the proposed licensed locations, as opposed to opinion, hearsay, feelings, belief or speculation.

5.10.065 City Manager Review.

The City Manager is authorized to file a favorable recommendation with the OLCC for all regular OLCC liquor license original applications and renewals which receive a favorable City recommendation.

5.10.070 City Council Review.

If the City Manager's decision is to provide an unfavorable recommendation, notice of the City Manager's decision shall be provided to the applicant no later than fifteen days before the recommendation is to be provided to the Oregon Liquor Control Commission. Notice may be by personal delivery, certified or registered mail, return receipt requested, or signature confirmation. Notice to the applicant shall be sent to the applicant's address stated in the application. The notice shall state the grounds for the unfavorable recommendation, and advise the applicant that the City Manager's decision may be appealed to the City Council by filing a written notice of appeal with the City Recorder within ten days of the date of the City Manager's decision. If, before the date the decision is to be provided to the Oregon Liquor Control Commission, the City Recorder receives a request for appeal from an unfavorable recommendation by the applicant, the City Manager shall file with the OLCC a written request for additional time to submit the

recommendation and the hearing shall be scheduled so that a recommendation can be filed within the time limit of the extension.

5.10.080 Contents of Public Hearing Notice.

Notice of the public hearing must be given to the applicant either personally or by certified mail, return receipt requested, or signature confirmation, postmarked not later than 10 days prior to the hearing. The notice shall contain: (1) the date, time and place of the hearing; (2) a copy of the recommendation of the City Manager together with all supporting reports and documents; and (3) a statement that information about procedures and rights of parties may be obtained from the City Manager.

5.10.090 Publication of Public Hearing Notice.

If a public hearing is scheduled, the City Manager shall publish in a newspaper of general circulation in the city a notice specifying a time, date and location of the hearing and business name and address of applicant. The notice shall inform the public that testimony may be given for or against the application

5.10.100 Public Hearing Procedures.

When a public hearing before the City Council is held: (1) The applicant and the City Manager may present written and oral evidence and may rebut opposing evidence; (2) The hearing shall be limited to production of evidence relevant to the recommendation of the City Manager, unless the council decides to hear additional evidence; (3) After consideration of all relevant evidence, the City Council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the TMC 5.10.060 criteria and shall be final. In the case of an adverse recommendation, the City Council shall make findings of fact which shall be forwarded to the OLCC along with the City Council recommendation against the application.