

ORDINANCE NO. 777-A

Introduced by all Commissioners unanimously, with one abstention.

AN ORDINANCE AMENDING ORDINANCE NO. 776-A, TO ESTABLISH GUIDELINES FOR THE CONSIDERATION OF LIQUOR LICENSE APPLICATIONS, AND DECLARING AN EMERGENCY.

THE CITY OF WARRENTON ORDAINS:

Section 1. Ordinance 776-A, adopted on or about February 25, 1985, be and the same is hereby amended to read as follows:

Section 1. The Commission finds:

1. That ORS 471.210 and the administrative rules of the Oregon Liquor Control Commission authorize the Commission to make recommendations to the Oregon Liquor Control Commission concerning the issuance of liquor license for premises located within the City.
2. That, in consideration of the neighborhood and community impact that the presence and location of establishments selling alcoholic beverages may present, the Commission should ensure that an application review and recommendation process is developed and maintained in order that the City's recommendations, as to those persons that should not be so licensed, and those locations that should not be so approved or renewed, are fairly determined and promptly forwarded for OLCC consideration.
3. That a formalized process be utilized to ensure that such recommendations be determined in an orderly and efficient manner.

Section 2. Purpose. The purpose of this ordinance is to establish the principal criteria which shall be considered by the Commission in making recommendations to the Oregon Liquor Control Commission concerning the granting, denying, modifying or renewing of all liquor licenses for premises within the city limits. This ordinance establishes a process to be utilized for the investigation of such license applicants for the purpose of making such recommendations that is fair, effective and efficient. This ordinance is necessary to ensure that all premises licensed to sell or 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 3. Application Procedure. (a) Any applicant for any license who is required by the Oregon Liquor Control Commission (O.L.C.C.) to have a recommendation from the City concerning the suitability of such application shall present the license application forms prescribed by the O.L.C.C. to the City for the purpose of obtaining the recommendation of the City concerning such license. In this ordinance, the term "application" includes any renewal of or change in an existing license.

(b) For the purpose of conducting the investigation to ascertain pertinent information bearing upon such City recommendation, the City Manager may require such other information in addition to that provided upon the O.L.C.C. application forms as he deems appropriate.

(c) The City Manager shall accept liquor license applications only when the following conditions are met:

- (1) All required forms are properly completed and in order; and

- (2) Commencing in January of 1986, the processing fee, as allowed by the Oregon Revised Statutes, has been paid.

Section 4. Investigation of Applications. The City Manager shall coordinate and conduct an investigation of each application for the purpose of determining what recommendation shall be made by the City to the O.L.C.C. The City Manager shall provide a copy of all applications to the Warrenton Police Department in order that the Police Department will investigate and report on each application; reports of the Police Department shall be made a part of such recommendation.

Section 5. Staff License Recommendation Procedures (a) The City Manager shall make a favorable recommendation on an application filed unless one of these conditions is present:

- (1) The application is for a new outlet; or
- (2) The application is for a new location; or
- (3) The application is for an increase in liquor selling or dispensing privilege; or
- (4) The application is opposed by residents or property owners within 200 feet of the licensed location.
- (5) The report of the Police Department indicates that one or more of the factors in Section 6(c) may exist.

(b) The City Manager shall make an Unfavorable recommendation under the following conditions:

- (1) The application is incomplete;
- (2) The applicant neglects or refuses to provide, in a timely manner, any information reasonably requested by the City Manager, the Warrenton Police Department, or the City Commission;
- (3) The applicant provides false or misleading information to the City Manager, Police Department, or City Commission;
- (4) The location for which application is made is not properly zoned for the proposed licensed outlet;

Section 6. Commission Recommendation Procedures. (a) In those application cases in which one of conditions of Section 5(a), is present, the City shall, in addition to carrying out its investigation pursuant to Section 4:

- (1) Notify property owners within 200 feet of the proposed licensed outlet;
- (2) City Staff shall place the application on the Commission calendar with a recommendation to Commission no sooner than ten (10) days after mailing such letter of notification.

(b) When the issuance of a license or the renewal of an existing license has been opposed in writing by the owners or occupants of property within 200 feet of the location, the City may place the license hearing on the Commission calendar not sooner than ten (10) days after mailing notification of such hearing to the objecting citizens and the licensee.

(c) The City Manager may make an Unfavorable or a Conditionally Favorable recommendation to the Commission regarding any application case involving one of conditions of Section (5) (a), or in any renewal of license case, if:

- (1) The applicant's record reflects a pattern of violation of the alcoholic liquor laws of this State;
- (2) The applicant is known to use alcoholic beverages to excess or controlled substances;
- (3) The record of the applicant shows a violation(s) of criminal law(s) connected in time, place and manner with a liquor establishment or which demonstrate a disregard for law;
- (4) 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 violation of the provisions of the City Code, or federal or state law relating to minors, gambling, obscenity, controlled substances, prostitution or alcoholic beverages, or Chapters 163, 164, 165 and 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.
- (5) The applicant has allowed, on the premises:
 - (a) Any female person to be so costumed or dressed that the nipple(s) of her breast(s) are uncovered and exposed to public view;
 - (b) Any person, in public view, to expose his or her genitalia to public view, or to appear without covering his or her genitalia with an opaque material which does not simulate the organ covered; or
 - (c) Any person, in public view, to engage in or simulate any act of sexual intercourse, sodomy, masturbation or sexual stimulation by massage or other stimulation of the genital area of the body.
- (6) The applicant's premises are not maintained in reasonable repair, both interior and exterior, and kept clean and free of litter, rubbish, and dirt;
- (7) 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;
- (8) The licensing of the premises would not be in the best interests of the community because of a history of illegal activities, altercations, noisy conduct, or other disturbances in or around the premises;
- (9) The applicant has demonstrated an unwillingness or inability to cooperate with city agencies and/or

neighbors in resolving community disputes related to a licensed establishment;

- (10) There is any other specific reason consistent with the purposes of this ordinance which may in the opinion of the City Manager or the Chief of Police warrant an adverse report to the Commission based upon public health, safety, welfare, convenience or necessity.
- (11) A Dispenser Class A Applicant is not open for meal service to the general public, including minors, for at least two of the three meal periods, breakfast, lunch or dinner until at least 8:00 o'clock p.m., on days when the applicant is otherwise open for business.

(d) Before the Commission hears any liquor license application, the applicant shall be notified by the City Manager of the time, date, and place of hearing, of the nature of the recommendations made to the Commission of the right to reasonable opportunity to be heard at the Commission meeting and of the contents of this ordinance with regard to procedures and criteria. Where a recommendation is not Favorable, it shall be the responsibility of the City Manager to inform the applicant as to the reasons for the recommendation and to advise the applicant as to the procedures for gaining access to any reports which may be a part of such recommendation.

Section 7. Commission Hearing Procedures. (a) In those cases in which the Commission has scheduled a hearing on any liquor license application, such applicant shall be given a reasonable opportunity to be heard and address concerns raised by City Manager or Police, members of the Commission, and persons or groups appearing in opposition to such application. The Commission's Favorable or Unfavorable recommendation on such application, based upon a determination of what course of action best serves the interests of the citizens of the City, shall be final.

(b) Where the Commission finds that the applicant is violating or has been in violation of criteria which are enumerated in this Ordinance as reasons for an Unfavorable recommendation, but not to the extent that an immediate Unfavorable recommendation is justified, the recommendation to the Oregon Liquor Control Commission may be "Favorable with Letter of Warning". In such a case, the City shall prepare and deliver to the applicant, with a copy to the Oregon Liquor Control Commission, a summary of the reports against such applicant and a note that same is thereby formally warned to correct the problems cited. During the ensuing license period, the City shall monitor the progress of the applicant in eliminating such problems. At the next renewal hearing, the burden of proof shall be on the licensee to show that the licensee should be favorably recommended for renewal and the City Manager shall report to the Commission on the applicant's performance during the preceding period. If the Commission finds that the licensee has not made sufficient progress in correcting the conditions which led to the Letter of Warning, then the Commission's recommendation to the Oregon Liquor Control Commission may be unfavorable.

Section 8. Reconsideration of Applications. After having made a recommendation other than Favorable on any license application, the City Manager and the Commission shall not consider any new application for the same location by the same or substantially the same applicant for a period of at least six months or while

such applicant has pending an appeal in court or in a state administrative agency relating to such license. Notwithstanding, the City Manager may reconsider and/or resubmit such an application to the Commission in less than six months if he reasonably believes that the conditions which caused the Commission to make a recommendation other than Favorable have substantially changed, and no court or administrative appeal of such license is pending.

Section 9. Severability. If any portion of this ordinance is deemed unconstitutional or otherwise unlawful it shall not invalidate any other portion of this ordinance.

Section 2. The Commission declares that, in order to immediately protect and preserve the public peace, safety and welfare by implementing a liquor license processing system before the time for the license renewal comes, an emergency exists, and this ordinance shall be in full force and effect from and after its passage by the Commission.


Passed unanimously by all Commissioners of the City of Warrenton this 4th day of March, 1985.

Approved by the Mayor of the City of Warrenton this 4th day of March, 1985.



Mayor

ATTEST:



Auditor and Police Judge