

A BILL FOR AN ORDINANCE REPLACING)	ORDINANCE BILL NO.	<u>21</u>
CHAPTER 5.10 (ORDINANCE 2071) OF THE)	FOR 2008	
LEBANON MUNICIPAL CODE, LIQUOR)		
LICENSE APPLICATION PROCESS)	ORDINANCE NO.	<u>2770</u>

Whereas, the Lebanon City Council deems it necessary to establish a comprehensive process to ensure that premises licensed to sell or dispense liquor, within the city limits, meet community expectations and conduct business in a lawful, peaceful, safe and sanitary manner.

THE PEOPLE OF THE CITY OF LEBANON ORDAIN AS FOLLOWS:

5.10.010 Purpose. The purpose of this chapter is to establish criteria for Council consideration in recommending to the Oregon Liquor Control Commission (OICC) that it grant, deny, modify or renew liquor licenses for premises within the city. The process established to review license applicants in order to make recommendations will be fair, effective and efficient.

5.10.020 Application Conditions. The city shall accept applications for regular OICC liquor licenses only when all required forms are properly completed and in order; and the appropriate processing fee established by Council resolution has been paid, or as required under OICC regulations for application renewals.

5.10.030 City Investigation. The city manager, or designee, shall coordinate an investigation of each application to determine the appropriate city recommendation to the OICC. The city manager may require additional information appropriate for conducting the investigation. The city manager shall provide a copy of each application to the building official, fire district, city planner, police chief and any other city or county official deemed appropriate for such investigation and reporting. Reporting from such departments shall be included in each staff recommendation to Council. Report for any unfavorable recommendation must be made to the city manager within ten days of the date the application was accepted.

5.10.040 Recommendation Procedure. OICC applications receiving favorable recommendations from city staff will be scheduled as a consent calendar item on the next available City Council Meeting Agenda, unless a Council member requests a public hearing. Upon request of a councilmember, or an adverse or conditional recommendation by the city manager, a public hearing will be scheduled and notice provided.

5.10.050 Public Hearing Procedures (Council Action).

A) In the event that a public hearing is required, such public hearing will be scheduled and notice given pursuant to LMC 5.10.090. The public hearing will be conducted by the City Council.

B) The city, the applicant and any interested parties shall have the right to present evidence and witnesses. The mayor and council members may ask questions of any applicant or witness.

C) The city, the applicant or any other affected party may be represented by legal counsel at their own expense.

D) After due consideration of the evidence and testimony presented, the Council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the criteria in this chapter and shall be final. Written findings shall be produced and forwarded to the OICC, along with Council's recommendation.

5.10.060 Criteria for Recommendation.

A) The City Council may make an unfavorable or conditionally favorable recommendation to the OICC on an application if the following apply, or a favorable recommendation if none of the following apply:

1. The application is not complete.
2. The applicant fails to provide the City Councilor any city or county agency involved herein with reasonably requested information in a timely manner.
3. The applicant recklessly or intentionally provides the city with false or misleading information.
4. The applicant has been convicted of or pled guilty to one or more of the following local, state or federal offenses:
 - a) Driving while under the influence of intoxicants;
 - b) Drinking alcoholic liquor in a motor vehicle upon a public highway;
 - c) Possession of a controlled substance;
 - d) Delivery of a controlled substance;
 - e) Manufacture of controlled substance;
 - f) Any other offense involving moral turpitude.
5. Evidence is discovered which indicates that the applicant is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.
6. The applicant is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.
7. The applicant has maintained an unsanitary establishment.
8. The applicant does not display a good record of compliance with the alcoholic liquor laws of this state and the rules of the OICC when previously licensed.
9. The applicant is not the legitimate owner of the business proposed to be licensed or other persons have ownership interests in the business, which interests have not been disclosed.

10. The applicant's record shows, through convictions, guilty pleas, civil compromises, administrative rulings or other means, violation(s) of law(s) or ordinance(s) connected in time, place and manner with a liquor establishment, including state alcoholic liquor and gambling laws.
11. The applicant has maintained or allowed to exist, an establishment that creates or is a public nuisance under state law or city ordinance.
12. That there are sufficient licensed premises in the locality set out in the application, or that granting of a license in the locality set out in the application is not demanded by public interest or convenience.
13. The applicant has not maintained the premises in accordance with the building code or fire code in the city and the state.
14. The applicant seeks licensing of premises inconsistent with city land use designations.
15. A history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises 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 for which is grounds for an unfavorable recommendation under this criteria, where related to the sale or service of alcohol, includes, but is not limited to:
 - a. Obtrusive or excessive noise, music or sound vibrations;
 - b. Public drunkenness;
 - c. Fights or altercations
 - d. Harassment of customers at businesses in the vicinity or citizens on public right-of-ways.
 - e. Alcohol or related litter;
 - f. Trespassing on private property;
 - g. Public urination or defecation; and
 - h. Vandalism of near-by private property by applicant's customers.
 - i. For those licensees/applicants located within the city established Alcohol Impact and Enhanced Enforcement Area (AIEEA): Providing service to any individual(s) who are under court order not to enter the AIEEA.

B) The City Council may consider such mitigating factors by a showing of the applicant that the problems are not serious or persistent or that the applicant has demonstrated a willingness and ability to control adequately the licensed premises and patron's behavior in the immediate vicinity of the premises.

10.070 Conditional Recommendation. If Council finds that any of the criteria established by LMC 5.10.070 apply to an applicant, a conditionally favorable recommendation with a letter of warning may be made. The city shall deliver to the applicant in person or by certified

mail a summary of the reports relating to the application and a notice to correct the problems cited. A copy of this notice and summary shall be sent to the GLCC. During the following license period, the city manager shall monitor the progress of the applicant in correcting such problems and report to the Council. At the time of the next license renewal, the applicant shall have the burden of proof to establish that the license should receive a favorable recommendation for renewal. If the Council finds that the applicant has not made sufficient progress in correcting the conditions, which resulted in the letter of warning, then the Council may make an unfavorable recommendation to the GLCC. Unfavorable staff recommendation requires public hearing per 5.10.040.


5.10.080 Unfavorable Recommendation--Resubmittal Terms and Conditions. If the Council makes an unfavorable recommendation on any license application, the Council shall not consider a new application from the same applicant while an administrative or court appeal relating to the license is pending. An application may be resubmitted to the Council in less than six months from the date of the Council's unfavorable recommendation only if the conditions which caused such recommendation have been remedied, as determined by the City Manager.

5.10.090 Notice of Hearing. In the event that a public hearing is scheduled, no later than ten days prior to the public hearing, there shall be published in a newspaper of general circulation specifying a time, date and location of the hearing and business name and address of the applicant. The notice shall inform the public that testimony may be given for or against the application.

Notice of the public hearing shall be given to the applicant either personally or by first class mail postmarked not later than 10 days prior to the hearing. The notice shall contain statements of:

- A) The time and place of the hearing;
- B) The matter(s) asserted or charged supporting the adverse or conditional recommendation or stating why the hearing was requested; and
- C) The applicant's right to legal representation at the hearing at the applicant's expense.

Passed by a vote of 5 for and 0 against by the Lebanon City Council on signed by the Mayor this 10th day of December, 2008.


Kenneth I. Toombs, Mayor
Bob Elliott, Council President

ATTEST:


Linda Kaser, City Clerk/Recorder