

ORDINANCE NO. 4553

AN ORDINANCE ENACTED BY THE NAMPA CITY COUNCIL AMENDING TITLE 5, CHAPTER, 12, SECTION 5-12-1, OF THE NAMPA CITY CODE, PERTAINING TO DEFINITIONS USED IN TITLE 5, CHAPTER 12; AMENDING TITLE 5, CHAPTER 12, SECTION 5-12-2, OF THE NAMPA CITY CODE, PERTAINING TO THE REQUIREMENT THAT ANYONE SELLING LIQUOR BY THE DRINK, BEER, OR WINE OBTAIN A LICENSES THEREFORE; AMENDING TITLE 5, CHAPTER 12, SECTION 5-12-3, OF THE NAMPA CITY CODE, PERTAINING TO THE INVESTIGATION INTO APPLICANTS FOR ALCOHOL LICENSES; AMENDING TITLE 5, CHAPTER 12, SECTION 5-12-6, OF THE NAMPA CITY CODE, PERTAINING TO COUNCIL APPROVAL OF INITIAL APPLICATIONS FOR ALCOHOL LICENSES; AMENDING TITLE 5, CHAPTER 12, SECTION 5-12-8, OF THE NAMPA CITY CODE, PERTAINING TO FEES FOR ALCOHOL LICENSES; REPEALING AND REPLACING TITLE 5, CHAPTER 12, SECTION 5-12-10, OF THE NAMPA CITY CODE, WITH A NEW SECTION PERTAINING TO REVOCATION OF AN ALCOHOL LICENSE FOR FAILURE TO PLACE SAID LICENSE INTO SERVICE; AMENDING TITLE 5, CHAPTER 12, 5-12-11, OF THE NAMPA CITY CODE, PERTAINING TO LOCATION REQUIREMENTS FOR ESTABLISHMENTS SELLING LIQUOR, BEER, AND WINE BY THE DRINK; AMENDING TITLE 5-12-12, OF THE NAMPA CITY CODE, PERTAINING TO TRANSFERS OF ALCOHOL LICENSES; AMENDING TITLE 5, CHAPTER 12, SECTION 5-12-13, OF THE NAMPA CITY CODE, PERTAINING TO HOURS OF SALE; ADDING A NEW SECTION 5-12-17 TO TITLE 5, CHAPTER 12, OF THE NAMPA CITY CODE, ADDING A POINT BASED SYSTEM FOR THE POTENTIAL SUSPENSION, REVOCATION, OR DENIAL OF ALCOHOL LICENSES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES, RESOLUTIONS, ORDERS AND PARTS THEREOF, IN CONFLICT HEREWITH.

BE IT ORDAINED by the Mayor and Council of the City of Nampa, County of Canyon, State of Idaho:

Section 1. That Title 5, Chapter 12, Section 5-12-1 of the Nampa City Code, be amended as follows:

5-12-1: DEFINITIONS:

ALCOHOLIC BEVERAGE: Any liquor, wine. and/or beer as defined by Title 23, Idaho Code.

BEER GARDEN: A particular location at a formal or social gathering, generally held at a park, but not limited to, where liquor, beer or wine can be donated or sold to the public with a catering permit if stipulated upon by the parks and recreation director and the event coordinator; and if they are in compliance with the specific regulations for the city parks.

CATERING PERMIT: Permit issued, which authorizes the permittee to serve and sell liquor, beer or wine by the drink, at a party or a convention, not to exceed five (5) consecutive days in length.

CONVENTION: A formal meeting of members, representatives, or delegates, of a political party, fraternal society, profession, or industry.

PARTY: A social gathering including but not limited to, weddings, birthdays, family gatherings, and special holiday celebrations.

Section 2. That Title 5, Chapter 12, Section 5-12-2 of the Nampa City Code, be amended as follows:

5-12-2: LICENSE REQUIRED:

It is unlawful for any person to offer for sale, sell, or in any manner dispose of liquor by the drink, wine, or beer without first obtaining the appropriate license as required by this chapter and Title 23, Idaho Code.

Section 3. That Title 5, Chapter 12, Section 5-12-3 of the Nampa City Code, be amended as follows:

5-12-3: INVESTIGATION:

Upon receipt of an application for an alcoholic beverage license, the city shall conduct an investigation of the statements contained in the application, the premises where the applicant proposes to do business, and such other and further investigations as may be deemed necessary.

Section 4. That Title 5, Chapter 12, Section 5-12-6 of the Nampa City Code, be amended as follows:

5-12-6: COUNCIL APPROVAL:

Initial applications for an alcoholic beverage license shall be submitted to council for approval or denial. A decision shall be made by the council within thirty (30) days of the final submission of an application. Notwithstanding any other provision of this Section to the contrary, the Council may also require as a condition of an issuance or any renewal of an alcohol beverage license that the licensee and/or its employees complete specialized liquor law enforcement training offered by the City of Nampa Police Department and/or the Idaho State Police.

Section 5. That Title 5, Chapter 12, Section 5-12-8 of the Nampa City Code, be amended as follows:

5-12-8: FEES:

Fees are established by council resolution, pursuant to Idaho Code. All fees shall be submitted at the time the application is presented to the clerk. If an application is denied, the fee shall be refunded, at the discretion of the City Clerk and based upon actual costs incurred by the City during the application process. License revocations shall not result in any fee refund. Beer and wine licenses shall be prorated by the calendar quarter.

Section 6. That Title 5, Chapter 12, Section 5-12-10 of the Nampa City Code, be amended as follows:

5-12-10: REVOCATION FOR FAILURE TO PLACE INTO SERVICE

Any license for the sale of liquor by the drink issued by the City of Nampa shall be placed into service by the licensee within six months of its issuance, which requirement shall be considered met once the premises for which the license is issued is made open to the licensee's clients or customers for at least thirty hours per week for twelve consecutive weeks. After the foregoing initial term, the premises for which the license is issued shall continue to be open an average of 30 hours per week, which average shall be calculated based upon the total hours the premises are open in each month. Failure to meet the foregoing requirements may result in a license revocation. Prior to such revocation, City Council shall hold a hearing at which the licensee may provide evidence and testimony concerning the aforementioned requirement. When the Mayor and Council revoke a license pursuant to this section, they shall specify, in writing, the statutes, ordinances and standards used in evaluating the application, the reasons for revocation, and the actions, if any, that the applicant could take to renew the license. The written statement asserting the reason for the license revocation decision by the City Council shall be delivered to the licensee within thirty (30) days of the Council decision.

Section 7. That Title 5, Chapter 12, Section 5-12-11 of the Nampa City Code, be amended as follows:

5-12-11: RESTRICTIONS:

No license for the sale of liquor, wine, or beer by the drink shall be issued for any premises in any neighborhood which is predominantly residential or within 300 feet of the property boundaries of any public school, church, or any other place of worship, measured in a straight line to the nearest entrance to the licensed premises, except with the approval of the City Council. This limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing same came therein. Additional restrictions may be placed on any such business under the planning and zoning code of the city.

Section 8. That Title 5, Chapter 12, Section 5-12-12 of the Nampa City Code, be amended as follows:

5-12-12: TRANSFERS:

Any licensed person desiring to change his place of business from one location to another or from one person to another shall file with the city clerk an application and transfer fee. The clerk shall make investigation of the new proposed place of business and/or of the new licensee and submit the application to council for approval as a new license.

Section 9. That Title 5, Chapter 12, Section 5-12-13 of the Nampa City Code, be amended as follows:

5-12-13: HOURS AND DAYS OF SALE:

Liquor by The Drink: In accordance with Idaho Code §23-927, no liquor may be sold, offered for sale or given away upon any licensed premises on the following days during the following hours:

Thanksgiving from one o'clock (1:00) A.M. to ten o'clock (10:00) A.M. the following day.

Christmas from one o'clock (1:00) A.M. to ten o'clock (10:00) A.M. the following day.

On any other day between one o'clock (1:00) A.M. and ten o'clock (10:00) A.M.

Section 10. That Title 5, Chapter 12, be amended by the addition of a new Section 5-12-17 of the Nampa City Code, as follows:

5-12-17: DENIALS OF LICENSE APPLICATIONS AND REVOCATIONS OF LICENSES:

Denial of a License Application: The Mayor and Council may deny a license application for fraud and misrepresentation in its procurement; for a violation of the laws of the United States, State of Idaho, or City of Nampa regulating the sale of alcoholic beverages; for a violation of any of the provisions of this chapter; and for any conduct or act of the licensee or any employees, or any conduct or acts permitted by him or them on the premises where such business is conducted, tending to render such business or premises as a public nuisance or a menace to the health, peace, safety or general welfare of the city.

Further, the Mayor and Council may deny a license application for a licensee having accumulated at least three (3) points against their license in the prior year. Renewal of such licenses may only be granted by the City Council after a public hearing at which the licensee or license applicant appears in person to provide testimony to demonstrate that procedures have been put in place to avoid and reduce future violations. Licenses without the assignment of at least three (3) points may be renewed by Consent Agenda through the City Council.

When the Mayor and Council deny a license, they shall specify, in writing, the statutes, ordinances and standards used in evaluating the application, the reasons for denial, and the actions, if any, that the applicant could take to obtain the license, transfer, or renewal. The foregoing shall be provided the applicant, in writing, within thirty (30) days of a decision to deny an application.

Revocation of an Existing License: Notwithstanding any other provision of this Code to the contrary, any license issued under this Title 5, Chapter 12, of the Nampa City Code, may be revoked or suspended by the City of Nampa pursuant to the following Alcoholic License Point System (ALPS):

General Provisions:

Under the Alcoholic License Point System, licensee misconduct and the failure to exercise proper controls over an establishment licensed to sell liquor, beer, and/or wine, by the drink may result in a revocation or suspension of said license based upon accumulated "points" assigned to a licensee for said misconduct and failures to exercise proper control.

The provisions of ALPS provide licensees in the City of Nampa with a clear description of what circumstances will result in a point being assigned to their license, the numbers of accumulated points that will result in certain consequences for the licensee, and the procedures and process for point allocations, hearings, and appeals.

Licensee Responsible for Conduct of Employees. License violations which occur due to the conduct of an employee or agent of a licensee shall be imputed to the licensee. Any points assessed for a license violation by an employee or agent of a licensee shall be assessed against the licensee's liquor license.

Licensee Responsible for Failure to Exercise Proper Control. License violations which occur due to the failure of the licensee or its employees or agents to exercise proper control over the licensed premises shall be imputed to the licensee. Failure to exercise proper control shall mean acts or omissions which a reasonable person would believe would result in a license violation, and which result in a license violation, as defined herein.

Burden of Proof, Liability. Points may only be assessed against a license when the City determines, by a preponderance of the evidence, that a licensee or an employee or agent of a licensee, committed a license violation. Points may be assessed against a license even if the individual who performed the action or conduct that constituted the license violation was not convicted of committing a crime.

License Point Violations: A license violation can occur on the licensed premises, in the parking lot for the premises, or in an adjacent area under the control of the licensee. License violations may result in the assessment of points against a liquor, beer, or wine license. If a single incident or occurrence would constitute multiple license violations as listed below, that single incident or occurrence shall only constitute a single license violation and said incident or occurrence shall be assessed with only the most serious applicable license violation. License violations shall remain on a license for the remainder of the then-current license year, as well as for one subsequent license year. For the purposes of this §5-12-17, license violations and applicable points shall include the following:

Training: Failure of a licensee, its officers, managers, employees and agents to undergo training as may be required by this Section. 1 Point.

Probation Violation: An license violation arising during a probationary period, as applied to a licensee in Subsection 5-12-17(II)(D)(6). 2 Points.

Alcohol Regulations: Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages. 1.5 Points

Homicides: Any homicide offense under Title 18, Chapter 40, Idaho Code. 6.5 Points.

Weapons: Any action or conduct which violates any provision of Title 18, Chapter 33, Idaho Code. 3 Points.

Controlled Substances: Any action or conduct which violates any provision of Title 37, Chapter 27, Idaho Code. 3.5 Points.

Prostitution: Any action or conduct which violates any provision of Title 18, Chapter 56, Idaho Code. 6.5 Points.

Human Trafficking: Any action or conduct which violates any provision of Title 18, Chapter 86, Idaho Code. 6.5 Points.

Gambling: Any action or conduct which violates any provision of Title 18, Chapter 38, Idaho Code. 2 Points.

Assault and Battery: Any action or conduct which constitutes assault or battery actions and violates any provision of Title 18, Chapter 9, Idaho Code. 3.5 Points.

Sex Crimes: Any action or conduct which violates any provision of Title 18, Chapters 15 and 66, Idaho Code. 6.5 Points.

Occupancy: Exceeding Occupancy load for the premises as stated on the occupant load limit sign posted in the premises or failing to post the occupant load limit sign for the premises in a conspicuous place near the main exit or exit access doorway of the premises. 1.5 Points.

Open Containers: Allowing a person to exit the licensed premises while possessing an open container of alcoholic beverage. 1.5 Points.

Right-of-Way Encroachment: The licensee violates any provision of a right-of-way encroachment license. 1 Point.

Hours of Operation: The licensee violates hours of operation as defined in Section 5-12-13, Nampa City Code. 1.5 Points.

Property Maintenance: The licensee violates the International Property Maintenance Code, as adopted by Title 4, Chapter 11, Nampa City Code. 1 Point.

General Violations: All other violations of law or the City Code. 1 Point.

Accumulated Point Classifications:

Minor: 1.0 to 2.5 points.

Significant: 3.0 to 6.0 points.

Major: 6.5 and above

Duration of Accumulated Points: Each assessment of Points pursuant to this Ordinance shall remain on the Licensee's record with the City for a period of 12 months following the date of assessment.

License Violation Review Procedures: Notification of the point system as stated herein, and a copy of this Section, will be provided to each licensee by the City Clerk upon the issuance of a license.

Alcohol Review Committee: A committee consisting of the Chief of Police or his/her designee, City Clerk or his/her designee, Chief of Staff or his/her designee, Building Official or his/her designee, and Planning and Zoning Director or his/her designee. This committee shall constitute the Alcohol Review Committee (Committee), which Committee shall be responsible for administering the provisions of the ALPS. The Chief of Police shall be the chair of the committee and shall schedule and conduct meetings of the Committee upon notification that a license violation has occurred requiring Committee action. The Committee shall abide by the applicable provisions of the Idaho Open Meeting laws.

The Committee shall meet monthly for the purpose of reviewing any new Incident Report of an alleged violation of this Ordinance by a licensee. At each meeting the Committee shall review the written Incident Report provided to the Committee by the Chief of Police and the Committee shall determine from the content of that report whether there is a factual basis to conclude that a prohibited act as set forth in Section 5-12-17(II)(B) has occurred.

If the Committee determines that there is not a factual basis to believe that a licensee or an employee or agent of a licensee committed a license violation, the City Clerk will notify the licensee that the Committee will take no further action with respect to that incident. The City Clerk within five (5) business days will mail a copy of the Incident Report to the licensee, along with written notice of the Committee's determination. The Incident Report shall be considered closed with no further action.

If the Committee determines that there is a factual basis to believe that a licensee or an employee or agent of a licensee committed a license violation, the Committee shall assess points against the license of the licensee in accordance with this Section. The City Clerk within five (5) business days of that determination and assessment shall mail a copy of the Incident Report to the licensee, along with a notification of the points assessed against the applicable liquor license for each violation, and any previous points assessed which have not yet expired. The Committee may also provide written notice of the Assessment to the Idaho State Police, Alcohol Beverage Control.

Point Assessment Outcome: When the cumulative points assigned to a liquor license reach the minor, significant, or major levels, the Committee shall hold a hearing to determine what penalties and remedies will be assessed against a licensee.

When points assigned to a liquor license, combined with any points previously assessed which have not yet expired, reach the minor category, the Committee may place the licensee on probationary status for a period not to exceed six (6) months. However, for any point assessment that would otherwise bring a licensee into the minor category, the Committee may in its discretion and in lieu of the assessment of points for the current violation, allow the licensee and its employees to complete specialized liquor law enforcement training offered by the City of Nampa Police Department and/or the Idaho State Police.

When points assigned to a liquor license combined with any points previously assessed which have not yet expired, reach the significant category, the Committee may require licensees and employees to complete the specialized training, may suspend the license for a period not to exceed thirty (30) days, and/or place a licensee on probationary status for a period not to exceed one (1) year.

When points assigned to a liquor license combined with any points previously assessed which have not yet expired, reach the major category, the Committee may put forth a recommendation to City Council to suspend or revoke the license. The City Council shall only elect to suspend or revoke a liquor license after conducting a hearing pursuant to Subsection 5-12-17(II)(F).

In making a determination as to the appropriate penalty or remedy to be imposed on a licensee, the Committee or Council may consider all circumstances related to the underlying license violation.

Any action or decision of the Committee shall be effective fourteen (14) calendar days after the City Clerk has mailed the Incident Report and Assessment of points to the Licensee,

unless a timely appeal is filed in which case any consequence is tolled during the pendency of the appeal.

Appeals: A Licensee may appeal a license violation determination by submitting a written appeal to the City Clerk within fourteen (14) calendar days of the City Clerk's mailing the of notification of the Incident Report and Assessment of points. The appeal will be heard by the City Council, which hearing shall be conducted pursuant to the hearing procedure under Subsection 5-12-17(II)(F). An appeal shall contain, and be based upon, either of the following two basis:

Specific new factual evidence that was not included within the Incident Report.

A procedural error regarding the Committee assessment process.

Hearing Procedures.

The Council, upon receiving a written appeal for a license violation determination, or a suspension/revocation recommendation, shall conduct an evidentiary hearing within thirty days of receipt of the Appeal. The notice of the hearing date and time shall be served upon the licensee by leaving a copy at the licensed premises or by mailing the notice by certified mail to the licensee at the licensed premises.

The Appellant/licensee shall appear in person, and may appear with legal counsel, to present evidence, to produce witnesses, to examine and cross examine any witnesses. Before any witness shall testify, the witness shall be sworn to testify under oath by the City Clerk or deputy clerk of the City of Nampa. The hearing shall be transcribed by a court reporter or stenographer, or, alternatively, a video and audio recording shall be made of the hearing. The Mayor shall preside over the hearing. The technical rules of evidence shall not apply, except the Mayor may exclude evidence which is irrelevant or repetitious. Each party is entitled to present oral arguments or written briefs within ten (10) days after the hearing, as may be determined in the discretion of the Mayor.

The Council shall make written findings of fact and conclusions of law within sixty (60) calendar days of the hearing. Such findings shall be based upon competent and substantial evidence contained in the hearing record as a whole. A copy of the Council decision, findings of fact, and conclusions of law shall be delivered to the City Clerk and to the licensee. Any revocation/suspension imposed by said written finding of facts and conclusion of law shall be effective upon delivery of the same to the licensee, unless tolled during the pendency of a lawful and timely appeal.

Section 11. This ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

Section 12. This ordinance is hereby declared to be severable. If any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purposes of the ordinance before the declaration of partial invalidity.

Section 13. All ordinances, resolutions, orders and parts thereof in conflict herewith are repealed.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 19TH DAY OF JANUARY, 2021.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 19TH DAY OF JANUARY, 2021.

Approved:

By
Mayor

Attest:

By
City Clerk