



## **Staff Report**

For City Council Meeting - 1/4/2023

### ***Subject - Ordinances/Resolutions - Ordinance #936 - An Ordinance Establishing the Process to Acquire a Liquor License in the City of Gearhart***

**Synopsis:** Every year, Council receives a list of OLCC liquor licenses in Gearhart that are eligible for license renewal effective at the end of March. ORS 471.166 establishes the process for local governments to make recommendations to the OLCC. Unless a reason for Council to question re-issuing a license arises, the Council “does nothing” and the OLCC automatically renews an application. Historically, no complaints or revocations have occurred. This was the past process.

As of February 1, 2023, the OLCC is requesting applicants be handled at the local level prior to final OLCC approval; the notification letter is attached. The City needs to adopt an ordinance outlining a variety of legalities including the liquor license application process, fees, timelines, and the type of application. Attached Ordinance #936 will establish a process for Gearhart business owners to acquire a liquor license at the local level under OLCC’s new rules. Applicants will also have to follow OLCC’s application process and fee schedule. Also on the agenda is draft Resolution #975 establishing fees that are referenced in Ordinance #936.

#### ***Council Options:***

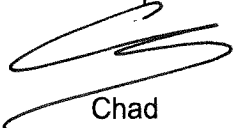
- Suggest changes to the draft and have staff bring it back to a future meeting;
- Make draft changes now and motion to approve Ordinance #936 as amended reading once by the title only;
- Motion to approve Ordinance #936 as is reading once by the title only;
- Motion to approve as is reading twice by title only declaring an emergency.

**Recommendation:** Staff recommends Council motion to approve Ordinance #936 as is reading once by title only. It would be read again by title only in February, effective 30 days later.

**Legal Analysis:** The City has roughly 13 businesses who hold liquor licenses.

**Financial Analysis:** Staff time will be paid through the fee schedule in Resolution #975.

Respectfully Submitted,



Chad



# Oregon

Kate Brown, Governor

**Liquor and Cannabis Commission**

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Portland, OR 97269-2297

503-872-5000

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City Administrator  
GEARHART  
PO Box 2510  
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## **\*UPDATE\***

# **ADVISORY TO CITIES AND COUNTIES**

December 15, 2022

### **WHAT'S GOING ON?**

This is an update to the advisory we mailed to you back in November, regarding the change to the recommendation process for annual liquor licenses.

### **WHAT'S THE UPDATE?**

The OLCC Commissioners adopted rule changes that are effective February 1, 2023.

This means effective February 1, 2023, all applicants for an annual liquor license must first obtain the recommendation from the local city or county and then submit the application to the OLCC.

There is no change to the process for renewal or special liquor licenses. Applicants will still need to first obtain the recommendation from the local city or county prior to submitting the application to the OLCC.

### **QUESTIONS FOR THE OLCC ABOUT THIS CHANGE?**

Please email [olcc.AlcoholLicensing@oregon.gov](mailto:olcc.AlcoholLicensing@oregon.gov) <<mailto:olcc.AlcoholLicensing@oregon.gov>>.



## ORDINANCE NO. 936

### AN ORDINANCE ESTABLISHING THE PROCESS TO ACQUIRE A LIQUOR LICENSE IN THE CITY OF GEARHART

WHEREAS, the OLCC (Oregon Liquor and Cannabis Commission) Commissioners adopted rule changes that are effective February 1, 2023 requiring all annual liquor license applicants to first obtain recommendation from the local city or county prior to submitting the application to the OLCC;

NOW, THEREFORE, the City of Gearhart ordains as follows:

**Section 1. Title.** This ordinance shall be known in short title as the "liquor license ordinance" of the City of Gearhart.

**Section 2. Definitions.** As used in this ordinance, the following terms shall have the meanings indicated:

"Application" means the written request of the City to grant, modify or renew a liquor license.

"City" means the City of Gearhart.

"Commission" means the Oregon Liquor & Cannabis Commission.

"Council" means the governing body of the City of Gearhart.

"Licensed Premises" means the room or enclosure for which a License has been issued by the Commission for the serving, mixing, handling or selling of alcoholic liquor.

"Licensee" means a person who has an alcoholic liquor license from the Commission, authorizing such person to sell or dispense alcoholic liquor.

"Alcoholic Liquor" means an alcoholic beverage containing more than one-half of one percent (.5%) of alcohol by volume.

"Hard Liquor" means an alcoholic beverage containing fifteen percent (15%) or more of alcohol by volume.

"Malt Beverage" means a beverage, as defined in the Oregon Liquor Control Act.

"Sell" means soliciting or receiving an order for or keeping, offering, or exposing for sale, delivering for value, or in any way other than gratuitous peddling, keeping with intent to sell, to traffic in for any consideration, promised or obtained, direct or indirect, or under any way, pretext or by any means whatsoever, procuring or allowing to be procured alcoholic liquor for any other person.

**Section 3. License Required.** No person shall sell alcoholic liquor unless the appropriate License has been obtained from the OLCC. Sales by a Licensee or an employee or agent of a Licensee shall be only as authorized by the License issued for the licensed premises.

**Section 4. Application/Applicant.** Any person or business requesting Council

recommendation to the Commission of a liquor license application shall make application upon suitable forms furnished by the City and/or the Commission. The application shall contain:

- A. The type of license applied for and a description of the nature of the business for which the application is made.
- B. The name and address of the applicant(s); if a partnership, the names and addresses of all partners; if the business is a corporation, the name and address of the home office, and the name and address of the registered agent in this state and the name and address of the local agent or representative who will be in charge of the business in the City.
- C. Name and address of all businesses and locations for which the applicant ever possessed a license to sell alcoholic beverages, both in Oregon and elsewhere.
- D. The address of the location where the business will be located in the City.
- E. The date of application.
- F. Any other information the City Administrator or Council deems necessary for review.
- G. The signature of the applicant or agent making the application.

**Section 5. Application/Applicant Fees.**

A. Each applicant for a License or Permit from the Commission who seeks the written recommendation of the City Council of the City of Gearhart, Oregon, or staff approval shall pay to the City a fee established by Resolution of the City Council of the City of Gearhart, for each application for a license permitting the sale or distribution of alcoholic liquor for consumption, as set forth in the application. Established fee(s) shall be paid to the City upon application submission for each license and for each annual renewal thereafter within the City of Gearhart. Such fees may be amended by Resolution of the City Council of the City of Gearhart, at any time.

**Section 6. Consumption, Possession of Liquor; Conform to License.**

A. Consumption of liquor on premises licensed only for malt beverages. No licensee, employee of licensee, nor agent of licensee shall knowingly permit alcoholic liquor containing more than fourteen percent (14%) of alcohol by weight to be brought on or consumed on the licensed premises controlled by the licensee and where the license of the premises permits only the sale and consumption of malt beverages.

B. Possession of liquor on premises to conform to license. No licensee, employee of licensee, nor agent of licensee shall have in their possession on licensed premises any alcoholic liquor that is not included within the scope of the license issued by the Commission.

**Section 7. Selling or Dispensing of Alcoholic Beverages in Public Places.**

A. No person shall sell, dispense or allow the consumption of alcoholic liquor from a licensed premise; nor shall a licensee, employee of licensee, nor agent of licensee deliver or permit the removal of alcoholic liquor to, on, or from a licensed premise between the hours of 2:30 a.m. and 7:00 a.m.

B. No person shall sell or dispense any alcoholic beverages in or upon any street, alley, or other public place, unless such place has been licensed for that purpose by the Commission; selling or dispensing alcoholic beverages is not permitted in public park spaces owned and operated by the City of Gearhart, Oregon.

**Section 8. Consumption of Alcoholic Beverages in Public Places Prohibited.**

A. No person shall consume any alcoholic beverages in or upon any street, alley, or other public place, unless such place has been licensed for that purpose by the Commission; alcohol consumption is not permitted in public park spaces owned and operated by the City of Gearhart, Oregon. Any exception would be a specially licensed event.

**Section 9. City Administrator Duties.**

A. The City Administrator may cause any application to be reviewed by the Chief of Police, City Planner, Building Official, or any other departmental manager, at his/her discretion, and may require the police department or other governmental agencies to inspect the premises on behalf of the City, for the purpose of obtaining information necessary to make a recommendation to the City Council. The applicant shall promptly supply to the City Administrator or administrative staff such other or additional information as deemed necessary to fully and completely review the application and formulate a recommendation to the City Council.

B. The City Administrator may waive any of the provisions of this article, other than City Council review, for any licensees' annual renewal. In such a case, the recommendation of the City Administrator may be placed on the City Council consent agenda, from which it may be removed for discussion upon the request of any member of the City Council.

C. Within thirty (45) days of receipt of the application, the City Administrator or shall make a recommendation to the City Council.

**Section 10. Hearing Procedure.**

A. If the City Administrator recommends approval of an application, the matter will be scheduled as an agenda item before the City Council. Any member of the Council or any person determined by the Council to be affected may request a public hearing before the City Council prior to approval of an application. Such public hearing will be scheduled, and notice given pursuant to Section 6 and Section 7 of this ordinance.

B. The Mayor shall preside over the hearings provided in this section and shall make rulings on all matters of procedure and evidence incident to the hearing not inconsistent with the provisions of this ordinance.

C. 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 witnesses.

D. Any other person wishing to present testimony will be given the opportunity before closing of the public hearing.

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

F. After due consideration of pertinent information and testimony, the Council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the criteria in this ordinance and shall be final. In the case of an adverse recommendation, written findings shall be produced and forwarded to the Commission along with the Council recommendation.

**Section 11. Applicant Notice.** Before the City Administrator forwards a recommendation of denial or license restriction to the City Council, notice to the applicant shall be given either personally or by registered or certified mail, postmarked no later than ten (10) working days prior to the meeting at which the matter will be considered. The notice shall:

A. State the time and place of the meeting.

B. Afford the opportunity for the applicant or an affected party to request a public hearing.

C. State the City Administrator's reasons for the recommendation of denial or restriction.

D. State that if the applicant desires a public hearing, the City Administrator must receive notice in writing, within ten (10) days of the date of notice of recommendation for denial or restriction.

**Section 12. Public Notice.**

A. In order to facilitate public participation in liquor license applications, the City shall cause to be placed on the City Council agenda an item specifying all liquor license applications by business name and address pending before the City Council.

B. In the event that a public hearing is scheduled, the City in addition to any regular City Council agenda, shall cause to be published 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 the applicant. The notice shall inform the public that testimony may be given for or against the application.

**Section 13. Council Action.** The Council shall recommend to the Commission on each liquor license application either approval, denial or modification in particulars stated. In making such determination, the Council may consider among other factors the following:

A. The completeness and accuracy of the application.

B. The timeliness and responsiveness of the applicant in supplying information requested by the City Administrator, or Council.

C. The frequency of persons under twenty-one (21) years of age, unaccompanied by adults, in the area of the applicant's premises.

D. Compliance with all statutes and ordinances related to the control and use of alcoholic beverages and controlled substances.

E. The criminal record and moral character of the applicant(s) and the agents and employees of the applicant.

F. The maintenance of the applicant's former or existing licensed premises including, but not limited to, noise, sanitation, cleanliness, orderliness, law enforcement incident experience and compliance with applicable nuisance laws, and other ordinances and regulations.

G. The relative condition of the premises with respect to sanitation and cleanliness.

H. The anticipated demands on City services, including law enforcement.

I. The number and sufficiency of licensee premises in the locality set out in the application (if a reduction in dispenser licenses is warranted, the Council may make a decision based on reasonable comparisons of services, facilities and economic benefit to the area, as well as convenience and public interest).

J. Conformance to City ordinances or regulations pertaining to zoning, building and fire codes.

K. Any other factors, which in the opinion of the Council, have bearing on the public health, safety, welfare, convenience or necessity of the City and/or its citizens.

**Section 14. Grounds for Unfavorable Recommendation.** In determining whether to make an unfavorable recommendation, the Council shall apply the grounds and criteria authorized by state law and the administrative rules of the Oregon Liquor Control Commission governing such a recommendation.

**Section 15. Severability.** If any phrase, clause, or part of Ordinance #936 is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

Passed by the City Council of Gearhart this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Abstain: \_\_\_\_\_

Approved and signed by the Mayor of Gearhart this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Mayor Kerry Smith

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ATTEST: City Administrator, Chad Sweet