



Staff Report

For City Council Meeting - 2/1/2023

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

Synopsis: As presented at the regular January 2023 City Council meeting:

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. Resolution #975 was approved with an amendment. Ordinance #936 was approved with (multiple) amendments, which are all reflected in the attached final version.

Council Options:

- Motion to approve Ordinance #936 for its second reading as amended reading once by the title only;
- Motion as stated above with further amendments;
- Take other action desired by Council.

Recommendation: Staff recommends Council motion to approve Ordinance #936 for its second reading as amended reading once by title only. It will take effect 30 days from today.

Legal Analysis: The OLCC Renewal list for 2023 is also attached; 11 businesses are listed. OLCC does not charge renewal fees. The businesses will not incur a local renewal fee per Resolution #975 this year as the ordinance would take effect 3/3/2023 and City recommendations are due to the OLCC by 3/4/2023 with license expiration occurring 3/31/2023.

There isn't enough time to inform the public and solicit a fair payment due date. They will instead receive a packet with copies of Ordinance #936, Resolution #975, the advisory letter from OLCC, and an explanation from the City for next year's renewal. All 11 businesses renew with OLCC automatically unless a denial with documented reasoning and/or incident is recommended by the City by 3/4/2023.

Staff will also begin preparing the application form for new license requests.

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

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'Chad', written in a cursive style.

Chad



Oregon

Kate Brown, Governor

Liquor and Cannabis Commission

PO Box 22297

Portland, OR 97269-2297

503-872-5000

800-452-6522

City Administrator
GEARHART
PO Box 2510
Gearhart, OR 97138

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>>.



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 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. Any exception would be a specially licensed event approved by the Council.

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 approved by the Council.

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 forty-five (45) days of receipt of the application, the City Administrator shall make a recommendation to the City Council.

Section 10. Hearing Procedure.

A. If the City Administrator recommends approval of an application, the matter shall 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 11 and Section 12 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 twenty (20) 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.

Mayor Kerry Smith

ATTEST: City Administrator, Chad Sweet

City Administrator
GEARHART
PO Box 2510
Gearhart, OR 97138

RENEWAL NOTIFICATION PROCESS

It's time again for liquor license renewals in your area. Liquor licenses are due to expire **3/31/2023**. Attached is the list of licensees who are required to submit their renewal application to local government for comment. According to our records you charge:

\$0.00 Renewal Fee for ON-PREMISES \$0.00 Renewal Fee for OFF-PREMISES

We told applicants to mail your local government fees to the address on this letter.
PLEASE NOTIFY US IMMEDIATELY IF THE FEE(S) OR ADDRESS ARE INCORRECT

HOW TO MAKE A RECOMMENDATION

You have until 3/4/2023 to make your recommendation. Below are your options for renewals:

RECOMMEND APPROVAL

- 1. DO NOTHING.** If you do not submit a recommendation by **3/4/2023**, the OLCC will process the renewal application as a favorable recommendation.

RECOMMEND DENIAL (see additional information on page 2)

- ~~1. File an unfavorable recommendation, stating the grounds for the unfavorable~~ (must meet the denial criteria on back of form); **OR**
- 2. Make a written request for additional time to complete an investigation.** The request must state: 1) you are considering making an unfavorable recommendation; 2) the specific grounds being considered. **The grounds must be one referenced in Oregon Administrative Rule 845-005-0308(3).** If your request is granted you will be given a 45-day extension to file your unfavorable recommendation. Unfavorable means recommending denial of a license or requesting restrictions be placed on a license.

If you need assistance or would like to discuss a specific application, please contact your local OLCC office for help. Please send renewal recommendation correspondence to OLCC.Renewals@oregon.gov or OLCC License Renewals, P.O. Box 22297, Portland, OR 97269-2297. If you have questions, contact our license renewal section at 503.872.5138 or toll free at 1.800.452.6522 ext 25138.

REASONS WE MAY DENY OR RESTRICT A LICENSE
ORS 471.313(4)(5), OAR 845-005-0320, 845-005-0321, 845-005-0322
845-005-0325, 845-005-0326(4)(5) or 845-005-0355

The following is a list of problems relating to the **APPLICANT** or **BUSINESS** that OLCC can consider to refuse or restrict a license:

1. Applicant has a habit of using alcohol or drugs to excess
2. Applicant makes a false statement to OLCC (must be related to a refusal basis)
3. Applicant has been convicted of local, state or federal laws that are substantially related to the fitness of holding a liquor license
4. Applicant has demonstrated poor moral character
5. Applicant has a poor record of compliance when previously licensed by OLCC
6. Applicant is not the legitimate owner of the business
7. The business has a history of serious and persistent problems at this location. The problems can include:

obtrusive or excessive noise, music or sound vibrations
public drunkenness
fights or altercations
harassment
unlawful drug sales
alcohol or related litter

OLCC is not able to consider the following issues when deciding to renew a liquor license:

lack of parking
increase in traffic
too many licenses in a specific area (saturation)
entertainment type - nude dancing, gambling, live bands, etc.
increased noise
zoning issues

Visit www.oregon.gov/olcc/ to see the full text of ORS and OAR referenced above. In order for an unfavorable recommendation from a local government to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), 471.313(5), OAR 845-005-0320, 845-005-0321, 845-005-0322, 845-005-0325 or 845-005-0326(4)(5) or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.



Oregon

Kate Brown, Governor

Liquor and Cannabis Commission

9079 SE McLoughlin Blvd.

Portland, Oregon 97222-7355

503-872-5000

800-452-6522

www.oregon.gov/olcc

29 December 2022

CHANGES TO ANNUAL LIQUOR LICENSE RENEWAL NOTIFICATION PROCESS

Hello. The OLCC will be implementing changes to the Annual Liquor License pre-renewal and post renewal notification process. The changes will go into effect on January 1st, 2023. These changes reflect the OLCC's commitment to reduce waste and modernize communication practices. Below is a request to contact the OLCC with an appropriate email address for us to send these communications to, or to confirm that we have the correct email address already on file. Also, below are the descriptions of the changes to the notice and instructions we provide to you each renewal cycle. The changes described in this notification only will impact the renewal process for Annual Liquor Licenses only, and specifically only the notifications the OLCC send to Local Governing Bodies. This will not impact any renewal processes for licensees. This is also only due to an update of OLCC processes within existing rules and statutes; no accompanied change in rule or statute requires these changes.

Request for Electronic Contact Information

Please reach out to the OLCC at OLCC.Renewals@oregon.gov to provide us with an updated email address that we can send these renewal notifications to. You may also provide an update to your renewal specific mailing address or contact phone number in order to update our records with as well, as we currently provide that information to licensees on our renewal forms.

Pre-Renewal Notice

The OLCC will no longer be mailing physical letters with attached licensee lists to Local Governing Bodies requesting your recommendation prior to renewals in your area each year. We will instead be sending you an email notification to the specific recipient email address that you provide to us, starting with what we have on file with us already. We will send this email out to all Local Governing Bodies each quarter. In this email notification, we will provide similar instructions to the recommendation process. We also will be providing a hyperlink in the notification to a licensee list that we will make available on our website that you can filter by your specific area. If you have no licensees in your area that are renewing during the future renewal period referenced in a given notification, you do not need to respond. This link will be active at all times and updated frequently so you may use it for your reference throughout the year, not just during your specific renewal period.

We will be requesting any responses you may have to our recommendation notification via email as well. Submission instructions will be changed to reflect that.



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Post-Renewal Notice:

The OLCC will no longer be mailing physical letters with attached renewed license lists to Local Governing Bodies to notify you of which of your licensees have stated they paid their local governing body's license fees to you for the current license year. We will instead be sending you an email notification to the specific recipient email address that you provide to us, starting with what you have on file with us already. We will send this email out to all Local Governing Bodies each quarter. In this email notification, we will provide similar instructions to the previous physical letters. We also will be providing a hyperlink in the notification to a licensee list that we will make available on our website that you can filter by your specific area to show your area's renewed licenses for reference. If you have no licensees in your area that renewed during the previous renewal period referenced in a given notification, you do not need to respond.

We will be requesting any responses you may have to our payment confirmation notification via email as well. Submission instructions will be changed to reflect that.

Other Communications:

Certain actions and responses to communications regarding the renewal process will also transition to an emailed response rather than a physical letter response, for the responses that are appropriate for email. Any reply that must be mailed to protect sensitive information or for other requirements will likely still be physically mailed.

If you have any questions or concerns, please feel free to contact Renewals at OLCC.Renewals@oregon.gov or myself at christopher.vossen@oregon.gov

Christopher Vossen
Liquor Licensing Assistant Manager

<u>License No./ Premises No.</u>	<u>Tradename/Licensee/License Type</u>	<u>Premises Address & Phone</u>	<u>Premises Mailing Address</u>
Lic. 344941 Prem. 2705	BUD'S CAMPGROUND & GROCERY GAAMA ENTERPRISES INC O - OFF-PREMISES SALES	4412 N HWY 101 GEARHART, OR 97138 503-738-6855	13905 NW WILLIS RD MCMINNVILLE, OR 97128
Lic. 348846 Prem. 59412	DOLLAR GENERAL STORE #18949 DG RETAIL LLC O - OFF-PREMISES SALES	3453 HWY 101 N GEARHART, OR 97138 503-717-9813	100 MISSION RIDGE GOODLETTSVILLE, TN 97072
Lic. 344803 Prem. 38549	EL TRIO LOCO MEXICAN CUISINE SANTA MARIA LLC F-COM - FULL ON-PREMISES SALES	3611, 3613, 3615 HWY 101 N GEARHART, OR 97138 503-352-9885	3615 HWY 101 N GEARHART, OR 97138
Lic. 346532 Prem. 62292	GEARHART LIQUOR STORE RICHARD D. TRUCKE O - OFF-PREMISES SALES	4206 HWY 101 N GEARHART, OR 97138 503-738-8232	
Lic. 353734 Prem. 64298	GEARHART OCEAN INN PACIFIC COTTAGES LLC F-COM - FULL ON-PREMISES SALES	67 N COTTAGE GEARHART, OR 97138 503-738-7373	
Lic. 346787 Prem. 22599	GREAT WALL RESTAURANT LIN'S RESTAURANTS INC F-COM - FULL ON-PREMISES SALES	4340 HWY 101 N GEARHART, OR 97138 503-738-4108	88822 TEAL RD GEARHART, OR 97138
Lic. 347290 Prem. 43991	HIGHLANDS GOLF CLUB DOWNTOWN GOLF CO LLC L - LIMITED ON-PREMISES SALES	33260 HIGHLANDS LN GEARHART, OR 97138 503-368-5744	PO BOX 2654 GEARHART, OR 97138
Lic. 347036 Prem. 2178	MCMENAMIN'S SANDTRAP BAR & GRII MCMENAMIN'S INC F-COM - FULL ON-PREMISES SALES	1157 N MARION GEARHART, OR 97138 503-223-0109	430 N KILLINGSWORTH PORTLAND, OR 97217
Lic. 347690 Prem. 17954	PACIFIC WAY CAFE & MARKETPLACE FRAZIER PACIFIC PARTNERS LLC L - LIMITED ON-PREMISES SALES	601 PACIFIC WY GEARHART, OR 97138 503-738-0245	PO BOX 2042 GEARHART, OR 97138
Lic. 347341 Prem. 2765	RECREATION LANES RESTAURANT AI DAMARKOM INC F-COM - FULL ON-PREMISES SALES	3518 HWY 101 N GEARHART, OR 97138 503-738-5333	PO BOX 23 SEASIDE, OR 97138
Lic. 347381 Prem. 61317	SUPERMART 11 HARGOBIND INC O - OFF-PREMISES SALES	3300 HWY 101 N GEARHART, OR 97138 503-739-7295	PO BOX 2082 GEARHART, OR 97138

Count for GEARHART

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