

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB7

ORDINANCE NUMBER: 2021-7

TITLE: AN ORDINANCE AMENDING SECTIONS OF ARTICLES 2, 3, AND 4 OF  
CHAPTER 6 OF THE BLACK HAWK MUNICIPAL CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK,  
GILPIN COUNTY:

Section 1. Section 6-51 of the City of Black Hawk Municipal Code is hereby repealed  
and reenacted to read as follows:

**Sec. 6-51. Definitions.**

The following words, terms, and phrases, when used in this Article, shall have the  
meanings ascribed to them in this Section, except where the context clearly  
indicates a different meaning:

***Adult*** means a person lawfully permitted to purchase alcohol beverages.

***Alcohol Beverages*** means fermented malt beverage, or malt, vinous, or spirituous  
liquors; except that "alcohol beverage" shall not include confectionary containing  
alcohol within the limits prescribed by Section 25-5-401(1)(i)(III), C.R.S.

***Bed and Breakfast*** means an overnight lodging establishment that provides at least  
one (1) meal per day at no charge, other than a charge for overnight lodging, and  
does not sell alcohol beverages by the drink.

***Brewer*** means any establishment where malt liquors are manufactured, except pre  
pubs licensed under this Article.

***Brew Pub*** means a retail establishment that manufactures not more than one million  
eight hundred sixty thousand (1,860,000) gallons of malt liquor on its premises each  
year.

***Brewery*** means any establishment where malt liquors are manufactured, except  
brew pubs licensed under this Article.

***City Clerk*** means the City Clerk of the City of Black Hawk, acting in the City  
Clerk's capacity as the Secretary of the Local Licensing Authority, having the

authority vested in the City Clerk under this Article and under Articles 3 and 4 of Title 44, C.R.S.

**City Council** refers to the City Council of the City of Black Hawk acting in its capacity as the local; licensing authority under the Colorado Liquor Code, as the same may be amended from time to time.

**Club** means:

- (a) A corporation that:
  - 1. Has been incorporated for not less than three years;
  - 2. Has a membership that has paid dues for a period of at least three years; and
  - 3. Has a membership that for three years has been the owner, lessee, or occupant of an establishment operated solely for objects of a national, social, fraternal, patriotic, political, or athletic nature, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.
- (b) A corporation that is a regularly chartered branch, or lodge, or chapter of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.

**Distill or Distilled** means the process by which alcohol that is created by fermentation is separated from the portion of the liquid that has no alcohol content.

**Distillery** means any establishment where spirituous liquors are manufactured.

**Distillery Pub** means a retail establishment:

- (a) Whose primary purpose is selling and serving food and alcohol beverage for on-premises consumption; and
- (b) That ferments and distills not more than forty-five thousand (45,000) liters of spirituous liquor on its licensed premises each calendar year.

**Fermented Malt Beverage** means malt liquors, when purchased by a fermented malt beverage retailer from a licensed wholesaler or when sold by a retailer licensed to sell fermented malt beverages; except "fermented malt beverage" does not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1)(i)(II).

***Fine*** means a form of discipline imposed pursuant to this Article. When a fine is an independent form of discipline, the fine shall not be less than five hundred dollars (\$500.00) nor more than one hundred thousand dollars (\$100,000.00). When a fine is in lieu of suspension, the fine shall be the equivalent of twenty (20%) of the retailer licensee's estimated gross revenues from sales of alcohol beverages during the period of the proposed suspension, except that the fine shall not be less than five hundred dollars (\$500.00) nor more than one hundred thousand dollars (\$100,000.00).

***Good Cause***, for the purpose of refusing or denying a license renewal or initial license issuance means:

- (a) The licensee or applicant has violated, does not meet, or has failure to comply with any of the terms, conditions, or provisions of this Article or any rules and regulations promulgated pursuant to this Article;
- (b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;
- (c) In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in Section 44-3-301(2), C.R.S.; or
- (d) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct. For purposes of this subsection, "disorderly conduct" has the same meaning as provided in Section 18-9-106, C.R.S.

***Hard Cider*** means an alcohol beverage containing at least one-half of one percent ( $\frac{1}{2}\%$ ) and less than seven percent (7%) alcohol by volume that is made by fermentation of the natural juice of apples or pears, including but not limited to flavored hard cider and hard cider containing not more than 0.392 grams of carbon dioxide per hundred milliliters. Hard cider shall be treated as a vinous liquor except where expressly provided otherwise.

***Hotel*** means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.

***Inhabitant*** means an individual who resides in a given neighborhood or community for more than six months each year.

***Lewd or Indecent Behavior*** means performing acts of or acts which simulate:

- (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual act which are prohibited by law;
- (b) The touching, caressing, or fondling of the breast, buttocks, anus, or genitals;
- (c) The displaying of the pubic hair, anus, vulva, or genitals; or
- (d) The displaying the post-pubertal human female breast below a point immediately above the top of the areola, or the displaying of the post-pubertal human female breast where only the nipple or the nipple and the areola are covered.

***License*** means a grant to a licensee to manufacture or sell alcohol beverages as provided by this Article.

***Licensed Premises*** means the premises specified in an application for a license under this Article that are owned or in possession of the licensee within which the licensee is authorized to sell, dispense, or serve alcohol beverages in accordance with this Article.

***Licensee*** means a person holding a license issued pursuant to this Article.

***Limited Winery*** means any establishment manufacturing not more than one hundred thousand (100,000) gallons, or the metric equivalent thereof, of vinous liquors annually.

***Liquor License*** shall include the following classes of licenses:

- (a) Arts license;
- (b) Beer and wine license;
- (c) Brew pub license;
- (d) Club license;
- (e) Distillery license;
- (f) Distillery pub license;
- (g) Hotel and restaurant license;
- (h) Liquor licensed drugstore license;

- (i) Lodging and entertainment facility license;
- (j) Optional premises license;
- (k) Racetrack license;
- (l) Retail liquor store license; and
- (m) Tavern or gaming tavern license.

***Liquor-licensed drugstore*** means any drugstore licensed by the state board of pharmacy that has also applied for and has been granted a license by the state licensing authority to sell malt, vinous, and spirituous liquors in original sealed containers for consumption off the premises.

***Location*** means a particular parcel of land that may be identified by an address or by other descriptive means.

***Lodging and entertainment facility*** means an establishment that:

- (a) Is either: (I) A lodging facility, the primary business of which is to provide the public with sleeping rooms and meeting facilities; or (II) An entertainment facility, the primary business of which is to provide the public with sports or entertainment activities within its licensed premises; and
- (b) Incidental to its primary business, sells and serves alcohol beverages at retail for consumption on the premises and has sandwiches and light snacks available for consumption on the premises.

***Malt Liquor*** includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing not less than one-half of one percent ( $\frac{1}{2}\%$ ) alcohol by volume.

***Meal*** means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

***Medicinal Spirituous Liquors*** means any alcohol beverage, excepting beer and wine, that has been aged in wood for four (4) years and bonded by the United States government and is at least one hundred (100) proof.

***Nudity*** means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a noticeably turgid state. For the purpose of this definition, a female breast is

considered uncovered if the nipple only or the nipple and the areola only are covered.

**Optional Premises** means:

- (a) The premises specified in an application for a hotel and restaurant license under Article 3, Title 44, C.R.S., with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant within which the licensee is authorized to sell or serve alcohol beverages in accordance with this Article and at the discretion of the state and local licensing authorities; or
- (b) The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility. For purposes of this subsection "outdoor sports and recreational facility" means a facility that charges a fee for the use of such facility.

**Person** means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee thereof.

**Premises** means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

**Racetrack** means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of Article 32, Title 44, C.R.S.

**Rectify** means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.

**Rectifying Plant** means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

**Resort Complex** means a hotel with at least fifty (50) sleeping rooms and that has related sports and recreational facilities for the convenience of its guests, or the general public located contiguous or adjacent to the hotel. For purposes of a resort complex only, "contiguous or adjacent" means within the overall boundaries or scheme of development or regularly accessible from the hotel by its members and guests.

**Resort Hotel** means a hotel, as defined in this Section, with well-defined occupancy seasons.

**Restaurant** means an establishment, which is not a hotel as defined in this Section, provided with special space, sanitary kitchen and dining room equipment, and persons to prepare, cook, and serve meals, where, in consideration of payment,

meals, drinks, tobaccos, and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobaccos, candies, and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area. Any establishment connected with any business wherein any business is conducted, excepting hotel business, limited gaming conducted pursuant to Article 30, Title 44, C.R.S., or the sale of food, drinks, tobaccos, candies, or such items of souvenir merchandise, is declared not to be a restaurant. Nothing in this subsection shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, amusement devices that pay nothing of value and cannot by adjustment be made to pay anything of value, or other forms of entertainment commonly provided in restaurants.

***Retail Liquor Store*** means an establishment engaged only in the sale of malt, vinous, and spirituous liquors in sealed containers for consumption off the premises and non-alcohol products, but only if the annual gross revenues from the sale of non-alcohol products do not exceed twenty percent of the retail liquor store establishment's total annual gross sales revenues, as determined in accordance with Section 44-3-409 (1)(b), C.R.S.

***Sales Room*** means an area in which a licensed winery, limited winery, distillery, or beer wholesaler sells and serves alcohol beverages for consumption on the licensed premises, sells alcohol beverages in sealed containers for consumption off the licensed premises, or both

***School*** means a public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one (1) through twelve (12). "Basic academic education" has the same meaning as set forth in section 22-33-104 (2)(b), C.R.S.

***Sealed Containers*** means any container or receptacle used for holding an alcohol beverage, which container or receptacle is corked or sealed with any stub, stopper, or cap.

***Sell or Sale*** means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for except through a licensee licensed under this Article; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess or transport in contravention of this Article; to traffic in for any consideration promised or obtained, directly or indirectly.

***Sell at Wholesale*** means selling to any other than the intended consumer of malt, vinous, or spirituous liquors. "Sell at wholesale" shall not be construed to prevent a brewer or wholesale beer dealer from selling malt liquors to the intended consumer, thereof, or to prevent a licensed manufacturer or importer from selling malt, vinous, or spirituous liquors to a licensed wholesaler.



***Spirituos Liquors*** means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, powdered alcohol, and every liquid or solid, patented or not, containing at least one-half of one percent ( $\frac{1}{2}\%$ ) alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in this section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

***State Licensing Authority*** means the Executive Director or the Deputy Director of the Department of Revenue if the Executive Director so designates.

***Tavern*** means an establishment serving alcohol beverages in which the principal business is the sale of alcohol beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

***Vinous Liquors*** means wine and fortified wines that: (I) contain not less than one-half of one percent ( $\frac{1}{2}\%$ ) and not more than twenty-one percent (21%) alcohol by volume and (II) are produced by the fermentation of the natural sugar contents of fruits and other agricultural products containing sugar. For the purpose of simplifying the administration of this Article, sake is considered a vinous liquor.

***Vintner's Restaurant*** means a retail establishment that sells food for consumption on the premises and that manufactures not more than two hundred fifty thousand (250,000) gallons of wine on its premises or licensed alternating proprietor licensed premises, combined, each calendar year.

***Winery*** means any establishment where vinous liquors are manufactured; except that the term does not include a vintner's restaurant licensed pursuant to Section 44-3-422, C.R.S.

Section 2. Section 6-52 of the City of Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-52. Persons Prohibited as Licensees.**

(a) No license provided by this Article shall be issued to or held by:

(1) Any person until the ~~annual occupational tax~~ APPLICABLE APPLICATION AND LICENSE FEE has been paid;

\* \* \*

(b)



\* \* \*

(2) With respect to club license applications ~~by corporation only~~, an investigation of the character of the ~~corporate~~ president OR CHAIR OF THE BOARD and ~~club~~ OPERATIONAL manager shall be deemed sufficient to determine whether to issue the club license to the ~~corporation~~ APPLICANT.

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Section 3. Section 6-58 of the City of Black Hawk Municipal Code is hereby repealed and reenacted to read as follows:

**Sec. 6-58. Application.**

(a) The City Council may issue only the following types of licenses upon payment of the fees specified in Section 6-72 and Section 44-3-505, C.R.S.

- (1) Arts license;
- (2) Beer and wine license;
- (3) Brew pub license;
- (4) Club license;
- (5) Distillery license;
- (6) Distillery pub license;
- (7) Hotel and restaurant license;
- (8) Liquor licensed drugstore license;
- (9) Lodging and entertainment facility license;
- (10) Optional premises license;
- (11) Racetrack license;
- (12) Retail liquor store license; and
- (13) Tavern or gaming tavern license.

(b) An application for a new liquor license shall be filed with the City Clerk. It shall be filed on duplicate forms made available by the State Liquor Licensing Authority. It shall be accompanied by the following:

- (1) The application fee for the license specified in Section 6-60 below;
- (2) Some evidence of ownership or right to possess the premises, such as a copy of the deed or lease;
- (3) Plans and specifications for the interior of the building, the building is to be occupied is in existence at the time of application. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed;
- (4) In case of partnership except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner, along with their name and residence address and telephone number; and
- (5) In the case of a corporation, a copy of its articles of incorporation, and if a foreign corporation, evidence of qualification to do business in this State, and a sworn statement setting forth the name, residence address and telephone number of each stockholder, director and officer of the corporation

Section 4. Section 6-62 of the City of Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-62. Public Notice.**

The applicant for a liquor license shall cause to be posted and published, not less than ten (10) days prior to the public hearing, a public notice of the hearing:

(1) The sign used for posting such notice shall be of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant and such other information as may be required to fully apprise the public of the nature of the application. IF THE APPLICANT IS A PARTNERSHIP, THE SIGN SHALL CONTAIN THE NAMES AND ADDRESSES OF ALL PARTNERS, AND IF the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

(2) The published notice shall contain the same information as that required for signs.

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Section 5. Section 6-71 of the City of Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-71. Penalty for Violation.**

(a) Any licensee who violates the terms of this Article may be subject to A FINE, suspension, or revocation of his or her license pursuant to Section 44-3-601, C.R.S.

\* \* \*

Section 6. Section 6-72 of the City of Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-72. License and Application Fees.**

(a) EACH APPLICATION FOR A LICENSE PROVIDED FOR IN THIS CHAPTER SHALL BE FILED WITH AN APPLICATION AND ~~The license fees~~ LICENSE FEE. THE FEES SHALL BE CONSISTENT ~~in the appropriate amount in accordance~~ with the fee schedule as determined by the Colorado Department of Revenue shall be paid to the City Clerk at the time of application submittal.

(b) No rebate shall be paid by the City of any alcoholic beverage license fee paid for any such license issued by it except upon affirmative action by the local licensing authority rebating a proportionate amount of such license fee.

~~(c) — Each application for a license provided for in this Section filed with the local licensing authority shall be accompanied by an application fee in accordance with the fee schedule as determined by the Colorado Department of Revenue to cover actual and necessary expenses.~~

~~(d) — The local licensing authority will charge applicants according to the City of Black Hawk Fee Schedule for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, members or managers pursuant to the requirements of Section 44-3-307, C.R.S.; however, the local licensing authority shall not collect such a fee if the applicant has already been approved by the State licensing authority with an approved master file.~~

Section 7. Article II of the City of Black Hawk Municipal Code is hereby amended with the addition of a new Section 6-75 entitled "Distilleries and Distillery Pubs" to read as follows:

**Sec. 6-75. Distilleries and Distillery Pubs.**

(a) A licensed distillery that DIRECTLY sells its product to a licensed retailer must also obtain a wholesale license ~~for self distribution or contract with a wholesaler to distribute.~~ A LICENSED DISTILLERY MAY ADDITIONALLY CONTRACT WITH A WHOLESALER FOR DISTRIBUTION.

(b) All licensed distilleries and distillery pubs must obtain a federal permit required under the Federal Alcohol Administration Act and Title 27 of the Federal Code of Regulations

(c) All licensed distillers must operate consistent with Section 44-3-402, C.R.S., and all other relevant state and federal laws, rules, and regulations.

(d) All licensed distillery pubs must operate consistent with Section 44-3-426, and all other relevant state and federal laws, rules, and regulations.

Section 8. Article II of the City of Black Hawk Municipal Code is hereby amended with the addition of a new Section 6-76 entitled "Sales Rooms" to read as follows:

**Sec. 6-76. Sales Rooms.**

(a) A manufacturer of spirituous liquors, including but limited to a distillery, licensed pursuant to this Article may conduct tastings and sell to customers spirituous liquors of its own manufacture on its licensed premises and at one other approved sales room location.

(c) The sales room must be operated in a manner consistent with state law, including Section 44-3-402(7), C.R.S. and 1 CCR 203-2 § 47-428, all other relevant state and federal laws, rules, and regulations.

Section 9. Section 6-91 of the Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-91. Application Required; Filing.**

\* \* \*

(b) All new applications for fermented malt beverage licenses shall be filed, in duplicate on forms made available by the office of the Secretary of State, with the City Clerk and shall be accompanied by the following:

(1) ~~Three (3) letters of character reference;~~

(2)(1) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner along with his or her name, residence address and telephone number;

(3)(2) In the case of a corporation, a copy of its articles of incorporation, and if a foreign corporation, evidence of qualification to do business in this state, and a sworn statement setting forth the names, residence addresses and telephone numbers of each stockholder, director and officer of the corporation; and

(4)(3) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building.

Section 10. Section 6-94 of the Black Hawk Municipal Code is hereby amended as follows:

**Sec. 6-94. Public Notice.**

\* \* \*

(b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type set so as to be not less than one (1) column in width nor less than six (6) inches in length.

\* \* \*

Section 11. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 12. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 13. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

Section 14. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 15. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 16.    Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 24<sup>th</sup> day of March, 2021.

  
David D. Spellman, Mayor

ATTEST:

  
Melissa A. Greiner, CMC, City Clerk

