

SPONSORED BY TRUSTEE

TRUSTEE'S BILL

ORDINANCE NO.

NO. 05-03
Series of 2005

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TITLE: A BILL FOR AN ORDINANCE AMENDING THE HUDSON MUNICIPAL CODE BY THE ADOPTION OF A NEW ARTICLE 4 TO CHAPTER 6 REGARDING LIQUOR LICENSING

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. The Hudson Municipal Code is amended by the addition thereto of a new Article 4 to Chapter 6, entitled "Liquor Licenses," to read as follows:

Article 4.

Division 2. In General

Sec. 6-111. Purpose; intent.

- (a) No license provided by this Article shall be issued to or held by:
- (1) Any person until the annual fee has been paid;
 - (2) Any person who is not of good moral character;
 - (3) Any corporation, any of whose officers, directors or stockholders holding ten percent (10%) of the outstanding and issued capital stock of the corporation are not of good moral character;
 - (4) Any partnership, association or company, any of whose officers, or any of whose members holding ten percent (10%) or more interest therein, are not of good moral character;
 - (5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the respective licensing authorities;
 - (6) Any sheriff, deputy sheriff, police officer, prosecuting officer, the state licensing authority or any of its inspectors or employees;
 - (7) Any person, unless he or she is with respect to his or her character, record and reputation satisfactory to the respective licensing authority; and

- (8) Any natural person under twenty-one (21) years of age.
- (b) In making a determination as to character or when considering the conviction of a crime, the local licensing authority shall be governed by the provisions of C.R.S. § 24-5-101.
- (c) Jurisdiction.
- (1) In investigating the qualifications of the applicant or a licensee, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.
- (2) As used in subsection (1) of this Section, "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 6-112. Separate license for each business.

- (a) Each license issued under this Article is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he or she holds. A separate license shall be issued for each specific business and each location, and in such license the particular liquors which the applicant is authorized to manufacture or sell shall be named and described.
- (b) In the event a specific business holding a license issued under this Article changes its business location, an application for a new license reflecting the change of location shall be made to the Town Clerk. An application fee in the amount of five hundred dollars (\$500.00) shall be paid to the Town at the time of making the application.
- (c) The Town Clerk shall cause the new application for a license reflecting the change of location to be placed on the agenda of a Board of Trustees' (the "Board") meeting to be held not less than four (4) days nor more than thirty (30) days after the Clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the Board meeting at which his or her application is presented. The date of presentation of the application to the Board shall be deemed the date of filing the application. Upon receipt of the application,

the Board shall follow procedures set forth in this Article for the investigation of the applicant, and the conduct of a public hearing and the notice requirement for such public hearing.

Sec. 6-113. Sale of all or part of business interest.

- (a) Whenever any individual, corporation or partnership existing or licensed under this Article sells all or part of its corporate stock, partnership interest or business interest in a beer or liquor outlet and a new license application is required by the State, an application fee in the amount of five hundred dollars (\$500.00) shall be paid to the Town at the time of making the application.
- (b) The Board shall follow the procedures in this Article for the investigation of the applicant, and shall determine whether the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license pursuant to Section 6-111 of this Article. If the investigation reveals no information tending to establish that the applicant may be prohibited from holding a license, the Town Clerk shall issue a license to the applicant. Provided, however, that if the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license, the Town Clerk shall cause the new application for the existing outlet to be placed on the agenda not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the Board meeting at which his or her application is presented. The date of presentation of the application to the Board shall be deemed the date of filing of the application. Upon receipt of the application, the Board shall follow procedures set forth in this Article for conducting a public hearing. The Board shall only consider the criteria listed in Section 6-111 of this Article when conducting the hearing.
- (c) The Town Clerk shall have the authority to issue a temporary permit to any applicant under this Section who has also satisfied the applicable provisions of C.R.S. § 12-47-303 and the provision of such statute shall apply to both the issuance and administration of such a temporary permit. The Town Clerk shall charge a fee of one hundred dollars (\$100.00) for a temporary permit.

Sec. 6-114. Change of corporate officers or directors.

- (a) Whenever any corporation causes a change in its corporate officers or directors, and a license addendum is required to be filed with the State, an application fee in the amount of one hundred dollars (\$100.00) shall be paid to the Town at the time of filing the addendum with the Town.
- (b) Upon the filing of a license addendum, the procedures set forth in Sec. 6-114 of this Article shall be followed.

Sec. 6-115. Additional licenses; rules and regulations; fees.

The Town Clerk shall establish rules and regulations concerning temporary beer or liquor licenses, special events licenses and renewal of 3.2 beer licenses. The Clerk is authorized to establish rules and regulations not inconsistent with other provisions of this Article for the filing, processing, investigation and review of applications for these licenses. The application and renewal fees for these licenses shall not be greater than the maximum fee allowed by law.

Sec. 6-116. Renewal.

- (a) All renewal applications for malt, vinous and spirituous liquor licenses and fermented malt beverage licenses shall be submitted to the Town Clerk on the prescribed forms, together with the applicable license fee, no later than forty-five (45) days prior to the date on which the license expires. No renewal application shall be accepted by the Town Clerk which is not complete in every detail.
- (b) Upon receiving the completed renewal application, the Town Clerk shall assemble the file of the applicant and review the file to determine whether "good cause" is present for non-renewal. Whether "good cause" is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the Town Clerk's review indicates no facts or circumstances supporting "good cause" for non-renewal, the Town Clerk shall issue a renewal license. Provided, however, that in the event that the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before the Board.
- (c) If there is information before the Town Clerk tending to constitute good cause for not renewing a particular license for an additional year, the Town Clerk, at the direction of the Board, shall cause to be issued a notice of hearing on the license renewal. In the event the Town Clerk issues a notice requiring a hearing to renew a license, the notice shall be served and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to the hearing.
- (d) Hearings held on any renewal application, after proper notice has been given, may result in denial of renewal of the license for good cause.
- (e) In the event that a license is renewed by the licensing authority, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The licensing authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed.

Division 2. 3.2 Beer

Sec. 6-117. Application required; filing.

- (a) An application for a 3.2 beer license shall be required for the following:
 - (1) Sales for consumption off the premises of the licensee;
 - (2) Sales for consumption on the premises of the licensee; and
 - (3) Sales for consumption both on and off the premises of the licensee.

A person licensed pursuant to this subsection may deliver at retail fermented malt beverages in factory-sealed containers in conjunction with the delivery of food products, if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority.

- (b) All new applications for 3.2 beer licenses shall be filed, in duplicate, on forms made available by the office of the Secretary of the State, with the Town Clerk and shall be accompanied by the following:
 - (1) Three (3) letters of character reference;
 - (2) 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 their name and residence address and telephone number;
 - (3) 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 and residence addresses and telephone numbers of each stockholder, director and officer of the corporation; and
 - (4) 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.

Sec. 6-118. Manager registration.

A person licensed pursuant to this Division 2 shall manage the premises him or herself or shall employ a separate and distinct manager on the premises and shall report the name of such manager to the Town. Such person licensed shall also report any change in managers to the Town within thirty (30) days after the change. Such failure to report a change in managers shall be grounds for suspension of a license.

Sec. 6-119 Fee.

An application fee in the amount of five hundred dollars (\$500.00) and a license

fee of three dollars and seventy-five cents (\$3.75) shall be paid to the Town at the time of making an application for a 3.2 beer license, and a renewal fee of twenty-five dollars (\$25.00) shall also be imposed by the Town for renewals. This fee shall be used by the Town to defray the expenses incurred by the Town in investigating the applicant and conducting the hearing. In addition, the Town shall impose a fee of seventy-five dollars (\$75.00) for the registration of a manager if the manager is different from the licensed person, and shall also impose a fee of seventy-five dollars (\$75.00) for a change of managers in accordance with Section 6-119 of this Article. No part of this fee shall be refundable to the applicant for any reason.

Sec. 6-120. Establishing neighborhood and public hearing dates.

- (a) The Town Clerk shall cause the application for a 3.2 beer license to be placed on the agenda of a Board meeting to be held not less than four (4) days nor more than thirty (30) days after the Clerk has received the application. The date of presentation of the application to the Board shall be deemed the date of filing of the application.
- (b) The corporate limits of the Town shall be designated the neighborhood upon the presentation of the application.
- (c) The Board shall also set a date for a public hearing, which date shall be held not less than thirty (30) days from the date of the Board meeting at which the date is set.

Sec. 6-121. Public Notice.

- (a) The applicant for a 3.2 beer license shall cause to be posted and published a public notice of hearing thereon. The sign used for posting such notice shall be of cardboard 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. 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.
- (b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type so as to be not less than one (1) column in width nor less than six (6) inches in length.
- (c) Where the building in which the 3.2 beer is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such

manner that it shall be conspicuous and plainly visible to the general public.

Sec. 6-122. Investigation of applicant.

- (a) The Weld County Sheriff's Department shall make an investigation of the applicant for a 3.2 beer license, and, in the case of a corporation, the board of directors of the applicant, and, in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation a report on the applicant. A written report of the finding of such investigation shall be delivered by the Weld County Sheriff's Department to the Town Clerk at least ten (10) days prior to the hearing on the application.
- (b) Not less than five (5) days prior to the date of the hearing on an application under this Division, the written report of the findings based on the investigation by the Police Department shall be made available to the applicant and other interested parties.

Sec. 6-123. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a 3.2 beer license shall be established by the Mayor.

Sec. 6-124. Considerations for approving or denying application.

Before entering any decision approving or denying the application for a 3.2 beer license, the Board shall consider the following:

- (a) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;
- (b) The reasonable requirements of the neighborhood;
- (c) The character and reputation of the applicant, subject to the provisions contained in Section 6-111 of this Article; and
- (d) Other pertinent facts and evidence affecting the qualification of the applicant.

Sec. 6-125. Approval or disapproval.

The decision of the Board approving or disapproving the application for a 3.2 beer license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant to the address shown in the application.

Sec. 6-126. Issuance of license in cases of building to be constructed.

In the case of buildings not yet in existence, where the Board votes in favor of the issuance of a 3.2 beer license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has complied substantially with the architect's drawings and plans and specifications submitted with the application for such license.

Sec. 6-127. Change of location.

All of the procedures outlined in this Division shall be applicable to a change of location of an existing 3.2 beer license.

Sec. 6-128. Rehearing limitation.

No application for the issuance of a 3.2 beer license shall be considered by the Board if an application for a similar type license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Sec. 6-129. Judicial review.

Any person applying to the courts for a review of any licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is furnished by the licensing authority pursuant to court order.

Division 3. Liquor

Sec. 6-130. Definitions.

As used in this Division, the term *liquor license* shall include the following classes of licenses:

- (a) Retail liquor store license;
- (b) Liquor-licensed drugstore;
- (c) Beer and wine license;
- (d) Hotel and restaurant license;
- (e) Club license;
- (f) Tavern license;
- (g) Optional premises license;

- (h) Brew pub license;
- (i) Arts license;
- (j) Racetrack license; and

Sec. 6-131. Application.

All applications for new liquor licenses shall be filed with the Town Clerk. They shall be filed in duplicate on forms made available by the state liquor licensing authority. Each application shall be verified by the oath or affirmation of such persons as prescribed by the state licensing authority. Any application shall be accompanied by the following:

- (a) Three (3) letters of character reference;
- (b) The occupational tax required by the Town;
- (c) 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;
- (d) Some evidence of ownership or right to possession of the premises, consisting of a copy of a deed or lease thereto;
- (e) 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 their name and residence address and telephone number; and
- (f) 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 and residence address and telephone number of each stockholder, director and officer of the corporation.

Sec. 6-132. Optional premises.

- (a) *Optional premises* means:
 - (1) Premises specified in an application for a hotel and restaurant license under C.R.S. § 12-47-101 with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel and restaurant within which such license is authorized to serve alcoholic beverages in accordance with the provisions of this Division and at the discretion of the state and local licensing authorities; and
 - (2) 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 Section *outdoor sports and recreational facility* means a facility which charges a fee for the use of such facility.

(b) The requirements for an optional premises license shall be:

- (1) An applicant or holder of a hotel and restaurant license desiring to sell or serve alcoholic beverages on an optional premises shall:
 - i. Provide a scale drawing showing the area to be licensed;
 - ii. Make a mark on the scale drawing indicating the location where alcoholic beverages are to be dispensed, significant land or architectural factors; and
 - iii. An affidavit of the owner or the agent and manager of the facility showing the need, convenience or desirability of the optional premises license.
- (2) The decisions of the Board shall be made by resolution within thirty (30) days of the date of providing all information pertinent to the application. No public hearing shall be required, but the Board may order a public hearing should, in its discretion, a public hearing be necessary.

Sec. 6-133. Application fee.

An application fee in the amount of five hundred dollars (\$500.00) shall be paid to the Town at the time of making an application for a liquor license. This fee shall be used by the Town to defray the expenses incurred by the Town in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason.

Sec. 6-134. Initial appearance before Board.

- (a) The Town Clerk shall cause the application for a liquor license to be placed on the agenda of a Board meeting to be held not less than four (4) days nor more than thirty (30) days after the Clerk has received the application. The date of presentation of the application to the Board shall be deemed the date of filing the application.
- (b) The Board shall designate the neighborhood upon the presentation of the application.
- (c) The applicant shall comply with the policies and procedures established by the Town Clerk and adopted by the Board for applications, including but not limited to the form of petitions and the means and methods for surveying and canvassing the neighborhood.
- (d) The Board shall also set a date for public hearing, which shall be not less than thirty (30) days from the date of the Board meeting at which the date is set.

Sec. 6-135. Public notice.

The applicant for a liquor license shall cause to be posted and published a public notice of hearing thereon:

- (a) The sign used for posting such notice shall be of cardboard 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 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.
- (b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type so as to be not less than one (1) column in width nor less than six (6) inches in length.
- (c) Where the building in which the liquor is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public.

Sec. 6-136. Investigation of applicant.

- (a) The Weld County Sheriff's Department shall make an investigation of the applicant for a liquor license, and, in the case of a corporation, the board of directors of the applicant, and, in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation of a report on the applicant. A written report of the finding of such investigation shall be delivered by the Chief of Police to the Town Clerk at least ten (10) days prior to the hearing on the application.
- (b) Not less than five (5) days prior to the date of the hearing on an application under this Division, the written report of the findings based on the investigation by the Weld County Sheriff's Department shall be made available to the applicant and other interested parties.

Sec. 6-137. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a liquor license shall be established by the Mayor.

Sec. 6-138. Consideration of factors.

Before entering any decision approving or disapproving the application for a liquor license, the Board shall consider the following:

- (a) The facts and evidence of the investigation;
- (b) The reasonable requirements of the neighborhood for the type of license for which application has been made, including reference to the number, type and availability of liquor outlets located in or near the neighborhood under consideration;
- (c) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise; and
- (d) Other pertinent facts and evidence affecting the qualification of the applicant.

Sec. 6-139. Decision of Board.

The decision of the Board approving or denying the application for a liquor license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing thereon. A copy of such decision shall be sent by mail to the applicant at the address shown in the application.

Sec. 6-140. License fees.

- (a) The following license fees shall be paid to the Town annually in advance:
 - (1) For each retail liquor store license, one hundred fifty dollars (\$150.00). Pursuant to subsection (c) below, one hundred twenty-seven dollars and fifty cents (\$127.50) shall be paid to the Colorado Department of Revenue, and twenty-two dollars and fifty cents (\$22.50) shall be paid to the Town Clerk;
 - (2) For each liquor-licensed drugstore, one hundred fifty dollars (\$150.00). Pursuant to subsection (c) below, one hundred twenty-seven dollars and fifty cents (\$127.50) shall be paid to the Colorado Department of Revenue, and twenty-two dollars and fifty cents (\$22.50) shall be paid to the Town Clerk;
 - (3) Beer and wine licenses.
 - i. For each beer and wine license, except as provided in subparagraph b below, three hundred twenty-five dollars (\$325.00). Pursuant to subsection (c) below, two hundred seventy-six dollars and twenty-five cents (\$276.25) shall be paid to the Colorado Department of Revenue, and forty-eight dollars and seventy-five cents (\$48.75) shall be paid to the Town Clerk;
 - ii. For each beer and wine license issued to a resort hotel, three hundred seventy-five dollars (\$375.00). Pursuant to subsection (c) below, three hundred eighteen dollars and seventy-five cents (\$318.75) shall be paid to the Colorado Department of Revenue, and fifty-six dollars and twenty-five cents (\$56.25) shall

be paid to the Town Clerk;

- (4) For each hotel and restaurant license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the Town Clerk;
 - (5) For each tavern license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the Town Clerk;
 - (6) For each optional premises license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the Town Clerk;
 - (7) For each club license, two hundred seventy-five dollars (\$275.00). Pursuant to subsection (c) below, two hundred thirty-three dollars and seventy-five cents (\$233.75) shall be paid to the Colorado Department of Revenue, and forty-one dollars and twenty-five cents (\$41.25) shall be paid to the Town Clerk;
 - (8) For each brew pub license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the Town Clerk;
 - (9) For each arts license, two hundred seventy-five dollars (\$275.00). Pursuant to subsection (c) below, two hundred thirty-three dollars and seventy-five cents (\$233.75) shall be paid to the Colorado Department of Revenue, and forty-one dollars and twenty-five cents (\$41.25) shall be paid to the Town Clerk;
 - (10) For each racetrack license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the Town Clerk; and
 - (11) For each bed and breakfast permit, twenty-five dollars (\$25.00). Pursuant to subsection (c) below, twenty-one dollars and twenty-five cents (\$21.25) shall be paid to the Colorado Department of Revenue, and three dollars and seventy-five cents (\$3.75) shall be paid to the Town Clerk.
- (b) No rebate shall be paid by the Town 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) Eighty-five percent (85%) of the license fees provided for in this section and

collected by the Town Clerk shall be paid to the Colorado Department of Revenue, which shall transmit said fees to the State Treasurer to be credited to the old age pension fund.

- (d) Each application for a license provided for in this section filed with the local licensing authority shall be accompanied by an application fee in the following amounts to cover actual and necessary expenses:
 - (1) For a new license, five hundred dollars (\$500.00);
 - (2) For a transfer of location or ownership, five hundred dollars (\$500.00) each;
 - (3) For a renewal of license, fifty dollars (\$50.00), except that an expired license renewal fee shall be five hundred dollars (\$500.00); and
 - (4) For the registration of a manager who is separate from the licensed person, or for a change in managers, seventy-five dollars (\$75.00).
- (e) The local licensing authority may charge corporate applicants and limited liability companies up to one hundred dollars (\$100.00) 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 6-111 of this Article; however, the local licensing authority shall not collect such a fee if the applicant has already undergone a background investigation and paid a fee to the state licensing authority.

Sec. 6-141. Business premises prerequisite.

In the case of buildings not yet in existence, where the Board votes in favor of the issuance of a liquor license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine the applicant has complied substantially with the architect's drawings and plans and specifications submitted for such license.

Sec. 6-142. Distance from schools.

- (a) No liquor license provided for by this Division shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred (500) feet from any public or parochial school or the principal campus of any college, university or seminary.
 - (b) Subsection (a) does not apply to:
 - (1) The renewal or re-issuance of any license once granted;

- (2) Any licensed premises located or to be located on land owned by a municipality;
- (3) A liquor license in effect and actively doing business before the principal campus was constructed;
- (4) Any club located within the principal campus of any college, university or seminary, which limits its membership to the faculty or staff of such institution; or

Sec. 6-143. Transfer.

No license for alcoholic liquor granted under the provisions of this Division shall be transferable, except that when a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.

Sec. 6-144. Change of location.

All of the procedures outlined in this Division shall be applicable to a change of location of an existing liquor license.

Sec. 6-145. Rehearing limitation.

No application for the issuance of an alcoholic liquor license shall be considered by the Board if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Sec. 6-146. Judicial review.

Any person applying to the courts for a review of the state or any local licensing authority's decision shall apply for review within thirty (30) days after the date of decision of refusal by a local licensing authority or, in the case of approval by a local licensing authority, within thirty (30) days after the date of decision by the state licensing authority, and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the licensing authority pursuant to court order.

Sec. 6-147. Exemptions.

- (a) The provisions of this Division shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.
- (b) Any provision of this Article to the contrary notwithstanding, when permitted by federal law and rules and regulations promulgated pursuant thereto, a head of a family may produce for family use and not for sale such amount of malt or vinous liquor as is exempt from the federal excise tax on such liquors when produced by a head of a family for family use and not for sale.
- (1) The production of malt or vinous liquors under the circumstances set forth in this subsection shall be in strict conformity with federal law and rules and regulations issued pursuant thereto.

- (2) Malt or vinous liquors produced pursuant to the provisions of this subsection shall not be required to obtain any license provided by this Division.

Division 4 – Regulation of Conduct in Establishments Selling Alcoholic Beverages

Sec. 6-148. Definitions.

The following words, terms and phrases, when used in Sections 6-149 through 6-158 of this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) *Adult* means a person lawfully permitted to purchase alcoholic beverages.
- (b) *Alcoholic beverage* means fermented malt beverage or malt, vinous, or spirituous liquors; except that *alcoholic beverage* shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).
- (c) *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 malt, vinous, or spirituous liquors by the drink.
- (d) *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.
- (e) *Brewery* means any establishment where malt liquors are manufactured, except brew pubs licensed under this Article.
- (f) *Club* means:
- (1) A corporation that:
 - i. Has been incorporated for not less than three (3) years;
 - ii. Has a membership that has paid dues for a period of at least three (3) years; and
 - iii. Has a membership that for three (3) 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;
 - (2) A corporation that is a regularly chartered branch or lodge, or Article of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.
- (g) *Distillery* means any establishment where spirituous liquors are manufactured.

- (h) *Fermented malt beverage* or *3.2 beer* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (0.5%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume; except that *fermented malt beverage* shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).
- (i) *Fine* means a form of discipline imposed pursuant to this Article in lieu of a suspension. Any fine shall be the equivalent of twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).
- (j) *Good cause*, for the purpose of refusing or denying a license renewal or initial license issuance, means:
 - (1) The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Article or any rules and regulations promulgated pursuant to this Article;
 - (2) 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;
 - (3) 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 C.R.S. § 12-47-301(2); or
 - (4) 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 paragraph, *disorderly conduct* is defined in C.R.S. § 18-9-106.
- (k) *Hard cider* means an alcoholic beverage containing at least one-half of one percent (0.5%) 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 gram of carbon dioxide per hundred milliliters. For the purpose of simplicity of administration of this Article, *hard cider* shall in all respects be treated as vinous liquor except where expressly provided otherwise.
- (l) *Hotel* means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.
- (m) *Inhabitant* means an individual who resides in a given neighborhood or

community for more than six (6) months each year.

- (n) *Lewd or indecent displays* means performing acts of or acts which simulate:
- (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (2) The touching, caressing or fondling of the breast, buttocks, anus or genitals;
 - (3) The displaying of the pubic hair, anus, vulva or genitals; and
 - (4) The displaying of 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 the nipple only or the nipple and the areola only are covered.
- (o) *License* means a grant to a licensee to manufacture or sell fermented malt beverages or malt, vinous or spirituous liquors as provided by this Article.
- (p) *Licensed premises* means the premises specified in an application for a license under this Article which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense or serve fermented malt beverages or malt, vinous or spirituous liquors in accordance with the provisions of this Article.
- (q) *Licensee* means a person holding a license issued pursuant to this Article.
- (r) *Limited winery* means any establishment manufacturing not more than one hundred thousand (100,000) gallons, or the metric equivalent thereof, of vinous liquors annually which uses not less than seventy-five percent (75%) Colorado-grown products in the manufacture of such vinous liquors.
- (s) *Liquor license* shall include the following classes of licenses:
- (1) Retail liquor store license;
 - (2) Liquor licensed drugstore;
 - (3) Beer and wine license;
 - (4) Hotel and restaurant license;
 - (5) Club license;
 - (6) Tavern or gaming tavern license;

- (7) Optional premises license;
 - (8) Brew pub license;
 - (9) Arts license; and
 - (10) Racetrack license.
- (t) *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.
- (u) *Local licensing authority* means, for purposes of this Article, the Town's Special Licensing Authority.
- (v) *Location* means a particular parcel of land that may be identified by an address or by other descriptive means.
- (w) *Malt liquors* includes beer and shall be construed to mean 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 more than three and two-tenths percent (3.2%) of alcohol by weight or four percent (4%) alcohol by volume.
- (x) *Meal* means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.
- (y) *Medicinal spirituous liquors* means any alcoholic 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.
- (z) *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 discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.
- (aa) *Optional premises* means:
- (1) Premises specified in an application for a hotel and restaurant license under C.R.S. § 12-47-103, 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 which is licensed to serve alcoholic beverages in accordance with the provisions of this Article and at the discretion of the state and local licensing authorities; and

- (2) 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 paragraph, *outdoor sports and recreational facility* means a facility that charges a fee for the use of such facility.
- (bb) *Person* means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof.
- (cc) *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.
- (dd) *Racetrack* means any premises where races meet or simulcast races with pari-mutuel wagering are held in accordance with the provisions of C.R.S. § 12-60-102.
- (ee) *Rectify* means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.
- (ff) *Rectifying plant* means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.
- (gg) *Resort complex* means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.
- (hh) *Resort hotel* means a hotel with well-defined occupancy seasons.
- (ii) *Restaurant* means an establishment which is not a hotel 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 C.R.S. § 12-47.1-101 through 12-47.1-302, 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.
- (jj) *Retail liquor store* means an establishment engaged only in the sale of malt, vinous and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises; tobaccos, tobacco products, smokers' supplies and nonfood items related to the consumption of such beverages; and liquor-filled

candy and food items approved by the state licensing authority, which are prepackaged, labeled and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen (16) ounces. Nothing in this Subsection shall be construed to authorize the sale of food items that could constitute a snack, meal or portion of a meal.

- (kk) *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) to twelve (12). *Basic academic education* has the same meaning as set forth in C.R.S. § 22-33-104(2)(b).
- (ll) *Sealed containers* means any container or receptacle used for holding an alcoholic beverage, which container or receptacle is corked or sealed with any stub, stopper or cap.
- (mm) *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 C.R.S. Article 46 or 48 of Title 12; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or possess with intent to sell; to possess or transport in contravention of this Article; or to traffic in for any consideration promised or obtained, directly or indirectly.
- (nn) *Sell at wholesale* means selling to any other than the intended consumer of fermented malt beverages or malt, vinous or spirituous liquors. *Sell at wholesale* shall not be construed to prevent a brewer or wholesale beer dealer from selling fermented malt beverages or malt, vinous or spirituous liquors to the intended consumer thereof or to prevent a licensed manufacturer or importer from selling such beverages to a licensed wholesaler.
- (oo) *Spirituous liquors* means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) 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, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.
- (pp) *State licensing authority* means the executive director of the Department of Revenue or the deputy director of the Department of Revenue if the executive director so designates.
- (qq) *Tavern* means an establishment serving malt, vinous and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.
- (rr) *Vinous liquors* means wine and fortified wines that contain not less than one-half

of one percent (0.5%) and not more than twenty-one percent (21%) alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

(ss) *Winery* means any establishment where vinous liquors are manufactured.

Sec. 6-149. Penalty for violation.

- (a) Any licensee who violates the terms of this Article may be subject to suspension or revocation of his or her liquor license pursuant to C.R.S. § 12-47-601.
- (b) Whenever a decision of the licensing authority suspending a license for fourteen (14) or fewer days becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the licensing authority may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The licensing authority may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation that it deems desirable, that:
- (1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purpose;
 - (2) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy there from; and
 - (3) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.
- (c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the licensing authority. Such fine shall be paid into the general fund of the Town.
- (d) The licensing authority may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in subsection (b) of this Section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the licensing authority.

Sec. 6-150. Use of gambling equipment.

No licensee shall install, maintain or operate, or permit the installation, maintenance or operation of, within or upon the licensed premises, any gambling table, establishment, device, machine, apparatus or other thing contrary to this Article or to the laws of this State or which is kept or used for the purpose of gambling either directly or indirectly. This Article shall not be construed to prohibit the use of bona fide amusement devices which do not and cannot be adjusted to pay anything of value, and which may not be used for gambling, directly or indirectly, and for the scoring, achievement, use or operation of which no prize, reward or thing of value is offered or paid by any person.

Sec. 6-151. Conduct on premises.

- (a) Each licensee shall conduct his or her establishment in a decent, orderly and respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise or other disturbance or activity offensive to the senses of the average citizen, or to the residents or the neighborhood in which the establishment is located.
- (b) Any licensee shall immediately report to the Police Department of the Town any unlawful or disorderly act, conduct or disturbance committed on the premises.
- (c) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises, signs to be furnished by the Town Clerk's office, which signs shall be in the following forms:
 - (1) "Warning! Hudson police must be notified of all disturbances in this establishment and on the grounds which are part of this establishment."
 - (2) "Warning! A mandatory fine of nine hundred ninety-nine dollars (\$999.00) and imprisonment of up to one (1) year may be levied on any person convicted of carrying or possessing any dangerous or deadly weapon, including firearms or knives with over three-and-one-half-inch blades, into or onto any public property, any organized public gathering, or any establishment licensed for the sale of alcoholic or fermented malt beverages.
- (d) Prosecution or conviction under this Section shall not prohibit prosecution or conviction under any other applicable law or ordinance, and the penalties provided shall be accumulative and in addition to all other penalties incurred under such other applicable law or ordinance enacted by the Town.
- (e) It shall not be a defense that the licensee was not personally present on the premises at the time any unlawful or disorderly act, conduct or disturbance took place; provided, however, that an agent, servant or employee of the licensee shall not be responsible hereunder when absent from the premises while not on duty.

(f) Any person who violates any provision of this section, upon conviction thereof, shall be fined not more than nine hundred ninety-nine dollars (\$999.00) and/or shall be imprisoned for not more than one (1) year.

Sec. 6-152. When consumption on premises prohibited.

No licensee shall permit the consumption of malt, vinous or spirituous beverages of 3.2 percent beer on the licensed premises at any time when the sale of such beverages is prohibited by law.

Sec. 6-153. Soliciting drinks.

No licensee, manager or agent shall employ or permit upon any liquor licensed on-sale premises, any employee, waiter, waitress, entertainer, host or hostess to mingle with patrons and personally beg, procure or solicit the purchase or sale of drinks or beverages for the use of the one begging, procuring or soliciting or for the use of any other employee.

Sec. 6-154. Loitering.

No licensee, manager or agent shall permit upon any premises licensed under this Article for on-premises consumption any person to loiter in or about the premises for the purpose of begging and soliciting any patron or customer of, or visitor in, such premises to purchase any drinks or beverages of any type or nature whatsoever, for the one soliciting or begging.

Sec. 6-155. Nudity on premises.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages of 3.2 percent beer shall permit any person to appear in a state of nudity within or upon the premises.

Sec. 6-156. Indecent displays.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or 3.2 percent beer shall permit any lewd or indecent display by any person within or upon the premises.

Sec. 6-157. Showing of films, etc., depicting acts prohibited.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages of 3.2 percent beer shall permit the showing of films, still pictures, electronic reproduction or other visual reproductions depicting any act or live performance prohibited by Sections 6-149 through 6-158 of this Article.

Division 6 – Special Events Permit

Sec. 6-159. Special events permit authorized.

The Town shall be authorized to issue special events permits in accordance with C.R.S. § 12-48-101.

Sec. 160. Fee.

In addition to the fees paid to the Department of Revenue, an application for a special events permit shall be accompanied by a fee paid to the Town in the amount of twenty-five dollars (\$25.00), to defray the expenses for any necessary investigation and for the issuance of the permit.

Section 2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, 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 Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. 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 4. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this _____ day of _____, 2005.

TOWN OF HUDSON, COLORADO

Charles E. Rossi, Mayor

ATTEST:

Judy Larson, Town Clerk

PASSED ON SECOND AND FINAL READING this _____ day of _____, 2005, AND ORDERED PUBLISHED ONCE IN FULL.

TOWN OF HUDSON, COLORADO

Charles E. Rossi, Mayor
ATTEST:

Judy Larson, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney