

BILL NO. 2018-21

NYE COUNTY ORDINANCE NO. 541

**SUMMARY:** An ordinance amending Nye County Code Title 5 Business Licenses and Regulations, by amending Chapter 5.04, Liquor Regulations; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

**TITLE:** AN ORDINANCE AMENDING NYE COUNTY CODE TITLE 5 BUSINESS LICENSES AND REGULATIONS, BY AMENDING CHAPTER 5.04, LIQUOR REGULATIONS; AMENDING SECTION 5.04.020: DEFINITIONS; AMENDING SECTION 5.04.070: APPLICATION; AMENDING SECTION 5.04.090: INVESTIGATION; FEES; AMENDING SECTION 5.04.100: INVESTIGATION; SHERIFF'S DUTIES; AMENDING SECTION 5.04.110: INVESTIGATION; REPORT TO BOARD; AMENDING SECTION 5.04.130: BOARD DETERMINATION PROCEDURE; AMENDING SECTION 5.04.160: FEES; DISBURSEMENT; AMENDING SECTION 5.04.190: RENEWAL PROCEDURE; AMENDING SECTION 5.04.210: TEMPORARY; AMENDING SECTION 5.04.220: SPECIAL EVENT PERMIT; APPLICATION; AMENDING SECTION 5.04.240: SPECIAL CLUB; RESTRICTIONS; AMENDING SECTION 5.04.460: PENALTY FOR VIOLATION; AND PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

**WHEREAS**, pursuant to NRS 244.119, the Nye County Board of County Commissioners ("Board") is authorized to amend the Nye County Code;

**WHEREAS**, the "Board" upon examination of the issues, believes that the County Liquor and Licensing ordinances, as codified, should be amended to provide for better control and more efficient administration of liquor licensing in Nye County.

**NOW, THEREFORE**, pursuant to NRS 244.110, the Board of County Commissioners of the County of Nye, State of Nevada does ordain:

**ARTICLE I. GENERAL PROVISIONS**

**5.04.020: DEFINITIONS:**

For the purposes of this chapter, the following words shall have the meanings set out in this section, unless the context otherwise clearly indicates:

**AGENT:** A person authorized by the applicant or licensee to act and speak for him.

**BOARD:** The Nye County liquor/licensing board, as constituted as a merged board pursuant to Chapter 5.02 of this title, and comprised of the five (5) members of the Nye County Board of County Commissioners and the Nye County Sheriff.

**CLUB:** An association of persons, incorporated or not, for the promotion of some common object, but not including associations organized for any commercial or business purpose, owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests.

**CORKED:** Closed with any stub, stopper or cap, whether made of cork, wood, glass, plastic or metal or any other substance, and includes boxes, cans, cases or kegs.

**LICENSE DEPARTMENT:** The license department of Nye County, Nevada.

**LIQUOR:** Whiskey, wine, beer, malt liquor, gin, cordials, ethyl alcohol or rum, and any other beverage or substance with an alcoholic content of one-half of one percent or more by volume which is used for beverage purposes.

**ORIGINAL PACKAGE:** Any container or receptacle used for holding liquor, which container or receptacle is corked or sealed.

**PACKAGE:** Any container or receptacle used for holding liquor, which container or receptacle is corked or sealed.

**QUARTER YEAR:** One of the following three (3) month periods:

- A. January 1 through March 31;
- B. April 1 through June 30;
- C. July 1 through September 30;
- D. October 1 through December 31.

**RETAIL:** The sale of liquor by the package, bottle or drink to consumers.

**RETAIL LIQUOR LICENSE:** A license issued by the board which permits the sale of liquor by the drink by the licensee at the premises specified in the license, and/or the sale of unopened liquor in its original container in packages by the licensee at the premises specified in the license for consumption off the licensee's premises. A retail liquor license permits the sale of wine or beer in the original container for consumption on the licensee's premises if the original container is opened at the time of the sale.

**SALE OR TO SELL:** Means and includes any of the following:

- A. To exchange, barter, possess or traffic in;
- B. To solicit or receive an order for;
- C. To keep or expose for sale;
- D. To serve with meals being purchased;

- E. To deliver for value or in any other way than gratuitously;
- F. To peddle;
- G. To possess with intent to sell;
- H. To transfer to anyone for sale or resale;
- I. To possess or transport in contravention of this chapter;
- J. To traffic in for any consideration, promised or attained, directly or indirectly; or
- K. To procure or allow to be procured for any reason.

**SPECIAL CLUB LICENSE:** An establishment where beer, wine and liquor are sold only by the drink. The sale of beer and wine in the original package for consumption away from the place of purchase is prohibited.

**SPECIAL EVENT PERMIT:** Permit for selling liquor at a special event by:

- A. A nonprofit organization or club which otherwise does not hold a liquor license; or
- B. A currently licensed for profit business or other for profit or nonprofit entity which desires to sell liquor outside of its licensed premises.

A special event conducted in a public place must be generally accessible by the public.

**WHOLESALE DELIVERY LIQUOR LICENSE:** A license issued by the board which permits the sale and delivery of liquor by a person not having a place of business within the county to persons with valid packaged or retail liquor licenses only.

**WHOLESALE LIQUOR LICENSE:** A license issued by the board which permits the sale and delivery of liquor by a person having a place of business within the county to persons with valid packaged or retail liquor licenses. (Ord. 246 § 1, 2001)

**5.04.070: APPLICATION:**

- A. Before any license is issued by the Board authorizing the sale of alcoholic beverages, the applicant therefor shall submit a written application to the License Department on a form provided by the Department and shall comply with the following:
  1. Be accompanied by the nonrefundable investigation fee provided in this Chapter;
  2. Be accompanied by the present quarterly license fee;
  3. Include the name and address of the applicant, and of any other person having an interest in the business to be licensed. If the applicant is a partnership, the application shall include the names and addresses of all partners and any other person(s) having a financial interest in the business. If the applicant is a corporation, the application shall include the names and addresses of all officers, directors and stockholders having more than twenty-five percent (25%) of the issued stock, the designated agent or resident manager, and the principal place of business of the corporation. If it is a corporation whose stock is sold to the general public, the stockholders need not be listed;
  4. Include the name, address and telephone number of the individual(s) who will actively manage the business for which the license is sought. At least one such manager must reside within the County;

5. Specify the class or classes of license sought;
  6. Specify the location of the premises for which the license is sought, and the name of the owner(s), agents, lessee or assignee of the premises where the business is to be operated;
  7. Be signed by all persons who shall conduct or have an interest in the business activities for which a liquor license is required. In the case of corporations, clubs or organizations with members, the application shall be verified by the president or secretary or the person who shall actively manage or conduct the business or activity for which a liquor license is required;
  8. Be sworn to as to the truthfulness of the information contained therein.
- B. There shall be a minimum processing time of thirty (30) calendar days for any application for a liquor license.
- C. The Sheriff, upon provision by the License Department of an application for a liquor license under this chapter, together with all statements of compliance with provisions of this chapter, shall thereafter investigate into the qualifications of the applicant. Upon results of the investigation, the Sheriff shall prepare a summary of whether the applicant meets the criteria for being granted a liquor license and submit to the License Department.
- D. In the case of a corporate licensee, any and all changes in the officers, directors or stockholders, or stockholders owning in the aggregate more than twenty-five percent (25%) of the stock of such corporation, shall be reported to the License Department within thirty (30) calendar days of the appointment or election of such officers and directors, or acquisition by such stockholder(s), as the case may be, and such officers, directors and stockholder(s) shall be required to qualify for a license as required in this Chapter.
- E. In the case of a partnership license, the partnership contract must be submitted with the application. Any change in the partners or other persons with a financial interest in the business shall be reported to the License Department within thirty (30) calendar days of the change, and if the change involves the addition of a person not previously investigated, that person shall be required to qualify for a license as required by this Chapter. (Ord. 176 § 2, 1995; Ord. 101 § 7, 1983)

**5.04.090: INVESTIGATION; FEES:**

- A. Each applicant for a liquor license shall pay a nonrefundable investigation fee to the License Department at the time of filing the application.
- B. The investigation fee for an individual application shall be five hundred dollars (\$500.00), plus extraordinary costs incurred in the course of the investigation by the Sheriff. For copartnerships, the investigation fee shall be five hundred dollars (\$500.00) for each person with a financial interest in the business, plus extraordinary costs incurred in the course of the investigation by the Sheriff. For publicly held corporations, the investigation fee shall be five hundred dollars (\$500.00) for each designated agent or resident manager, plus extraordinary

costs incurred in the course of the investigation by the Sheriff. For nonpublicly held corporations, the investigation fee shall be five hundred dollars (\$500.00) for each officer and any designated agent or resident manager, plus extraordinary costs incurred in the course of the investigation by the Sheriff.

- C. If an applicant withdraws his application prior to the beginning of an investigation, all fees deposited shall forthwith be returned to the applicant.
- D. An applicant who has been previously investigated by the Board who has held a County license within one year preceding the present application shall be required to pay half of the aforementioned investigation fee. (Ord. 176 § 4, 1995: Ord. 101 § 8, 1983)

#### **5.04.100: INVESTIGATION; SHERIFF'S DUTIES:**

- A. As part of the investigation of an applicant, the Sheriff shall:
  - 1. Inspect, or cause to be inspected, the location of the proposed place of business;
  - 2. Investigate the moral character of the person or persons applying for the license and managers of the proposed business for which a license is sought;
  - 3. Report the results of the investigation to the Licensing Department.
- B. The Sheriff shall, as a part of the investigation:
  - 1. Require the applicant or applicants to be fingerprinted and/or photographed;
  - 2. Require the applicant or applicants to answer any and all questions deemed appropriate and necessary to the Sheriff or Board, pertaining to such application or the fitness of any persons connected as owners, part owners, officers, managers or assistants of any establishments applying for a liquor license;
  - 3. Require the applicant to furnish a current financial statement and full financial disclosure;
  - 4. Research the applicant's criminal and financial history by accessing available data bases, including NCIC, III, and TRW.
- C. The investigation shall be completed in the shortest time possible. However, the Sheriff is required to make a complete investigation and shall be given a reasonable amount of time to verify the information obtained.
- D. All information other than criminal history information of a confidential nature supplied under the terms of this Chapter shall be maintained by the Sheriff in a confidential file, to be open for inspection only by County officials and County law enforcement officers; provided, however, the applicant shall waive the requirements of this subsection and by such waiver permit interrogation of the applicant at any meeting of the Board, concerning matters contained in the application or information obtained in the course of an investigation. (Ord. 176 § 5, 1995: Ord. 101 § 9, 1983)

#### **5.04.110: INVESTIGATION; REPORT TO BOARD:**

Upon completion of the investigation described in section 5.04.100 of this article, the sheriff shall immediately refer the application to the License Department, together with his findings and all facts upon which the findings are based. The License Department shall then place this item on the next regular or special meeting of the Board. (Ord. 101 § 9, 1983)

#### **5.04.130: BOARD DETERMINATION PROCEDURE:**

- A. After completion of the investigation by the Sheriff and the inspection by the health department of the state, the License Department shall cause the application to be placed upon the agenda for consideration by the Board.
- B. The applicant or applicants or their agent(s) shall appear before the Board at the appointed time.
- C. The Board may act upon the application or defer action until the next meeting of the Board. (Ord. 101 § 11, 1983)

#### **5.04.160: FEES; DISBURSEMENT:**

The license fee collected by virtue of this chapter shall be delivered by the License Department to the County Treasurer, and shall be kept by the Treasurer in the general fund for the sole use and benefit of the county, and shall be paid out by order of and under the direction of the Nye County Board of County Commissioners in the same manner as other general fund disbursements are made. (Ord. 101 § 32, 1983)

#### **5.04.190: RENEWAL PROCEDURE:**

- A. Application for renewal of licenses shall be made by petition to the License Department by filing the same with the License Department, together with all fees and with such information as may be required for investigation of suitability of the applicant. Applications for renewal shall be made at least ten (10) calendar days before the end of the calendar quarter in which the license expires.
- B. Notwithstanding any other provisions of this chapter, the procedures set forth in this chapter for the application and issuance of liquor licenses shall not apply to the renewal of licenses previously issued to the same applicant. After application for renewal has been submitted to the License Department, the License Department shall cause the reissuance or cancellation of such license renewals in the manner following:
  1. At the first meeting of the Board of each fiscal year, the License Department shall present a list of applicants for renewal, together with fees collected during the previous fiscal year, and present the recommendations for or against the renewal of each such license over the next fiscal year.

2. Any licensee whose license renewal has been disapproved by the Board shall be notified of such in writing, in the manner provided in this chapter. The licensee may avail himself of the procedures set forth in this chapter.
3. Renewal of licenses under this chapter must be for a minimum of one calendar quarter but may be made for no more than four (4) calendar quarters within the current fiscal year.
4. Notwithstanding any other provision of this chapter, no existing license required under this chapter shall lapse or be revoked when renewal is delayed solely due to the notice and agenda requirements of Nevada's Open Meetings Law. (Ord. 253 § 1, 2002)

#### **ARTICLE IV. LICENSES; SPECIAL**

##### **5.04.210: TEMPORARY:**

The Board shall have the authority, after such investigation as it deems proper, to issue a temporary license pending the processing of an application for a permanent license; provided, however, that at the time any such temporary license is issued by the Board, a full and complete application for a license shall be on file with the License Department. (Ord. 101 § 24, 1983)

##### **5.04.220: SPECIAL EVENT PERMIT; APPLICATION:**

- A. A special event permit is required for each and every special event, despite the fact that each applicant, host, promoter or person in charge of the event may hold a liquor license, if that event is to be held in a location or on premises different from those for which the liquor license was granted.
- B. Application for a special event permit must be made in writing to the License Department and describe the nature of the special event, the date of the event, and the location applicable to the permit. In approving a special event permit, the Board may impose such conditions upon the permit as deemed necessary and proper.
- C. A special event conducted in a public place must be generally accessible by the public. (Ord. 246 § 4, 2001)

##### **5.04.240: SPECIAL CLUB; RESTRICTIONS:**

- A. A special club license shall operate within the following guidelines:
  1. Access to a facility with a special club license shall be restricted to members and guest(s) accompanied by a member. Restriction of access shall be accomplished by locking the front door to:
    - a. Prevent free entry;
    - b. Check membership at the door, or the like.

2. Intoxicating liquors may be served only to members or guests accompanied by a member.
  3. The licensee shall maintain competitive pricing of intoxicating beverages, and in no case shall intoxicating beverages be sold at a price less than cost.
  4. Waiver of any or all of these guidelines may be accomplished by submission of a written request and procurement of approval of a majority of members of the Board.
  5. The license issued for the sale and consumption of alcoholic liquors shall be restricted to the club's premises.
  6. Before any club license is issued by the Board authorizing the sale of alcoholic beverages, the applicant therefor shall submit a written application to the License Department on a form provided by the Department and shall comply with the following:
    - a. Contain the name of a member;
    - b. Contain a description of the character and purpose of the organization; and
    - c. Be signed by a duly authorized member of the organization.
  7. The holder of a club license may apply for a special event permit for the sale and consumption of alcoholic liquors at places other than its own premises upon processing its application for a special event permit as provided in this Chapter.
  8. The club must maintain an up-to-date list of all club members that is readily available for review by the license department.
- B. No special club license shall be granted to any existing brothel owner, or to any person, association or corporation seeking to obtain a special club license to be housed in a building compromising, containing or contiguous to a brothel. (Ord. 101 § 22, 1983)

## **ARTICLE V. LICENSES; SUSPENSION AND REVOCATION**

### **5.04.460: PENALTY FOR VIOLATION:**

- A. All license fees imposed by this Chapter shall be due and payable to the License Department no later than the last day of the month preceding the quarter for which the license is to be issued.
- B. A penalty of ten dollars (\$10.00) shall be added to any license fee received after the fifth day of the first calendar month of the quarter for which the license is to be issued.



C. Failure of a licensee to pay the license fee within fifteen (15) calendar days after the first day of the quarter for which the license is to be issued shall be deemed a surrender of such license, and the same shall be considered surrendered or revoked. Reinstatement shall require a majority vote of the Board, together with the late penalty and a reinstatement fee of one hundred dollars (\$100.00).

D. In addition to the penalties regarding suspension or revocation of a license, any person convicted in a court of competent jurisdiction of violation of the provisions of this Chapter shall be guilty of a misdemeanor. (Ord. 101 § 39, 1983)

SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 12<sup>th</sup> day of December, 2018.

Proposed on the 16<sup>th</sup> day of October, 2018.


Proposed by: Commissioner Schinhofen.


Adopted on the 20<sup>th</sup> day of November, 2018

Vote: Ayes: Commissioners: Koenig, ~~Schinhofen~~, Wichman, Borasky, Cox

Nays: Commissioners: 0

Absent: Commissioners: 0 - Schinhofen

BY:   
John Koenig, Chairman  
Nye County Board of  
County Commissioners

ATTEST:   
Sandra L. Merlino  
Clerk and Ex-Officio  
Clerk of the Board