

Trustee Bill No. 3
Series of 2008
Town of Foxfield

Introduced by

Mayor Sullivan

A BILL FOR AN ORDINANCE ADOPTING LIQUOR LICENSING REGULATIONS

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF FOXFIELD, COLORADO:

Section 1. The Board of Trustees hereby adopts provisions regarding liquor licensing within the Town as follows:

Part 1

Alcoholic Beverages

Section 1. Definitions.

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

- (1) *Adult* means a person lawfully permitted to purchase alcoholic beverages.
- (2) *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 Section 25-5-410(1)(i)(II), C.R.S.
- (3) *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.
- (4) *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.
- (5) *Brewery* means any establishment where malt liquors are manufactured, except brew pubs licensed under this Ordinance.
- (6) *Club* means:
 - a. A corporation that:
 1. Has been incorporated for not less than three (3) years;
 2. Has a membership that has paid dues for a period of at least three (3) years; and

3. 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.

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.

(7) *Distillery* means any establishment where spirituous liquors are manufactured.

(8) *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 ($\frac{1}{2}\%$) 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 Section 25-5-410(1)(i)(II), C.R.S.

(9) *Fine* means a form of discipline imposed pursuant to this Ordinance 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).

(10) *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 failed to comply with any of the terms, conditions or provisions of this Ordinance or any rules and regulations promulgated pursuant to this Ordinance;

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 12-47-301(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 paragraph, *disorderly conduct* has the meaning as provided for in Section 18-9-106, C.R.S.

(11) *Hard cider* means an alcoholic beverage containing at least one-half of one percent (½%) 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 Ordinance, *hard cider* shall in all respects be treated as a vinous liquor except where expressly provided otherwise.

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

(13) *Inhabitant*, with respect to cities or towns having less than forty thousand (40,000) population, means an individual who resides in a given neighborhood or community for more than six (6) months each year.

(14) *License* means a grant to a licensee to manufacture or sell fermented malt beverages, or malt, vinous or spirituous liquors as provided by this Ordinance.

(15) *Licensed premises* means the premises specified in an application for a license under this Ordinance 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 Ordinance.

(16) *Licensee* means a person holding a license issued pursuant to this Ordinance.

(17) *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.

(18) *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 or gaming tavern license;
- g. Optional premises license;
- h. Brew pub license;

- i; Arts license; and
- j. Racetrack license.

(19) *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.

(20) *Local licensing authority* means, for purposes of this Ordinance, the Board of Trustees.

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

(22) *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.

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

(24) *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.

(25) *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 purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

(26) *Optional premises* means:

a. Premises specified in an application for a hotel and restaurant license under Title 12, Ordinance 47, 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 which is licensed to serve alcoholic beverages in accordance with the provisions of this Ordinance and at the discretion of the state and local licensing authorities; and

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 paragraph, *outdoor sports and recreational facility* means a facility that charges a fee for the use of such facility.

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

(28) *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.

(29) *Racetrack* means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of Ordinance 60 of Title 12, C.R.S.

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

(31) *Rectifying plant* means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

(32) *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.

(33) *Resort hotel* means a hotel, as defined in Subsection (12) of this Section, with well-defined occupancy seasons.

(34) *Restaurant* means an establishment, which is not a hotel as defined in Subsection (12) of 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 Ordinance 47.1 of Title 12, 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.

(35) *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, a meal or portion of a meal.

(36) *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.

(37) *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.

(38) *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 Ordinance or Ordinance 46 or 48 of Title 12, C.R.S.; 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 Ordinance; to traffic in for any consideration promised or obtained, directly or indirectly.

(39) *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.

(40) *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 ($\frac{1}{2}\%$) 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 Subsections (23) and (44) of this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

(41) *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.

(42) *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.

(43) *Vinous liquors* means wine and fortified wines that contain not less than one-half of one percent ($\frac{1}{2}\%$) 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.

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

Section 2. Persons prohibited as licensees.

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

(1) Any person until the annual occupational tax 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%) or more 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, 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 Board of Trustees;
- (6) Any sheriff, deputy sheriff, police officer, prosecuting officer, the state licensing authority or any of its inspectors or employees;
- (7) Any person whose character, record and reputation is not satisfactory to the Board of Trustees; and
- (8) Any natural person under twenty-one (21) years of age.

(b)(1) 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 Section 24-5-101, C.R.S.

(2) With respect to club license applications by corporation only, an investigation of the character of the corporate president and the club manager shall be deemed sufficient to determine whether to issue the club license to the corporation.

(c)(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 paragraph (1) of this Subsection, *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.

Section 3. Separate license for each business.

Each license issued under this Ordinance 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.

Section 4. Sale of all or part of business interest.

(a) Whenever any individual, corporation or partnership existing or licensed under this Ordinance 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 an amount to be determined by the Town by resolution shall be paid to the Town at the time of making the application.

(b) The Town Clerk shall follow the procedures in this Ordinance 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 2. 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 of Trustees meeting at which his or her application is presented. The date of presentation of the application to the Board of Trustees shall be deemed the date of filing the application. Upon receipt of the application, the Board of Trustees shall follow procedures set forth in this Ordinance for the conduct of a public hearing. The Board of Trustees shall only consider the criteria listed in Section 2 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 either Section 12-47-303, C.R.S., and the provision of such statute shall apply to both the issuance and administration of such a temporary permit. The Town Clerk shall not charge a fee for a temporary permit if the application for the temporary permit is filed with the Town Clerk at the same time as the application to transfer ownership of a license. Otherwise, the Town Clerk shall charge a fee to be determined by the Town by resolution for a temporary permit.

Section 5. 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 an amount to be determined by the Town by resolution shall be paid.

(b) Upon the filing of a license addendum, the procedures set forth in Section 4(b) of this Ordinance shall be followed.

Section 6. Renewal fee and procedures.

(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 nonrenewal. 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 nonrenewal, the Town Clerk shall issue a renewal license; provided, however, that in the event 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 of Trustees.

(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 of Trustees, 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 at least thirty (30) days prior to the expiration date on the license and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to 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.

Section 7. Application.

(a) The local licensing authority may issue only the following malt, vinous and spirituous liquor licenses upon payment of the fee to be determined by the Town by resolution and Section 12-47-505, C.R.S.:

- (1) Retail liquor store license;
- (2) Liquor-licensed drugstore license;
- (3) Beer and wine license;
- (4) Hotel and restaurant license;

- (5) Tavern license;
- (6) Beer pub license;
- (7) Club license;
- (8) Arts license;
- (9) Racetrack license;
- (10) Optional premises license; and
- (11) Retail gaming tavern license.

(b) An application for a new liquor license shall be filed with the Town Clerk. It shall be filed in duplicate on forms made available by the state liquor licensing authority. It shall be accompanied by the following:

- (1) The application fee for the license as specified herein;
- (2) 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;
- (3) Some evidence of ownership or right to possession of the premises, consisting of a copy of a deed or lease;
- (4) 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
- (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 8. Optional premises license.

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:
 - a. Provide a scale drawing showing the area to be licensed.
 - b. Show on the scale drawing the location at which alcoholic beverages are to be dispersed, and significant land or architectural factors.

c. 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) An applicant for a hotel and restaurant license who desires to sell or serve alcohol beverages on optional premises shall file with the optional premises permit application a list of the optional premises locations. Such application and list shall be filed with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight (48) hours prior to serving alcohol beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Ordinance under circumstances not specified in this Subsection.

(3) An applicant for an optional premises license who desires to sell, dispense or serve alcohol beverages on optional premises shall file with the optional premises license application a list of the optional premises locations and the area in which the applicant desires to store malt, vinous and spirituous liquors for future use on the optional premises. The application and additional information shall be filed with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the license and areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight (48) hours prior to serving alcohol beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Ordinance under circumstances not specified in this Subsection.

(4) After all information pertinent to the application has been provided, the Board of Trustee's decision shall be made by resolution within thirty (30) days. No public hearing shall be required, unless the Board of Trustees, in its discretion, determines that a public hearing is necessary.

Section 9. Application fee.

An application fee in an amount to be determined by the Town by resolution shall be made 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. This fee shall be in addition to the license fees set forth hereinbelow.

Section 10. Initial appearance before the Board of Trustees.

(a) The Town Clerk shall place on the agenda of a Board of Trustees meeting the request for a new liquor license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. When the application is presented to the Board of Trustees, either the applicant or his or her attorney shall attend the meeting. The date the application is received by the Town Clerk shall be deemed the date of filing of the application.

(b) The applicant shall be instructed to, and shall prepare and furnish at the public hearing, a survey map showing the neighborhood and the location and nature of other liquor outlets.

(c) The Board of Trustees shall also set a date for public hearing. The public hearing shall be held not less than thirty (30) days from the date of the Board of Trustees meeting in which the application was presented.

Section 11. Public notice.

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

(a) 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 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 set so as to be not less than one (1) column in width nor less than six (6) inches in length.

(c) If the building in which 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 the application, the sign shall be posted upon the premises where the building is to be constructed in such a manner that it shall be conspicuous and plainly visible to the general public.

Section 12. Investigation of applicant.

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

Section 13. Consideration of factors.

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

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

Section 14. Decision of the Board of Trustees.

The decision of the Board of Trustees 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. A copy of the decision shall be sent by mail to the applicant at the address shown in the application.

Section 15. Business premises prerequisite.

In the case of buildings not yet in existence, where the Board of Trustees 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 that the applicant has substantially complied with the architect's drawings and plans and specifications submitted for such license.

Section 16. Distance from schools.

- (a) No liquor license provided for by this Ordinance 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 reissuance 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; or

(4) Any club located within the principal campus of any college, university or seminary, as defined in Section 12-47-103, C.R.S., which limits its membership to the faculty or staff of such institution.

Section 17. Transfer.

No liquor license granted under the provisions of this Ordinance shall be transferable, except as provided in this Ordinance. 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 the survivors for the balance of the license.

Section 18. Change of location.

If the holder of an existing liquor license changes location, then all of the procedures outlined in this Ordinance shall apply.

Section 19. Rehearing limitation.

No application for the issuance of a liquor license shall be considered by the Board of Trustees 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 the new application.

Section 20. Penalty for violation.

(a) Any licensee who violates the terms of this Ordinance may be subject to suspension or revocation of his or her license pursuant to Section 12-47-601, C.R.S.

(b) Whenever the Board of Trustee's decision to suspend 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 Board of Trustees 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 Board of Trustees 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; 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 Town. Such fine shall be paid into the general fund of the Town.

(d) The Board of Trustees 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 Board of Trustees.

Section 21. License fees.

(a) The annual license fees to be paid in advance to the Town Clerk shall be determined by Resolution.

Part 2

3.2 Beer Licenses

Section 1. 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.

(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 State, with the Town Clerk and shall be accompanied by the following:

- (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;
- (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
- (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 2. Fee.

An application fee in the amount of five hundred dollars (\$500.00) and a license fee of twenty-five dollars (\$25.00) shall be made to the Town at the time of making an application for a 3.2 beer license, and an annual renewal fee of twenty-five dollars (\$25.00) shall be collected by the Town. 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.

Section 3. Initial appearance before Board of Trustees.

(a) The Town Clerk shall place on the agenda of a Board of Trustees meeting the request for a 3.2 beer license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. When the application is presented to the Board of Trustees, either the applicant or his or her attorney shall attend the meeting. The date the application is received by the Town Clerk shall be deemed the date of filing the application.

(b) The applicant shall be instructed to, shall cause to be prepared and shall furnish at the public meeting a survey map showing the neighborhood as designated by the Town, and further showing on such map the location and nature of other 3.2 beer outlets.

(c) The Board of Trustees shall also set a date for public hearing, which date shall be held not less than thirty (30) days from the date the application is presented at the Town Council meeting.

Section 4. Public notice.

(a) The applicant for a 3.2 beer license shall cause to be posted and published a public notice of hearing. 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 set 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 therefor, 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. (Ord. 91-13 §1)

Section 5. Investigation of applicant.

(a) The Town Clerk 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.

(b) Not less than five (5) days prior to the date of the hearing on an application under this Ordinance, the written report of the findings based on the investigation by the Town Clerk shall be made available to the applicant and other interested parties.

Section 6. 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.

Section 7. Considerations for approving or denying application.

Before entering any decision approving or denying the application for a 3.2 beer license, the Board of Trustees 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; and
- (d) Other pertinent facts and evidence affecting the qualification of the applicant.

Section 8. Approval or disapproval.

The decision of the Board of Trustees approving or denying 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 at the address shown in the application.

Section 9. Issuance of license when building not yet constructed.

In the case of buildings not yet in existence, where the Board of Trustees 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 substantially complied with the architect's drawings and specifications submitted with the application for such license.

Section 10. Change of location.

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

Section 11. Rehearing limitation.

No application for the issuance of a 3.2 beer license shall be considered by the Board of Trustees 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.

Section 12. Judicial review.

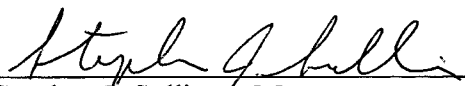
Any person applying to the courts for a review of any licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is furnished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

Section 2. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police powers of the Town of Foxfield, 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. 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. This ordinance shall become effective thirty (30) days after final publication.

Adopted as Ordinance No. 3 Series of 2008, by the Board of Trustees of Foxfield, Colorado, and signed and approved by its Mayor or presiding officers this 21st day of February A.D. 2008.


Stephen J. Sullivan, Mayor

ATTEST:

