

ORDINANCE

AN ORDINANCE OUTLINING THE CITY'S PROCEDURES FOR THE HANDLING OF APPLICATIONS TO CHANGE, ALTER OR MODIFY A LIQUOR LICENSED PREMISES

WHEREAS the Manitou Springs City Council is the Local Licensing Authority in the City of Manitou Springs for all purposes under the Colorado Liquor Code, the Colorado Beer Code and the regulations promulgated under said codes; and

WHEREAS one of the many duties of the Local Licensing Authority is to consider applications submitted by licensees for consent to physically change, alter or modify their licensed premises; and

WHEREAS the process for proposing and the consideration of such changes, alterations or modification of the licensed premises is governed by Regulation 47-302, Colorado Code of Regulations, 1 C.C.R. 203-2; and

WHEREAS Regulation 47-302 requires a licensee to seek the written consent of the Local Licensing Authority for any physical change, alteration or modification to the licensed premises which will materially or substantially alter the licensed premises or the usage of the licensed premises and requires that the Local Licensing Authority, when making its decision with respect to proposed changes, alterations or modifications of a licensed premises, must consider all pertinent requirements of the Liquor or Beer Codes and the regulations promulgated thereunder and also must take into account several factors, including but not limited to:

- the reasonable requirements of the neighborhood and the desires of the adult inhabitants of the neighborhood;
- the possession, by the licensee, of the modified premises by ownership, lease, rental or other arrangement; and
- compliance with applicable zoning laws;

WHEREAS Regulation 47-302 does not require the Local Licensing Authority to conduct a public hearing prior to granting or denying an application for modification of premises, but the Manitou Springs City Council believes and hereby determines that public hearings regarding such applications are sometimes necessary in order to give applicants and the adult inhabitants of the neighborhood an opportunity to be heard and to provide the evidence and other information that must be considered by the Local Licensing Authority before its decision is made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: There shall be added to the Manitou Springs Municipal Code a new Section 5.20.065 to read as follows:

5.20.065 Changing, Altering or Modifying a Licensed Premises.

- A. Whenever a person holding a license issued under the Colorado Liquor or Beer Code applies for consent to change, alter or modify a licensed premises, the Local Licensing Authority shall grant (with or without conditions) or deny such consent in writing. When an application is denied, the grounds for denial shall be stated in the written decision.
- B. When a licensee requests modifications that will not result in a change in the service capacity of the licensed premises, consent to the request may be granted or denied without a public hearing

provided that the application for modification is processed, considered and determined in a manner consistent with the requirements and provisions of Regulation 47-302, Colorado Code of Regulations, 1 C.C.R. 203-2. Examples of modifications that may be covered by this paragraph B include: remodeling of a kitchen or fixtures within a kitchen; changing an internal doorway from one location to another; and moving an existing bar from one location to another.

- C. Examples of proposals that may require a public hearing prior to the Local Licensing Authority's decision include, but are not limited to, those which request:
1. any increase or decrease in the total size or capacity of the licensed premises;
 2. the sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises;
 3. any substantial or material enlargement of a bar, or the addition of a separate bar, or the installation of a bar or bar area within a premises that has no bar or bar area;
 4. the installation of a stage, bandstand or dance floor in a premises where there is no existing stage, bandstand or dance floor, or a material enlargement or reduction in size of an existing stage, bandstand or dance floor;
 5. any other material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application.
- D. Any required public hearing shall be preceded by public notice. A notice sign must be conspicuously posted at the physical location of the premises and must be in a place plainly visible to the public. The posted notice will provide details on the type of modification sought, the date, time and location of the hearing, and contact information where interested parties can acquire more information on the application. The same information must be published in the City's newspaper of record.
- E. In any public hearing conducted pursuant to this section, it shall be the burden of the licensee seeking consent to change, alter or modify a licensed premises to establish the "needs and desires" of the neighborhood. Although the law does not require that an Applicant petition the neighborhood, it is the most common form of evidence presented.
- F. When a licensee requests consent to create or enlarge an outdoor service area in an application for modification of a premises and competent evidence is presented in a public hearing showing that the establishment or enlargement of such outdoor service area is likely to have an adverse impact within the immediate vicinity of the licensed premises if conditions protecting the immediate neighborhood are not imposed, the Local Licensing Authority may, as an alternative to denying the application, make its consent to the requested modification conditional. Such conditional consent may:
1. restrict or limit the hours of operation of an outdoor service area;
 2. require or limit lighting in and around such outdoor service area;
 3. require fencing or other screening designed to discourage patrons of the licensed premises from entering into neighboring areas and to minimize light and noise impacts in such areas;
 4. limit or prohibit live entertainment and amplified music in outdoor service areas;
 5. contain other requirements, restrictions and/or limitations deemed necessary by the Local Licensing Authority to eliminate or mitigate potential adverse impacts within neighborhoods in the immediate vicinity of the licensed premises.
- G. Nothing in this section shall require a licensee to seek consent for modification of a premises if the modification will not materially or substantially alter the licensed premises or the usage of the licensed premises. Examples of modifications for which written consent of the Local Licensing Authority is not required include:

1. painting and redecorating of premises;
2. the installation or replacement of electric fixtures or equipment;
3. the lowering of ceiling;
4. the installation and replacement of floor coverings;
5. the replacement of furniture and equipment, and other similar changes;
6. any non-structural remodeling of a licensed premises where the remodel does not expand the existing licensed area.

Section 2: If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3: The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 4: This ordinance shall take effect five (5) days after final approval and adoption on second reading.

Passed on First Reading and Ordered Published this 1st day of March 2011.

/s/ Donna Kast
City Clerk

A Public Hearing on will be held at the March 15, 2011 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: March 3, 2011.
Pikes Peak Bulletin

Passed on Second Reading and Ordered Published this 15th day of March 2011.

Approved: /s/ Marc A. Snyder
Mayor and City Council

Attest: /s/ Donna Kast
City Clerk

Approved for Council Action: /s/ Mike Leslie
Deputy City Administrator

Approved as to form: /s/ Jeff Parker
City Attorney

Published: March 17, 2011
Pikes Peak Bulletin