

CHAPTER 6

Business Licenses and Regulations

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ARTICLE I

Business Licenses

Sec. 6-1-10. Purpose.

The purpose of this Article is the regulation and registration of businesses operating within the Town to further the health, safety and welfare of the citizens of the Town, to provide the Town with necessary information concerning businesses in the Town and to further proper collection of taxes to support the Town. (Ord. 526 §1, 2005)

Sec. 6-1-20. License required; exempt activities.

(a) Every person shall obtain a business license from the Town before operating, conducting or carrying on any trade, profession or business within the Town.

(b) The following activities do not require a business license under this Article, and the burden of proving that an activity falls within one (1) of the following exemptions is upon the person claiming such exemption:

(1) Any canvassing on behalf of a candidate for elective public office or for proponents of a measure to be placed on the ballot.

(2) Activity consisting solely of mere delivery in the Town where no intent exists to evade the provisions of this Article.

(3) The selling of newspapers on public streets or in public places in a manner otherwise in compliance with this Code.

(4) Established delivery routes, persons calling by appointment, yard sales and garage sales.

(5) Activities of the federal or state government or municipal corporations.

(6) Occasional babysitting not including childcare operations.

(c) This business license shall be in addition to any other license or permit required by this Code for the conduct of such business. (Ord. 526 §1, 2005)

Sec. 6-1-30. Applications.

Applications for all licenses and permits required by any provision of this Code shall be made in writing to the Town Clerk. Each application shall state the name of the applicant, the permit or license desired, the location to be used, if any, the time covered and the fee to be paid. Each application shall contain such additional information as may be needed for the proper guidance of the Town officials in the issuing of the permit or license applied for. (Prior code 5-1-1)

Sec. 6-1-40. Forms.

Forms for all licenses, permits and the applications therefor shall be prepared and kept on file by the Town Clerk. (Prior code 5-1-2)

Sec. 6-1-50. Signatures.

Each license or permit issued shall bear the signature of the Town Clerk, in the absence of any specific provision to the contrary. Such license or permit shall be in the form determined by the Town Clerk. (Prior code 5-1-3; Ord. 526 §1, 2005)

Sec. 6-1-60. Issuance.

Upon receipt of the required fee and compliance with Section 6-1-30, the Town Clerk will issue a license that indicates that the license fee has been paid for the specified year. (Ord. 526 §1, 2005)

Sec. 6-1-70. Carrying or posting license required.

The license for a particular business location shall be posted at all times in a conspicuous place in the place of business. If the business is not operated, conducted or carried on at a fixed location, then the licensee must carry the license upon his or her person when operating, conducting or carrying on such trade, profession or business. Every licensee shall produce his or her license for examination when requested to do so by any Town police officer or by any person representing the Town. (Ord. 526 §1, 2005)

Sec. 6-1-80. Separate license for each location.

Any person operating, conducting or carrying on any retail trade, profession or business within the Town must obtain a separate license for each location of such trade, profession or business. (Ord. 526 §1, 2005)

Sec. 6-1-90. License nontransferable.

No license issued under the provisions of this Article shall be transferable from person to person or place to place. (Ord. 526 §1, 2005)

Sec. 6-1-100. Period of license.

All licenses shall expire on January 1 of each calendar year unless sooner revoked, cancelled or suspended. There shall be paid a nonrefundable business license fee in an amount set by resolution of the Board of Trustees unless sooner revoked, cancelled or suspended. (Ord. 526 §1, 2005)

Sec. 6-1-110. Fees.

Such fees shall be paid in advance at the time application therefor is made to the Town Clerk. When an applicant has not engaged in the business until after the expiration of part of the current license year, the license fee shall be prorated by quarters in the absence of any specific provision to the contrary and the fee paid for each quarter or fraction thereof during which the business has been or

will be conducted. Except as otherwise provided, all license fees shall become a part of the General Fund. (Prior code 5-1-4; Ord. 526 §1, 2005)

Sec. 6-1-120. License renewal.

(a) Unless specifically otherwise stated, all annual licenses may be renewed upon application and payment of the annual license fee to the Town Clerk. The license will be renewed if there has been no change in the application information relating to the business. The application for renewal and the fee therefor shall be submitted to the Town Clerk on or before the expiration date of the current license.

(b) If the application for renewal and fee therefor are not received on or before the expiration date of the current license, and the licensee continues to engage in the business for which the license was issued, then in addition to other penalties which may be imposed, there shall be imposed a penalty of ten percent (10%) of the amount of the license fee. In addition to the above penalty provision, it is unlawful for a licensee to continue to engage in any business or activity after his or her license therefor has expired. (Prior code 5-1-5; Ord. 526 §1, 2005)

Sec. 6-1-130. Building and premises.

No license shall be issued for the conduct of any business, and no permit shall be issued for anything or any act, if the premises and building to be used for the purpose do not fully comply with the requirements of this Code. No such license or permit shall be issued for the conduct of any business or performance of any act which would involve a violation of Chapter 16 of this Code. (Prior code 5-1-6; Ord. 526 §1, 2005)

Sec. 6-1-140. Inspections.

Whenever inspection of the premises used for or in connection with the operation of a licensed business or occupation are provided for or required by this Code or are reasonably necessary to secure compliance with any provision of this Code or to detect violations thereof, it shall be the duty of the licensee or the person in charge of the premises to be inspected to admit thereto for the purpose of making the inspection any officer or employee of the Town who is authorized or directed to make such inspection at any reasonable time that admission is requested. It is unlawful for such person to fail or refuse to admit such officer or employee for such purpose. (Prior code 5-1-8; Ord. 526 §1, 2005)

Sec. 6-1-150. Suspension.

A license may be suspended:

- (1) When any money due the Town has not been paid. This includes failure to pay civil penalties, fines, taxes, fees or any other money owed to the Town.
- (2) When any activity conducted by the licensee or his or her employee or agent violates any federal, state or local rule, regulation or law.
- (3) Upon failure to comply with the terms and conditions of the license.
- (4) Upon any grounds of suspension provided by this Code. (Ord. 526 §1, 2005)

Sec. 6-1-160. Revocation.

The Board of Trustees may, upon seven (7) days' written notice to a licensee stating the contemplated action and in general the grounds therefor, and after a reasonable opportunity to be heard, revoke any license issued by the Town if it finds that:

(1) The licensee has failed to pay the annual license fee or any taxes or fees required to be paid;

(2) The licensee has failed to file any reports or furnish any other information that may be required by the provisions relating to the specific license;

(3) The licensee has violated any of the terms of the provisions pertaining to his or her license or any regulation or order lawfully made relating thereto; or

(4) Any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such license, would have warranted the refusal of the issuance of such license. (Prior code 5-1-9; Ord. 526 §1, 2005)

Sec. 6-1-170. Return of fees.

Upon refusal of any license, the fee therefor paid in advance shall be returned to the applicant. In the event that any license is revoked, all monies paid therefor shall be and remain the monies of the Town and no refund shall be made to any licensee. (Prior code 5-1-10)

Sec. 6-1-180. Posting license.

It shall be the duty of any person conducting a licensed business in the Town to keep his or her license posted in a prominent place on the premises used for such business at all times. (Prior code 5-1-11)

Sec. 6-1-190. Change of location.

The location of any licensed business or occupation, or of any permitted act, may be changed, provided that ten (10) days' notice thereof is given to the Town Clerk in the absence of any provision to the contrary. However, the building and zoning requirements of this Code shall be complied with. (Prior code 5-1-7; Ord. 526 §1, 2005)

Sec. 6-1-200. Penalty.

Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person who is found guilty of, or pleads guilty or nolo contendere to the violation of any Section of this Article shall be subject to a penalty as set forth in Section 1-4-20 of this Code. (Ord. 526 §1, 2005)

ARTICLE II

Alcoholic Beverages

Sec. 6-2-10. Beer and liquor licenses.

All provision for licensing fees in accordance with state statutes and liquor laws shall apply to the issuance of said licenses within the Town, and only such license fees as so stated in said state laws shall apply. (Prior code 3-4-1; Ord. 526 §1, 2005)

Sec. 6-2-20. Optional premises licenses.

(a) Authority. The Board of Trustees shall have the power to issue optional premises licenses and optional premises for hotel and restaurant licenses in accordance with the provisions of the Colorado Liquor Code, Section 12-47-101 et seq., C.R.S., and the provisions of this Section.

(b) Required. It is unlawful for any person to sell, dispense or serve malt, vinous or spirituous liquors at an outdoor sports and recreational facility as defined herein without first having obtained a valid optional premises license as provided in this Section.

(c) Standards. The following standards for the issuance of optional premises licenses or for optional premises for hotel and restaurant licenses are adopted pursuant to Section 12-47-310, C.R.S. The standards adopted herein shall be considered in addition to all other standards applicable to the issuance of licenses under this Article and the Colorado Liquor Code for an optional premises license or for an optional premises for a hotel and restaurant license. These two (2) types of licenses for optional premises will be collectively referred to as "optional premises" in these standards unless otherwise stated.

(d) Eligible facilities. An optional premises may only be approved when the premises to be licensed is located on or adjacent to an outdoor sports and recreational facility as defined in Section 12-47-103, C.R.S.; provided, however, that the type of outdoor sports and recreational facilities which may be considered for an optional premises license shall be limited to golf courses.

(e) Size of eligible facilities. There are no restrictions on the minimum size of the outdoor sports and recreational facilities which may be eligible for the approval of an optional premises license. However, the Board of Trustees may consider the size of the particular outdoor sports and recreational facility in relation to the number of optional premises requested for the facility.

(f) Number of optional premises. There are no restrictions on the number of optional premises which any one (1) licensee may have on an outdoor sports or recreational facility. However, any applicant requesting approval of more than one (1) optional premises on an outdoor sports or recreational facility shall demonstrate the need for each optional premises in relationship to the outdoor sports or recreational facility and its guests.

(g) Submittal requirements. Application for an optional premises license shall be made to the Town Clerk on forms which shall contain the following information in addition to information required by the licensing authority of the State:

(1) A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premises requested.

(2) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use.

(3) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises.

(4) A description of the provisions which will be implemented to control the dispensing of alcoholic beverages to minors or visibly intoxicated persons.

(5) If the applicant does not own the optional premises, the applicant shall submit to the Town Clerk proof of the applicant's right of possession and written authorization for the optional premises license from the owner of the optional premises.

(6) Such other information as may be reasonably required to satisfy the Board of Trustees that control of the optional premises will be assured and that the health, safety and welfare of the neighborhood and users of the outdoor sports and recreation facility will not be adversely affected should the optional premises license be issued.

(h) Processing of applications. An application for a new optional premises license or an optional premises for a new hotel and restaurant license shall be processed in the same manner as any other new license application. An application for an optional premises filed in connection with an existing hotel and restaurant license shall be processed in the same manner as an application to modify or expand the licensed premises.

(i) Discretion of the Board of Trustees. The decision of the Board of Trustees whether to grant an optional premises license shall be discretionary. The Board of Trustees shall have the right to deny any request for such a license or to place on the license any conditions, restrictions or requirements which, in its discretion, it deems appropriate to serve the public health, safety and welfare. The Board of Trustees shall also have the right to suspend or revoke the optional premises license in accordance with the procedures provided for in the Colorado Liquor Code.

(j) Notice of operation. Pursuant to Section 12-47-310, C.R.S., no alcoholic beverages may be served on the optional premises unless the licensee has provided written notice to the Board of Trustees and the state licensing authority forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice must contain the specific days and hours on which the optional premises are to be used. In this regard, there shall be no limitation on the number of days which a licensee may specify in each notice. However, no notice may specify any date of use which is beyond the current license period. (Ord. 440 §1, 2001; Ord. 526 §1, 2005)

Sec. 6-2-30. Educational requirements.

Every hotel and restaurant licensee, registered manager and licensee's employee is encouraged to obtain a certificate of completion from an educational program of training for intervention procedures for servers of alcohol. Those registered managers obtaining a certificate of completion may file a copy

of the certificate of completion with the Board of Trustees with an application of renewal of a liquor license. The foregoing shall not limit the Board of Trustees' power to require training in appropriate cases. (Ord. 526 §1, 2005)

Sec. 6-2-40. Town Clerk – licensing duties.

(a) The Town Clerk shall receive all applications for licenses and shall issue all licenses granted by the Town upon payment of fees required and approval of the appropriate licensing authority.

(b) The Town Clerk may approve an application for renewal so long as the licensee does not have a pending order to show cause why the license should not be suspended or revoked at the time of renewal, and so long as the licensee has not, within the preceding two (2) years, had its license suspended or paid a fine in lieu thereof. All other applications for renewal shall be reviewed and either approved or denied by the Board of Trustees.

(c) The Town Clerk may approve an application for a special event permit when, after investigation and upon review, no protests have been filed by any affected persons and there do not appear to be sufficient grounds upon which to deny the application. All other applications for special event permits shall be reviewed and approved or denied by the Board of Trustees. (Ord. 557 §1, 2006)

Sec. 6-2-50. Suspension – fine in lieu.

(a) Whenever a decision of the Board of Trustees suspending a license or permit for fourteen (14) days or less becomes final, the licensee may, before the operative date of the suspension, petition the Board of Trustees for permission to pay a fine in lieu of the suspension for all or part of the suspension period.

(b) Upon receipt of such a petition, the Board of Trustees may cause any investigation to be made which it deems desirable. The Board of Trustees may, in its sole discretion, grant the petition if it is satisfied and makes findings that:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during all or a portion of the period set for suspension, and payment of the fine will achieve the desired disciplinary purposes; and

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages which the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; 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 complaint which resulted in the final decision to suspend the license.

(c) The fine paid by the licensee shall be equivalent to twenty percent (20%) of the licensee's estimated gross revenues from sales of alcoholic beverages during the entire period of the suspension. However, in no event shall the fine be less than two hundred dollars (\$200.00) nor shall it be more than five thousand dollars (\$5,000.00). The Board of Trustees may use any reasonable method to

determine the licensee's estimated gross revenues from sales of alcoholic beverages during the period of the suspension.

(d) Payment of any fine authorized by the terms of this Section shall be made by the licensee in the form of cash, certified check or cashier's check made payable to the Town of Bennett and shall be credited to the general fund.

(e) Upon receipt of the fine from the licensee in the form of payment specified in Subsection (d) above, the Board of Trustees shall enter an order permanently staying the entire period of the suspension or that period which is not otherwise conditionally stayed.

(f) If the Board of Trustees does not make the findings required in Subsection (b) above, or the licensee fails within the time specified by the licensing authority to pay the fine imposed pursuant to this Section, or the licensee tenders payment of the fine in a form other than as authorized in Subsection (d) above, the suspension shall go into effect on the operative date finally set by the authority.

(g) The Board of Trustees shall only grant such stays of the suspension of the licensee's license as may be necessary for the authority to complete the investigations authorized in Subsection (b) above, make findings and, if it makes findings authorizing the imposition of a fine as authorized in this Section, permanently stay the entire period of the suspension or that portion of the suspension not otherwise conditionally stayed. (Ord. 565 §1, 2007)

Sec. 6-2-60. Liquor tastings.

(a) The Town hereby authorizes tastings to be conducted by retail liquor store and liquor-licensed drugstore licensees in accordance with this Section and pursuant to Section 12-47-301, C.R.S. Within the Town, it is unlawful for any person or licensee to conduct tastings unless a permit has been obtained in accordance with this Section. The Local Licensing Authority is authorized to issue tasting permits in accordance with the requirements of this Section.

(b) A retail liquor store or liquor-licensed drugstore licensee that wishes to conduct tastings shall submit an application for a tastings permit to the Local Licensing Authority annually. The application shall be in the form required by the Town Clerk and shall include a written control plan establishing how the applicant will conduct the tastings in compliance with the provisions of the Colorado Liquor Code and this Code, and without creating a public safety risk to the neighborhood. The Local Licensing Authority may reject the permit application if the applicant fails to establish that the licensee is able to conduct tastings without violating the provisions of this Section or creating a public safety risk to the neighborhood. The Local Licensing Authority and the Town Clerk may establish application procedures for tastings permits.

(c) Each application for a liquor tastings permit shall be accompanied by an initial liquor tastings application fee in the amount of one hundred fifty dollars (\$150.00) and a fifty-dollar annual renewal fee each year thereafter.

(d) Tastings shall be subject to the following limitations:

(1) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division of the Colorado Department of Revenue and who is either a retail liquor store or liquor-licensed drugstore licensee or an employee of a licensee and only on a licensee's licensed premises.

(2) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub or winery licensed pursuant to Section 12-47-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol. Such suppliers shall have licenses from the Town to the extent required by this Section and Section 12-47-301, C.R.S.

(3) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (½) of one (1) ounce of spirituous liquor.

(4) Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.

(5) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m.

(6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

(7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.

(8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.

(9) The licensee shall not serve more than four (4) individual samples to a patron during a tasting.

(10) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

(11) Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.

(12) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

(13) The applicant for a tastings permit shall certify on the application that all persons serving alcohol at tastings have completed a server training program that meets the standards established by the Liquor Enforcement Division of the Colorado Department of Revenue.

(e) A violation of a limitation specified in this Section or of Section 12-47-301(10) or 12-47-801, C.R.S., by a retail liquor store or liquor-licensed drugstore licensee, whether by the licensee, the

licensee's employees or agents or otherwise, shall be the responsibility of the licensee who is conducting the tasting.

(f) A licensee conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee and are imposed by the Local Licensing Authority. The Local Licensing Authority shall conduct a hearing with regard to any violations of this Section in accordance with the requirements of this Code and Section 12-47-601, C.R.S. (Ord. 609-10 §1)

ARTICLE III

Medical Marijuana Businesses

Sec. 6-3-10. Intent, authority and applicability.

(a) Intent. It is the intent of this Article to prohibit certain commercial medical marijuana businesses in the Town, and in furtherance of its intent, the Board of Trustees makes the following findings:

(1) The Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S., clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 of the Colorado Constitution.

(2) The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."

(3) The Colorado Medical Marijuana Code specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses...based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."

(4) Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.

(b) Authority. The Town's authority to adopt this Article is found in: the Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S.; the Local Government Land Use Control Enabling Act, Section 29-20-101, et seq., C.R.S.; Section 31-23-101, et seq., C.R.S. (municipal zoning powers); Section 31-15-103 and Section 31-15-401, C.R.S. (municipal police powers); and Section 31-15-501, C.R.S. (municipal authority to regulate businesses).

(c) Applicability. This Article shall apply to all property, businesses and business enterprises operating within the Town, whether stationary, mobile or virtual. (Ord. 615-11 §1)

Sec. 6-3-20. Definitions.

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

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Medical marijuana center, medical marijuana-infused products manufacturer and optional premises cultivation operation shall have the same meanings as set forth in the Colorado Medical Marijuana Code, Title 12, Article 43.3, C.R.S., as the same may be amended from time to time.

Patient has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.

Primary caregiver has the meaning set forth in Article XVIII, § 14(1)(f) of the Colorado Constitution. (Ord. 615-11 §1)

Sec. 6-3-30. Medical marijuana businesses prohibited.

It is unlawful for any person to operate, cause to be operated or permit to be operated in the Town a medical marijuana center, an optional premises cultivation operation or a business as a medical marijuana-infused products manufacturer. (Ord. 615-11 §1)

Sec. 6-3-40. Patients and primary caregivers.

Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in Article XVIII, § 14 of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, Title 12, Article 43.3, C.R.S., Section 25-1.5-106, C.R.S., and the rules promulgated thereunder. (Ord. 615-11 §1)

Sec. 6-3-50. Penalty for violation; injunctive relief.

(a) Any person who violates any provision of this Article shall be punished by a fine of not more than the amount provided in Subsection 1-4-20(b) of this Code or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. Each act or omission in violation of one (1) or more of the provisions of this Article shall be deemed a separate violation for each and every day that such acts or omissions occur.

(b) The operation of a medical marijuana center, an optional premises cultivation operation or a business as a medical marijuana-infused products manufacturer in violation of the terms of this Article may be enjoined by the Town in an action brought in a court of competent jurisdiction. (Ord. 615-11 §1)