

NOTICE OF INTENT

TO ADOPT AN ORDINANCE AMENDING CHAPTER 4 (ALCOHOLIC BEVERAGES), ARTICLE I (IN GENERAL), SECTIONS 4-1 THROUGH 4-31, AND ARTICLE II (LICENSES), SECTIONS 4-32 THROUGH 4-36 OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO

The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt an amendment to the Town of Silver City Code of Ordinances. This notice is hereby given the title as follows:

ORDINANCE NO. 1304

AN ORDINANCE AMENDING CHAPTER 4 (ALCOHOLIC BEVERAGES), ARTICLE I (IN GENERAL), SECTIONS 4-1 THROUGH 4-31, AND ARTICLE II (LICENSES), SECTIONS 4-32 THROUGH 4-36 OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO

Sponsored by Councilor Cynthia Ann Bettison

WHEREAS, the State of New Mexico regulates the sale of alcoholic beverages under the provisions of the “Liquor Control Act,” NMSA 1978, § 60-3A-1 et seq.; and

WHEREAS, pursuant to the Liquor Control Act, as amended, the State of New Mexico permits municipalities a means to adopt local option provisions of the Liquor Control Act, and pursuant to NMSA 1978, § 7-24-1 by ordinance to impose an annual municipal license tax upon persons holding state licenses under the provisions of the Liquor Control Act; and

WHEREAS, in Chapter 4, Article I, Section 4-1, et seq., of the municipal code of the Town of Silver City, the Town has adopted local option provisions of the Liquor Control Act and an annual municipal license tax upon persons holding state liquor licenses; and

WHEREAS, the New Mexico state legislature amended the Liquor Control Act in a comprehensive manner by passing HB 255 during the 2021 regular session, which was signed by the governor on March 17, 2021; and

WHEREAS, the Town Council finds that the Town should also amend its local ordinances concerning the sale and dispensing of alcoholic beverages in order to comply with the recent amendments by the State to the Liquor Control Act and said amendment to the local ordinance is appropriate for the health, safety and welfare of the Town and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

1. Chapter 4 (Alcoholic Beverages), Article I (In General), Sections 4-1 through 4-31, Article II (Licenses), Sections 4-32 through 4-36, are amended in their entirety to read as follows:

ARTICLE 1. - IN GENERAL

Sec. 4-1. - Definitions.

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

Alcoholic beverages.

(1) The term "alcoholic beverages" means any and all distilled or rectified spirits, potable alcohol, powdered alcohol, frozen or freeze-dried alcohol, brandy, whisky, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol.

(2) The term "alcoholic beverages" does not include medicinal bitters.

Beer means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water. The term "beer" includes such liquors as porter, beer, ale, and stout.

Brewer means a person who owns or operates a business for the manufacture of beer.

Cider means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent alcohol by volume and not more than eight and one-half percent alcohol by volume.

Club means:

- (1) Any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state:
 - a. With a membership of not less than fifty (50) members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who under the constitution and bylaws of the club, have all voting rights and full membership privileges; and
 - b. Which group is the owner, lessee, or occupant of premises used exclusively for club purposes; and
 - c. Which group the director finds:
 1. Is operated solely for recreation, social, patriotic, political, benevolent, or athletic purposes; and
 2. Has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible; or
- (2) An airline passenger membership club operated by an air common carrier that maintains or operates a clubroom at an airport terminal. As used in this paragraph, the term "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the federal aviation administration.

Department means the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act (NMSA 1978, § 60-3A-1 et seq.), and "department" means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act.

Director means the chief of the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act, and means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act.

Dispenser means any person licensed under the provisions of the Liquor Control Act, selling, offering for sale, or having in the person's possession with the intent to sell alcoholic beverages, both by the drink for consumption on the licensed premises and in unbroken packages, including locally produced growlers, for consumption and not for resale off the licensed premises. For the purposes of this chapter, dispenser also includes, without limitation, a small brewer, craft distiller, and winegrower (winery) as defined by and specified according to the provisions of the Liquor Control Act.

Distiller means a person engaged in manufacturing spirituous liquors.

Governing body means the board of county commissioners of a county or the town/city council or city commissioners of a municipality.

Growler mean a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of New Mexico produced beer, wine or cider for consumption off premises.

Hotel means an establishment or complex having a state resident as a proprietor or manager and where, in consideration of payment, food and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five (25) sleeping rooms.

License year means all licenses provided for in this chapter shall begin July 1 each year and end on June 30 the following year.

Minor means any person under 21 years of age.

Package means a container of alcoholic beverages that is filled or packed by a manufacturer (a distiller, rectifier, brewer, winer) or wine bottler for sale by the manufacturer or wine bottler to wholesalers.

Person means an individual, corporation, firm, partnership, co-partnership, association, or other legal entity.

Public Celebration means any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or intermittent basis, any activities held on an intermittent basis, or other type of public celebration held within the town.

Rectifier means a person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

Restaurant.

- (1) The term "restaurant" means any establishment having a state resident as a proprietor or manager, that is held out to the public as a place where food is prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen, and the employees necessary for preparing, cooking, and serving food.
- (2) The term "restaurant" does not include establishments, as defined in the rules promulgated by the director, serving only hamburgers, sandwiches, salads, and other fast food.

Retailer means any person licensed under the provisions of the Liquor Control Act, selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages in unbroken packages, including growlers, for consumption and not for resale off the licensed premises.

Special dispenser's permit means a permit, approved by the town council and issued by the director to dispense alcoholic beverages at a public celebration held within the town.

Spirituous liquors.

- (1) The term "spirituous liquors" means all alcoholic beverages as stated in the definition of alcoholic beverages.
- (2) The term "spirituous liquors" does not include fermented beverages such as wine, beer, cider and ale.

Wine means all alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and which does not contain less than one-half percent nor more than twenty-one (21) percent alcohol by volume.

Winegrower or winer means a person who owns or operates a business for the manufacture of wine and cider.

Winery means a licensed premise where a winegrower manufactures and stores wine or cider.

Sec. 4-2. - Unlawful to drink in public places.

- (a) It shall be unlawful for any person to consume alcoholic beverages in, on or at any public place, or for any person who is an owner or proprietor to sell, serve, furnish or permit the consumption of alcoholic beverages in any public place or private club, except establishments or premises having a license to dispense alcoholic beverages. However, alcoholic beverages may be dispersed and consumed during public celebrations wherein a special dispenser's permit has been issued and in compliance with all state statutes and town regulations.
- (b) For the purposes of this section public place is defined as any public street, alley, sidewalk, public way, park, cemetery, school yard, sports field, or open space; and any place or business open to the use of the public in general, open to public view, or to which the public has access. However, for the purposes of this section, the municipal golf course shall not be considered a public place.

Sec. 4-3. - Selling or giving liquor to minors prohibited.

It shall be unlawful for a minor to buy, attempt to buy, receive, possess or permit himself or herself to be served with alcoholic beverages, except that a parent, legal guardian, or adult spouse of a minor may serve alcoholic beverages to that minor on real property, other than licensed premises, when said minor is under the control of the parent, legal guardian, or adult spouse who is actually, visibly, and personally present at the time such alcoholic beverage is served to the minor.

Sec. 4-4. - Sale to intoxicated persons.

It shall be a violation of this chapter for any person to sell, serve, give, or deliver any alcoholic beverage to, or to procure or aid in the procurement of any alcoholic beverage for an intoxicated person, if that person selling, serving, giving, delivering, procuring or aiding in the procurement knows or has reason to know that person buying, receiving service or receiving of such alcoholic beverage is intoxicated.

Sec. 4-5. - Minors prohibited in liquor establishments; exception.

- (a) Any person licensed pursuant to the provisions of the Liquor Control Act (NMSA 1978, § 60-3A-1 et seq.) or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act and this chapter.
- (b) A minor shall not enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors, except as authorized by regulation or as necessitated by an emergency.

Secs. 4-6—4-31. – Reserved.

ARTICLE II. – LICENSES

Sec. 4-32. - Sale and possession.

The sale or the possession for the purpose of sale, or offering for sale, of alcoholic beverages is hereby prohibited within the town except as hereinafter provided.

Sec. 4-33. - Town liquor license.

Before any person shall establish or engage in the business of selling, offering for sale and dispensing alcoholic beverages within the town, such person shall procure from the town's clerk or designee a retailer's license, a dispenser's license, a club license, or a restaurant license, which includes either an A restaurant license for the sale and service of beer and wine only, an A restaurant license including a New Mexico spirituous liquors permit, or a B restaurant license for the sale and service of beer, wine, and spirituous liquors. The licenses enumerated above must be renewed annually for each license year.

Sec. 4-34. – Application requirement.

Every applicant for any license required by the provisions of this article shall first have obtained the appropriate state license from the State Alcoholic Beverage Control Division of the Regulation and Licensing Department according to the provisions governing the issuance of state licenses pursuant to the Liquor Control Act (NMSA 1978, § 60-3A-1 et seq.), and shall be made in the same manner as prescribed or practiced for the issuance of other licenses by the town.

Sec. 4-35. – Fees, payment, hours of operation, permits.

- (a) *Date due and rate.* Pursuant to the provisions of NMSA 1978, § 7-24-1, every applicant for a license required under this article and every applicant for renewal of a license issued under this article, before receiving the license or renewal thereof, shall pay to the town clerk, or designee, on or before July 1 annually, the following designated license fee for each place of business in the town:

- (1) Retailer's license \$250.00.
 - (2) Dispenser's license \$250.00.
 - (3) Club license \$250.00.
 - (4) Restaurant license \$250.00.
- (b) *Hours of Sale.* The holder of a town liquor license may sell, serve, dispense or furnish alcoholic beverages only between the hours and times specified and established by the Liquor Control Act.
- (c) *Special dispenser's permit.* Any person holding a dispenser's license within the town's municipal boundaries may dispense alcoholic beverages at a public celebration upon receiving approval from the town's governing body, and paying the appropriate fee to the department. Persons granted a special dispenser's permit pursuant to the provisions of the Liquor Control Act, NMSA 1978, § 60-6A-12, shall pay to the town a fee of \$25.00 per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state and local laws and regulations regulating dispenser's privileges and disabilities.
- (d) *Alcoholic Beverage Delivery Permit and Third-Party Delivery.* Persons granted an alcoholic beverage delivery permit issued pursuant to the provisions of the Liquor Control Act may deliver alcoholic beverages within the town's boundaries, or contract with a third-party alcohol delivery service for delivery of alcoholic beverages, if applicable, within the town only upon the terms, conditions, and provisions specified and established by the Liquor Control Act, all state law, and town regulations.

Sec. 4-36. – Penalties.

- (a) Any person convicted of violating the provisions of this chapter shall be subject to punishment as prescribed by general penalty section 1-9 of Chapter 1.
- (b) Failure of a licensee to pay the license tax imposed by this chapter shall be subject to appropriate action by the governing body of the town, as provided in NMSA 1978, § 7-24-3, relating to closing of establishments.

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PASSED, ADOPTED AND APPROVED by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this _____ day of _____, 2021.

TOWN OF SILVER CITY

(Seal)

Ken Ladner, Mayor

ATTEST:

Katherine Kunnert, Town Clerk

Consideration of the final adoption of such proposed ordinance will not take place until at least two (2) weeks subsequent to the date of this notice and only at a public meeting called and held in accordance with Section 3-17-3, N.M.S.A. 1978. Consideration of adoption of said ordinance is currently scheduled for and will not take place prior to August 24, 2021.

Katherine Kunnert, Town Clerk

Date