

Ordinance No. 04-04

LEEDS ALCOHOLIC BEVERAGE CONTROL ORDINANCE

WHEREAS, in 1984 the Town of Leeds adopted an ordinance entitled "Leeds Beer Ordinance #84 – 1" ("Beer Ordinance") which provided for the retail sale of alcoholic beverages on an "off-premises" basis only.

WHEREAS, the Leeds Town Council and the Leeds Town Planning Commission have reviewed and studied the impact and effect of said Beer Ordinance upon the health, safety and general welfare of the citizens and businesses of the Town.

WHEREAS, the Leeds Town Council, upon recommendation from the Leeds Planning Commission, have determined that it is in the best interest of the Town and its citizens to allow for the "on-premise" in addition to the "off-premise" sale of alcohol on a limited, yet regulated basis within the Town's municipal boundaries.

WHEREAS, the Leeds Town Council now wishes to enact an all encompassing alcoholic beverage control ordinance which regulates the sale of alcoholic beverages, both "on" and "off" premises, within the Town's municipal boundaries.

WHEREAS, the Leeds Town council desires that said all encompassing alcoholic beverage control ordinance be adopted and known as the "Leeds Alcoholic Beverage Control Ordinance" ("Ordinance") and supercede the Leeds Beer Ordinance #84 - 1.

WHEREAS, the Leeds Town council desires that, pursuant to the Ordinance, all definitions, sales and service of alcoholic beverages shall be in accordance with Utah State Law, Utah Department of Alcoholic Beverage Control, the Act and the Rules of the Commission.

WHEREAS, the Leeds Town Planning Commission has recommended approval of this Ordinance.

WHEREAS, a public hearing was held on August 25, 2004 with appropriate notices being properly posted for the public,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LEEDS AS FOLLOWS:

A.

## **ORDINANCE NO. 04-04**

### **LEEDS ALCOHOLIC BEVERAGE ORDINANCE**

AN ORDINANCE RELATING TO THE SALE OF BEER AND WINE, DEFINING BEER AND WINE, MINORS, "OFF-PREMISE" RETAILER, "ON-PREMISE" RETAILER, AND PREMISES: REQUIRING LICENSES THAT CAN BE ISSUED: PROVIDING FOR DETERMINATION OF POPULATION: PRESCRIBING THE TRANSFER OF LICENSES: CREATING STATUTORY PROHIBITIONS RELATING TO THE SALE AND USE OF ALCOHOLIC BEVERAGES WITHIN THE TOWN LIMITS.

This ordinance defines provisions for an ON-PREMISE Retail Beer License and an ON-PREMISE Retail Beer and Wine License. Licenses entitling the licensee to sell beer and wine in original containers of a size not to exceed one quart capacity for consumption on the licensed premises of a restaurant at which food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business and in connection with a license issued by the State of Utah as an on premises beer and wine retailer. Patrons may only purchase alcoholic beverages in connection with an order for food that is prepared, sold and served at the restaurant. All sales and service of alcoholic beverages shall be in accordance with Utah State Law, UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL and Title 32 of the Utah Code and Rules of the Commission.

This ordinance also defines provisions for an OFF-PREMISE Retail Beer License. A license entitling the licensee to sell beer in original containers of a size not to exceed one quart capacity, for consumption off the licensed premises. All sales of alcoholic beverages shall be in accordance with Utah State Law, UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL and Title 32 of the Utah Code and Rules of the Commission.

#### **B. DEFINITIONS:**

1. ACT: The Utah Alcoholic Beverage Control Act, Utah Code Annotated title 32A, as amended.
2. ALCOHOLIC BEVERAGES: "Beer" and "wine" and "liquor", as those terms are defined in this section.
3. ALCOHOLIC PRODUCTS: All products that contain at least sixty three one-hundredths of one percent (0.63%) of alcohol by volume or at least one-half of one percent (0.5%) by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or

combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this definition. "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over the counter drugs and medicines that otherwise come within this definition.

4. BEER, LIGHT BEER, MALT LIQUOR OR MALTED BEVERAGES: All products that contain sixty three one-hundredths of one percent (0.63%) of alcohol by volume or one-half of one percent (0.5%) of alcohol by weight, but not more than four percent (4%) of alcohol by volume or three point two percent (3.2%) by weight, and are obtained by fermentation, infusion or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

5. CLASS OF LICENSE: ~~Glass A:~~ ON-PREMISE Retail Beer License.  
~~Glass B:~~ ON-PREMISE Retail Beer and Wine License.  
~~Glass C:~~ OFF-PREMISE Retail Beer License.

5. CHURCH: A building set apart primarily for the purpose of worship in which religious services are held and with which clergy is associated, and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose, and which is tax exempt under the laws of the state of Utah.

6. LEEDS AREA: The areas encompassed by the latest Leeds Master Annexation Plan.

7. LICENSEE: Any person issued a license by the Town to sell, store or allow consumption of alcoholic beverages on premises owned or controlled by the person.

8. LICENSE OFFICER: This responsibility lies with the Town Clerk until such time that a duly authorized LICENSE OFFICER position is established and filled.

9. LIQUOR: Alcohol, or any alcoholic, spirituous, vinous, fermented, malt or other liquid, or combination of liquids, a part of which is spirituous, vinous or fermented, and all other drinks or drinkable liquids that contain more than one-half of one percent (0.5%) of alcohol by volume and is suitable to use for beverage purposes. "Liquor" does not include any beverage defined as beer, malt liquor or malted beverage that has an alcohol content of less than four percent (4%) alcohol by volume.

10. LOW ALCOHOL BEER OR NONALCOHOLIC BEER: Any product containing alcohol in an amount less than one-half of one percent (0.5%) by weight and obtained by fermentation, infusion or decoction of malted grain. Low alcohol or nonalcoholic beer may or may not contain hops or other vegetable products.

11. MINOR: Any person under the age of twenty-one (21) years.
12. OFF-PREMISE RETAILER: A licensee operating a bona-fide regularly established retail store selling beer together with commodities and engaged in the sale of beer only in the original containers.
13. ON-PREMISE RETAILER: A licensee entitled to sell beer or beer and wine for consumption on the licensed premises of a restaurant where patrons may only purchase alcoholic beverages in connection with an order for food which is prepared, sold and served at the restaurant during regular business hours.
14. RESTAURANT: Any business establishment where a variety of food is prepared and complete meals are served to the general public, located on premises having adequate culinary fixtures for food preparation and dining accommodations, and that is engaged primarily in serving meals to the general public.
15. SCHOOL: Any building used primarily for the general education of minors including nursery schools, infant daycare centers, or trade or technical schools.
16. WINE: Any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey or milk, or any other like substance, whether or not other ingredients are added. "Wine" is considered "liquor" for purposes of this title.

**C. LICENSE REQUIRED:**

1. It is unlawful for any person, licensee, permittee, or their officers, managers, employees or agents, to keep for sale, or to directly or indirectly or upon any pretense or devise, offer to sell, sell, or otherwise furnish or supply to another, any ALCOHOLIC PRODUCTS, without first having procured appropriate licenses.

**D. LICENSES, NUMBER PERMITTED:**

1. The Town Council shall have discretion to issue OFF-PREMISE licenses in the number determined appropriate in accordance with the population of the LEEDS AREA. At no time shall the number of OFF-PREMISE licenses issued exceed a number in excess of the population of the LEEDS AREA divided by 250.
2. The Town Council shall have discretion to issue ON-PREMISE licenses in the number determined appropriate in accordance with the population of the LEEDS AREA. At no time shall the number of ON-PREMISE licenses issued exceed a number in excess of the LEEDS AREA population divided by 400.

3. Population for determining the number of licenses shall be by the most recent decennial or special census or by other population determination made by the United States Government or the State of Utah or an agency deemed reliable by the Mayor and Town Council of the Town of Leeds.

**E. PROXIMITY LIMITATIONS:**

1. Specified: No licensee's premises may be established within three hundred feet (300') of any public or private school, church, public library, public playground or park, as measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground or park.

**F. APPLICATION FOR LICENSE:**

1. Required: An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the LICENSE OFFICER, and containing at a minimum the applicant's name, social security number, date of birth and residence address; the location of the proposed licensed premises, the CLASS OF LICENSE desired, any convictions for crimes which could disqualify the applicant as a licensee, and a space for the applicant to sign, under penalty of law, certifying that the applicant has complied with all requirements and possesses all qualifications for issuance of a license, and that all information contained in the application is true. If the applicant is a partnership, corporation, Limited Liability Company or other entity, the names and addresses of all partners, officers, directors, members, joint ventures, trustees and shareholders must be stated. Applications by a partnership, Limited Liability Company or joint venture must be subscribed and sworn to as set out above by all partners or members. Applications by a corporation must be subscribed and sworn to as set out above by the president and secretary and/or a majority of the Board of Directors. Applications shall include the following:

- a. An issuance fee as prescribed, which is non-refundable if a license is not issued;
- b. A copy of the applicant's current business license or application thereof. The applicant and business license holder must be one and the same;
- c. A certificate of at least three (3) residents of the Town stating that each of the three (3) persons personally knows the applicant, that the applicant is



an individual of good moral character, and that in the opinion of those residents, the applicant is a fit and proper person to be granted a license;

d. Evidence of the distance to the nearest school, church, public library, public playground or park;

e. A signed consent form stating that the LICENSEE will permit any authorized representative of the Town or any law enforcement officer an unrestricted right to enter the licensed premises; and

f. Any other pertinent information the LICENSE OFFICER may require.

2. Conditions Of Issuance: The Town Council shall issue a license only after considering the location, physical characteristics, capacity and condition of the proposed licensed premises, the character, background, management experience and qualifications of the applicant, the nature and class of the proposed license, public input with respect to issuance of the license, and after finding that the public convenience requires and the best interests of the community will be substantially served by the issuance of the license.

3. Assignment or Transfer: No license issued under this chapter shall be assigned, transferred, leased, subleased or sold, or otherwise transferred. At the discretion of the Town Council, a transfer of a license may be permitted upon a change of location where the owner remains the same. In this case, the same requirements as to the location of premises shall apply.

4. Non-use; Validity: A license issued under this chapter which is not used by the LICENSEE within or for a period in excess of ninety (90) consecutive days shall automatically revert to the Town and shall be null and void.

#### **G. QUALIFICATIONS OF LICENSEE:**

1. Every LICENSEE hereunder shall be of good moral character, over the age of twenty-one (21) years, and a bona fide citizen of the United States or a legal resident alien. If the applicant is a partnership, limited liability company or other entity, it shall be qualified to do business in the state and each partner or member shall meet the qualifications of a LICENSEE. If the applicant is a corporation, it shall be qualified to do business in the state, and each officer, director, trustee or shareholder shall meet the qualifications of a licensee. Any partnership, limited liability company, corporation or other entity that shall hold its license through an agent shall also meet all the qualifications of a licensee. Such agent shall be personally responsible for assuring compliance with this chapter and the act and shall be subject to the penalties for any violation of this chapter

or of the act. Upon the death, resignation or discharge of its agent, a partnership, limited liability company, corporation or other entity shall, within fifteen (15) days, appoint another agent to qualify for and hold the license. Failure to designate a substitute agent within the time required shall be grounds for suspension, revocation or refusal to renew the license.

2. No license shall be issued to any person who has violated any provision of this chapter, this title or the act, or who has violated any provision of a license to sell ALCOHOLIC PRODUCTS issued by the town or any other governmental agency within the state, or who has had such a license revoked. No license shall be issued to any person who has been convicted of a felony or of any violation of any law or ordinance relating to ALCOHOLIC PRODUCTS, driving under the influence, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude, or who has pleaded guilty to or forfeited bail on a charge of having committed a felony or of having violated any such law or ordinance. No partnership, limited liability company, corporation or other entity shall be issued a license or have its license renewed unless it has on file with the LICENSE OFFICER a list of its partners, members, trustees, officers, directors and shareholders. Any change in partners, members, trustees, officers, directors or shareholders of a partnership, limited liability company, corporation or other entity which occurs after the issuance of a license under this chapter shall be immediately reported to the LICENSE OFFICER. No partnership, limited liability company, corporation or other entity shall be issued a license or have its license renewed if any of its partners, members, trustees, officers, directors or shareholders have been convicted of a felony or any violation of any law or ordinance relating to ALCOHOLIC PRODUCTS, driving under the influence, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude, or have pleaded guilty to or forfeited bail on a charge of having committed a felony or of having violated any such law or ordinance.

#### **H. FEES:**

1. A non-refundable fee as identified in the Leeds Consolidated Fee Schedule shall accompany the original license application.
2. The ON-PREMISE RETAILER and OFF-PREMISE RETAILER Licenses shall be paid annually prior to June 30<sup>th</sup>. The annual license fee is referred to in the Leeds Consolidated Fee Schedule.
3. If a license is issued after December 30th in any year, one-half (1/2) of the annual fee will be charged.

## **I. CERTIFICATION OF EMPLOYEES:**

THE RIGHT TO A LICENSE HEREUNDER SHALL BE CONDITIONED AT ALL TIMES UPON COMPLIANCE WITH THE FOLLOWING:

1. Required: All employees of a licensee and any licensee who will be authorized to sell, furnish or serve alcoholic beverages to the public, shall complete, within thirty (30) days after the issuance of a license or commencement of employment, an instruction seminar as set forth in Utah Code Annotated section 62A-15-401, and shall thereafter maintain a current certification under this section. Any licensee or employee who sells, furnishes or serves alcoholic beverages without obtaining the certification required herein shall, in addition to any other penalty provided herein, be prohibited from obtaining certification for a period of one year from the date of the violation.
2. Convictions: No certificate shall be issued to an employee or licensee who has been convicted of a drug or alcohol related offense during a period of one-year preceding the application for a certificate. If charges are pending against an employee or licensee arising out of a drug or alcohol related offense, no certificate shall be issued until such charges are resolved and, if there is a conviction, none shall be issued for a period of one year thereafter.
3. Revocation: If any certified employee or certified licensee is convicted of any drug or alcohol related offense, including the crime of driving under the influence, their certificate shall be automatically revoked, and such employee or licensee shall not be permitted to sell, furnish or serve alcoholic beverages for a period of one year and until a new certification is obtained.
4. Appeal: Any revocation of certification under subsection 3 of this section may be appealed to the Town Council within ten (10) days after the mailing of written notice by the Town of such revocation.

## **J. PROHIBITED ACTS AND ACTIVITIES:**

IT IS UNLAWFUL;

1. For a person to buy for resale, sell or deal in ALCOHOLIC PRODUCTS without first having procured appropriate licenses duly issued by the Town, and otherwise complying with the provisions of this chapter, the act and any other applicable law.
2. For any retail LICENSEE to purchase ALCOHOLIC PRODUCTS from any person other than a wholesaler licensed in accordance with the Act.



3. For a LICENSEE or other person to sell, furnish, dispose of or give away ALCOHOLIC PRODUCTS, or to cause or allow any ALCOHOLIC PRODUCT to be sold, furnished, disposed of or given to any person under the age of twenty one (21) years, or for any person under the age of twenty one (21) years to purchase, possess or consume any alcoholic beverage.
4. For any person under the age of twenty one (21) years to purchase, possess or consume any ALCOHOLIC PRODUCTS, or for any person under the age of twenty one (21) years to have any detectable amount of alcohol in the blood or system as a result of having consumed any ALCOHOLIC PRODUCTS, and as determined from a totality of the circumstances, including any breath or blood test or the administration of field sobriety tests.
5. For an OFF-PREMISE RETAILER to employ a person under the age of eighteen (18) years to sell or dispose of any ALCOHOLIC PRODUCTS.
6. For an ON-PREMISE RETAILER to employ a person under the age of twenty-one (21) years to sell or serve any ALCOHOLIC PRODUCTS.
7. For a LICENSEE or its employee, when engaged in waiting on or serving customers, to consume ALCOHOLIC PRODUCTS, or to remain on or about the premises while in an intoxicated or disorderly condition.
8. For a LICENSEE or its employee, during that employee's working hours or in connection with such employment or the operation of the licensee's business, to give to or purchase for any other person, accept a gift of, purchase for himself or consume any ALCOHOLIC PRODUCTS.
9. For a LICENSEE, its employee or other person to serve, sell or furnish any alcoholic beverage to an interdicted, intoxicated or disorderly person, or for a LICENSEE, its employee or other person to allow or permit an interdicted, intoxicated or disorderly person to come into or remain on or about the licensed premises.
10. For an OFF-PREMISE RETAILER to sell beer except in the original container, or to permit beer to be consumed on the premises.
11. For a person to advertise the sale of beer and/or wine, except as may be expressly permitted by the UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL and/or the ACT, and except for the placement of a license issued under this chapter in a location in or about the licensed premises where it will be visible to the public.

12. To sell, dispose of, deliver, provide or give alcoholic beverages between the hours of 1:00 AM and 7:00 AM.

**K. REVOCATION, SUSPENSION OR REFUSAL TO RENEW:**

1. Reasons Specified: The Town Council may suspend, revoke, refuse to renew, and the LICENSE OFFICER may suspend or refuse to renew any license issued.

a. There occurs on the licensed premises repeated acts of violence.

b. The licensee knowingly submits false or fraudulent material information on any application or document filed with the Town.

c. The licensee is on the premises habitually drunk or under the influence of alcohol or illegal drugs.

d. The licensed business is delinquent for more than sixty (60) days in the payment of any fee or charge due to the Town.

e. The licensee attempts to, or does, assign, transfer or sell a license in violation of this chapter.

f. The licensee fails to keep for a period of two (2) years, or make available to the Town upon reasonable request, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of alcoholic beverages.

g. The licensee is convicted of a felony or any violation of any law or ordinance relating to alcoholic beverages, driving under the influence of alcohol, or alcohol related reckless driving, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude.

h. The licensee violates or fails to comply with this chapter or the act, or ceases to possess all of the qualifications required by this chapter or the act.

2. Complaint; Investigation; Notice Of Hearing: The LICENSE OFFICER shall receive all complaints of alleged violation of this chapter and is responsible for ordering, through the police department or other appropriate department, the investigation of all allegations of a violation of, or noncompliance with, this chapter, the act, or any condition imposed upon the LICENSEE by the license. Upon the LICENSE OFFICER'S initiation of an investigation or upon the receipt of a complaint and an investigation of the complaint, as deemed necessary, the

LICENSE OFFICER may cause a complaint and notice of hearing to be directed to the licensee setting forth the violations alleged against the LICENSEE, and requesting the LICENSEE, within ten (10) days after service of the complaint and notice of hearing, to appear by filing with the LICENSE OFFICER an answer to the complaint. Failure of the LICENSEE to answer is deemed an admission by him of his commission of the act charged in the complaint. The LICENSE OFFICER or the Town Council may then immediately begin disciplinary proceedings. The LICENSE OFFICER may set a hearing before the Town Council on any of the grounds set forth in subsection (1) of this section. In carrying out the duties under this section, the Town Clerk and investigating officers shall have all those rights and duties set forth in the act or the rules of the UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL. The complaint and notice of hearing provided herein shall be sufficient if it conforms to the rules of the UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL.

3. Conduct Of Hearing; Record: A hearing shall conform to the requirements of the rules of the UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL. The Town Council shall conduct a hearing and may accept any relevant and material evidence and testimony and apply any evidentiary rules set forth in the rules of the UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL. The Town shall prepare an official record of the hearing, including all testimony tape-recorded and all exhibits introduced. The Town is not required to transcribe such record except pursuant to an appeal, except that, upon written request and receipt of a reasonable fee for transcribing such record, the department may transcribe the record or allow for its transcription by the person requesting it.

4. Decision: If the hearing is conducted by the Town Council, the Town Council shall issue a decision no later than ten (10) days following the hearing. Such decision may be in writing or entered upon the record of the hearing. Such decision shall then be final for purposes of appeal.

5. Open Hearing; Rules Of Evidence Not Applicable: Hearings before the Town Council are open to the public and are informal with technical rules of evidence not applying to the proceedings. The licensee involved and any person requesting a hearing may be present and cross-examine witnesses and give evidence before the Town Council at the hearing.

#### L. PENALTY:

1. In addition to the denial, suspension, revocation or refusal to renew a license, the licensee and any person who shall violate the provisions of this chapter shall be guilty of a class B misdemeanor and, upon conviction, subject to penalty. Each day or incident of violation shall constitute a separate offense hereunder.

M. SEVERABILITY CLAUSE:

1. If any part of this amendment is held to be illegal, unconstitutional for any reason by a Court of Competent Jurisdiction or is in conflict with Utah State Law, UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL or Title 32 of the Utah Code and Rules of the Commission, the remainder shall not be affected thereby.

This Amendment shall become effective immediately upon passage and posting.

PASSED AND ADOPTED by the Leeds Town Council on this

25 day of August 2004

  
Darrell L. Nelson, Mayor Pro Tem

ATTEST:

  
Joy Stevens, Town Clerk/Recorder

Roll Call Vote for the Leeds Alcoholic Beverage Ordinance No. 04-04

4 Aye votes. 0 Nay votes.      Abstentions.

Amendment is ✓ passed.      rejected.

  
Joy Stevens, Town Clerk/Recorder

10-14-04  
Date

DLN:MS Word.Doc