

ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING
PROCEDURES FOR REVIEW OF LIQUOR LICENSE APPLICATIONS.

Whereas, ORS 471.210 and the Administrative Rules of the Oregon Liquor Control Commission (OLCC) authorize the Council to make recommendations concerning liquor license for businesses within the City, and

Whereas, the Council wishes to establish a formal review and recommendation process in order to provide for neighborhood and community comment and to fairly determine which persons and locations should be recommended for OLCC licensure, and

Whereas, this formal process will ensure that recommendations are determined in an orderly, consistent and efficient manner. Therefore

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

The following provisions are added to and made a part of Title 5 of the Milwaukie City Code:

Section 1. The purpose of these sections is to establish criteria for Council consideration in recommending to the Oregon Liquor Control Commission (OLCC) that it grant, deny, modify or renew liquor licenses for premises within the City. The process established to review license applicants in order to make recommendations will be fair, effective and efficient. These sections are necessary to ensure that premises licensed to sell or dispense liquor meet community expectations, and that such businesses are conducted in a lawful manner that does not unreasonably disturb the peace and tranquillity of this City and its neighborhoods.

Section 2. Applicants for OLCC licenses shall provide the City with the appropriate OLCC license application and identification forms. The manager may require additional information as appropriate for conducting the investigations required for such City recommendations.

Section 3. The Police Chief is authorized to approve applications for temporary OLCC licenses such as special events, special beer and special wine licenses. Such applications may be processed administratively after the fee established by Council has been paid. The Police Chief may make an unfavorable recommendation to the OLCC if the Police Chief finds that the applicant does not meet any of the criteria established by Section 6. Either the applicant or the Police Chief may refer an application to the Council for a public hearing.

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Section 4. The City shall accept applications for regular OLCC liquor licenses only when the following conditions are met:

- 1) All required forms are properly completed and in order;
- 2) The applicant has obtained a valid City business license; and
- 3) The appropriate processing fee established by Council resolution has been paid.

Section 5. The manager shall coordinate an investigation of each application to determine the appropriate City recommendation to the OLCC. The manager shall provide a copy of each application to the affected city departments for investigation and report. Renewals of regular OLCC licenses or changes in the name of the business or name of an owner may be approved by the Manager without consideration by the Council and the application shall be endorsed as if it received Council approval. Reports from such departments shall be included in each staff recommendation to the Council.

Section 6. The manager may make an unfavorable or conditionally favorable recommendation to the Council on any application if:

- 1) The applicant has a record of violations of state alcoholic liquor laws;
- 2) The applicant has a record of use of controlled substances or excessive use of alcoholic beverages;
- 3) The applicant has a record of violations of criminal law or ordinances connected in time, place and manner with a liquor establishment or which demonstrate a disregard for law;
- 4) The applicant has maintained, or allowed to exist, an establishment which creates or is a public nuisance, or other violation of the City code, or federal or state law which causes, permits or suffers disorderly or violent acts, litter, noise, vandalism, vehicular or pedestrian traffic congestion, or other locational problems, in the proximity of such establishment;
- 5) The applicant has not maintained the premises in accordance with the building code, fire and life safety code and health regulations of the City and the State;

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- 6) The applicant seeks licensing of premises which would not be consistent with City land use ordinances or regulations;
- 7) The applicant has demonstrated an unwillingness or inability to cooperate with the City or neighbors to resolve driving under the influence of liquor concerns or community disputes related to a licensed establishment;
- 8) The applicant is not the legitimate owner of the business to be licensed or has failed to disclose other ownership;
- 9) The application contains false or misleading statements; or
- 10) There is any other specific reason consistent with the purposes of these provisions which the manager concludes warrants an adverse recommendation to the Council based upon public health, safety, welfare, convenience or necessity.

Section 7. All regular OLCC liquor license original applications shall be included on a Council agenda. If the manager makes an unfavorable or conditionally favorable recommendation on an original, renewal or name change application, or if a councilor requests, a public hearing shall be held to allow all interested parties a reasonable opportunity to be heard by the Council.

Section 8. Before the Council recommends denial of an application, notice of a public hearing must be given to the applicant either personally or by certified mail postmarked not later than 10 days prior to the hearing. The notice shall contain:

- 1) the date, time and place of the hearing;
- 2) a copy of the recommendation of the manager together with all supporting reports and documents; and
- 3) a statement that information about procedures and rights of parties may be obtained from the office of the manager.

Section 9. If a public hearing is scheduled, the City shall publish in a newspaper of general circulation in the City a notice specifying a time, date and location of the hearing and business name and address of applicant. The notice shall inform the public that testimony may be given for or against the application.

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Section 10. When a public hearing before the Council is held:

- 1) The applicant and the manager shall have the right to present written and oral evidence and shall have the right to rebut opposing evidence;
- 2) The hearing shall be limited to production of evidence relevant to the recommendation of manager, unless the Council decides to hear additional evidence;
- 3) After consideration of all relevant evidence, the Council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the Section 6 criteria and shall be final. In the case of an adverse recommendation, the Council shall make findings of fact which shall be forwarded to the OLCC along with the Council recommendation against the application.

Section 11. If the Council finds that an applicant does not meet the criteria established by Section 6, it may make a favorable recommendation with a letter of warning. The manager shall deliver to the applicant in person or by certified mail a summary of the reports relating to the application, and a notice to correct the problems cited. A copy of this notice and summary shall be sent to OLCC. During the following license period, the manager shall monitor the progress of the applicant in correcting such problems and report to the Council. At the time of the next license renewal, the applicant shall have the burden of proof to establish that the license should receive a favorable recommendation for renewal. If the Council finds that the applicant has not made sufficient progress in correcting the conditions which resulted in the letter of warning, then the Council may make an unfavorable recommendation to OLCC without further public hearing.

Section 12. If the Council makes an unfavorable recommendation on any license application, the Council shall not consider a new application from the same applicant while an administrative or court appeal relating to such license is pending. The manager may resubmit an application to the Council in less than six months from the date of a Council unfavorable recommendation only if the conditions which caused such recommendation have been remedied.

Read the first time on January 6, 19 87, and moved to second reading by 4 - 0 vote of the City Council.

Read the second time and adopted by the City Council on January 6, 19 87.

Signed by the Mayor on January 6, 19 87.

Roger R Hall
Roger Hall, Mayor

ATTEST:

Jerri L Widner
Jerri Widner, City Recorder

Approved as to form:

Greg Eades
Greg Eades, City Attorney