

Chapter 5.10

ALCOHOLIC BEVERAGES

Sections:

- 5.10.010 Licensing authority.
- 5.10.020 Definitions.
- 5.10.030 Unlawful acts.
- 5.10.040 Public Consumption, Special Event and Tastings Permits.
- 5.10.050 Rebuttable presumption.
- 5.10.060 Optional Premises Licenses.
- 5.10.070 Delegation of authority to City Clerk to issue licenses.
- 5.10.080 Distance Restrictions.

5.10.010 Licensing authority. The Delta City Council is hereby designated the local licensing authority for the purposes of exercising the duties and powers provided for in the Colorado Beer Code and the Colorado Liquor Code. (Ord. 3, §5(part), 1987)

5.10.020 Definitions. As used in this Chapter, the following terms shall have the meanings ascribed to them in this Section:

A. "Alcoholic beverage" means fermented malt beverage or malt, vinous, or spirituous liquors; except that "alcohol beverage" shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410 (1) (i) (II).

B. "Fermented malt beverage" means malt liquors, when purchased by a fermented malt beverage retailer from a wholesaler licensed pursuant to Article 3, Title 44, C.R.S., or when sold by a fermented malt beverage retailer to consumers or persons licensed under C.R.S. §§ 44-3-411, 44-3-413, 44-3-414, 44-3-416 to 44-3-420, 44-3-422, 44-3-426, or 44-3-428; except that "fermented malt beverage" shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410 (1) (i) (II).

C. "Malt liquors" includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing not less than 0.5% alcohol by volume. For the purposes of beer and wine, hotel and restaurant, tavern, brew pub, club, arts, racetrack, retail gaming tavern, vintner's restaurant, distillery pub, and lodging

and entertainment licenses, "malt liquors" includes fermented malt beverages when purchased from a retailer licensed pursuant to C.R.S. § 44-4-104(1)(c).

D. "Spirituous liquors" means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, powdered alcohol, and every liquid or solid, patented or not, containing at least 0.5% alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in Paragraphs C and E herein, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

E. "Vinous liquors" means wine and fortified wines that contain not less 0.5% and not more than 21% alcohol by volume and are produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. (Ord. 3, §5(part), 1987); Ord. 4, 2022)

5.10.030 Unlawful acts. It shall be unlawful for any person to commit any of the following acts:

A. To consume any alcoholic beverage in or at any public place within the City of Delta, Colorado, including but not limited to the following public places: restaurants, retail liquor store, pool halls, dance halls, business premises, school premises, recreation halls, public buildings, places of public gathering for amusement or entertainment, parking areas or the surrounding premises of any of the aforementioned places, and streets, alleys, sidewalks, vacant lots or publicly owned property; provided however, this provision shall not apply to premises licensed for consumption thereon pursuant to law.

B. To possess an unsealed or open container containing any alcoholic beverage in any public place, including but not limited to the following public places: restaurants, retail liquor stores, pool halls, dance halls, business premises, school premises, recreation halls, public buildings, places of public gathering for amusement or entertainment, parking areas surrounding premises of any of the aforementioned places, and streets, alleys, sidewalks, vacant lots or publicly owned property; provided however, that this provision shall not apply to premises licensed for consumption thereon pursuant to law.

C. For any person owning or having possession of any premises to allow the consumption of an alcoholic beverage container upon such premises by any such person in violation of subsections (A) and (B) of this Section.

D. For any person under the age of 21 years old to purchase, possess or consume any alcoholic beverage.

E. To provide, sell, distribute or give any alcoholic beverage to any person under the age or 21 years. (Ord. 3, §5(part), 1987; Ord. 3, §1, 1989; Ord. 4, 2022)

5.10.040 Public Consumption, Special Event and Tastings Permits.

A. *Public Consumption Permit.* Any regularly organized group may apply to the City of Delta Police Department for a permit to consume and possess alcoholic beverages in the public places set forth in subsection 15.10.010(A) and to possess unsealed or open containers of alcoholic beverages prohibited in subsection 5.10.030(B).

1. An application for such a permit shall be made upon forms provided by and pursuant to regulations adopted by the City of Delta Police Department and shall be accompanied by a permit fee as set by the City's annual fee schedule.
2. Any such permit granted shall specify the time and place where the permit may be used.
3. Such activity shall likewise be subject to control and regulation of the Police Department (Ord. 3, §5(part), 1987; Ord. 4, 2022)

B. *Special Event Permit.* The City Council, as the Local Licensing Authority, hereby elects to exercise exclusive local control over the issuance of Liquor License Special Event Permits for events with the City. The City Clerk shall review and approve or deny applications for Special Event Permits pursuant to the following criteria:

1. The timely submission of a complete application and the payment of all applicable fees by the applicant.
2. The referral of the applications by the City Clerk to the Police Department and other appropriate City departments for review and comment.
3. The timely and property posting of a conspicuous public notice of the proposed permit and protest procedures at the location sought to be permitted.
4. Whether the applicant meets the qualifications set forth in C.R.S. § 44-5-102.

5. Whether there exists facts or information on the application, or as provided in referral comments or a protest against the permit sought by affected persons, illustrating grounds or good cause to deny the application. (Ord. 4, 2022)

C. *Alcoholic Beverage Tastings Permit.* The City hereby authorizes tastings to be conducted by retail liquor store or liquor-licensed drugstore licensees in accordance with this Section and pursuant to C.R.S. § 44-3-301, as the term "tastings" is defined in C.R.S. § 44-3-103. It is unlawful for any person or licensee to conduct tastings within the City unless authorized in accordance with this Section. Tastings shall not be authorized until the following prerequisites are fully satisfied, as determined by the City:

1. A retail liquor store or liquor-licensed drugstore that wishes to conduct tastings shall submit an application for an Alcoholic Beverage Tastings Permit to the City Clerk, which shall be accompanied by a fee as set by the City's annual fee schedule. The City Clerk may reject the application if the applicant fails to establish that the licensee is able to conduct tastings without violating any of the provisions of this Chapter. The City Clerk shall establish the application procedure.

2. The application shall include the name of the liquor-licensed premises, the person who is submitting the notice, and shall indicate the date and time the tastings are to take place.

a. The notice must state and affirm that the licensee wishing to conduct such tasting shall do so in accordance with the provisions of this Chapter, and without creating a public safety risk to the surrounding neighborhood.

b. The Alcoholic Beverage Tastings Permit shall concurrently run with the retail liquor store or liquor-licensed drugstore liquor license.

c. Further, the Alcoholic Beverage Tastings Permit must be reapplied for and the permit fee paid on a yearly basis.

3. Tastings authorized pursuant to this Section shall be allowed only for a retail liquor store or

liquor-licensed drugstore operating within the City whose license is valid and in full force and effect.

4. Tastings, once approved, shall be subject to the following limitations:

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

b. The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to C.R.S. § 44-3-403 at a cost that is not less than the laid-in cost of such alcohol.

c. The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half of one (1/2) ounce of spirituous liquor.

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

e. 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 a.m. or later than 9 p.m. A tastings schedule will be required as part of the application process.

f. Should the licensee desire to deviate from the tastings schedule as previously provided, the licensee must give the City Clerk at least five (5) days' prior notice of desired tastings schedule change.

g. The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

h. 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.

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

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

k. Alcohol samples shall be in open containers and shall be provided to a customer free of charge.

l. 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 fifty-six (156) days per year.

m. 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.

5. A violation of a limitation specified herein or of C.R.S. § 44-3-301(10) by a retail liquor store or liquor-licensed drugstore licensee, whether by their employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee that conducted the tasting.

6. A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

7. Nothing in this Section shall affect the ability of a Colorado winery licensed pursuant to C.R.S. §§ 44-3-402 or 44-3-403 to conduct a tasting pursuant to

the authority of C.R.S. §§ 44-3-402(2) or 44-3-403(2)(e). (Ord. 4, 2022)

5.10.050 Rebuttable presumption.

A. It shall be prima facie evidence that any beverage or liquid is an alcoholic beverage if it is or was contained within a container labeled as an alcoholic beverage container of any sort and if it either looks like, smells like or tastes like an alcoholic beverage. (Ord. 4, 2022)

5.10.060 Optional Premises Licenses. In addition to any applicable requirements and standards incorporated into the Colorado Liquor Code and regulations, the following specific standards and procedures shall apply to the issuance of Optional Premises Licenses within the City:

A. No Optional Premises License shall be issued for any outdoor sports or recreational facilities other than golf courses (excluding miniature golf courses) which include at least nine (9) holes and are open to the public.

B. An application for an Optional Premises License or permit shall be made on forms supplied by the City and filed with the City Clerk, together with all applicable local and state license fees.

C. The application shall be accompanied by a map or drawing indicating the location of the optional premises, and a copy of the deed, lease or other instrument by which the applicant has legal possession of the optional premises.

D. No alcoholic beverages may be served on licensed optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used.

E. All Optional Premises Licenses or permits shall be valid for a period of one (1) year from the date of issuance, unless revoked or suspended, and must be renewed annually thereafter. (Ord. 14, §1, 2003; Ord. 4, 2022)

5.10.070 Liquor License renewals and transfers.

A. The City Clerk shall review and approve or deny applications for Liquor License renewals and transfers pursuant to the following criteria:

1. The timely submission of a complete application and the payment of all fees by the applicant.
2. The referral of the application by the City Clerk to the police department and other appropriate city departments for review and comment.
3. For license transfers, whether the applicant satisfies the eligibility criteria set forth in C.R.S. § 12-47-307 and complies with C.R.S. § 12-47-303.
4. Whether there exist facts or information on the application, or as provided in referral comments, illustrating reasonable grounds or good cause to deny the application. (Ord. 4, 2022)

B. The City Clerk may issue a Temporary Permit pending the review of a Liquor License renewal or transfer pursuant to the following criteria:

1. The timely submission of a complete application and the payment of all fees by the applicant.
2. The timely filing of an application for the transfer of the Liquor License corresponding to the application for a Temporary Permit.
3. Whether the premises subject to the proposed Temporary Permit is currently subject to a valid liquor license. (Ord. 4, 2022)

C. In the event the City Clerk cannot or will not approve a renewal or transfer of a Liquor License, or a Temporary Permit, then the Clerk shall promptly schedule the matter for consideration before the City Council, acting as the Local Liquor Licensing Authority. Additionally, any applicant dissatisfied with a decision of the City Clerk under this Section may appeal to the City Council by filing a written protest with the City Clerk no less than ten (10) days after the date of the Clerk's decision. The City Clerk shall promptly set the appeal for hearing for the City Council in accordance with the procedures required by this Code and Colorado Revised Statutes. (Ord. 4, 2022)

D. The City Clerk shall not approve an application for renewal or transfer of a Liquor License, nor issue a Temporary Permit, where the Police Department has timely submitted a written objection to the Clerk concerning such action. Whenever such an objection is received, the Clerk shall set the application for hearing before the City Council in accordance with the procedures set forth above. (Ord. 4, 2022)



E. The City Clerk, for good cause, may waive the forty-five (45) day requirement for filing a license renewal application.

5.10.080 Distance Restrictions. The distance restrictions imposed by CRS 44-3-313(1)(d)(I), prohibiting the sale of alcoholic beverages within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary, are eliminated for all hotel and restaurant licenses, beer and wine licenses, arts licenses and vintner's restaurant licenses issued within the City of Delta. (Ord. 5, §1, 2021)