



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: September 27, 2006

SUBJECT: Study Session Agenda for October 2, 2006

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

A light dinner will be served in the Council Family Room 6:00 P.M.

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

PRESENTATIONS

6:30 P.M.

1. Presentation by Kathy Kelly, District 50 Education Foundation
2. Proposed Ordinance re Amendments to the City's Liquor Licensing Provisions and Alcohol-Related Police Regulations
3. Presentation of The Orchard Town Center Video (*Verbal*)

EXECUTIVE SESSION

1. Discussion of Personnel Matter (Presiding Judge's Performance Evaluation) Pursuant to WMC Section 1-11-3(C)(1) and CRS 24-6-402(4)(f)

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

J. Brent McFall
City Manager



W E S T M I N S T E R

Staff Report

City Council Study Session Meeting
October 2, 2006



SUBJECT: Presentation by Kathy Kelly, District 50 Education Foundation

PREPARED BY: Melissa Salazar, Administrative Secretary

Summary Statement:

This report is for City Council information only and requires no action by City Council. District 50 Education Foundation will be at Monday night's Study Session to make a brief informational presentation.

Background Information

The District 50 Education Foundation has launched a new initiative inviting community and business leaders to attend tours at their schools to see the ways that the Education Foundation has impacted teachers, staff and students within Adams County School District 50. The Foundation has set a goal of raising \$500,000 annually within the next 5 years.

Kathy Kelly, Director and Matt Duran, President of District 50 Education Foundation will be at Monday night's Study Session to provide City Council a brief synopsis of the tour and to discuss the future strategic plans for the foundation.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

Staff Report

City Council Study Session Meeting
October 2, 2006



SUBJECT: Proposed Ordinance re: Amendments to the City's Liquor Licensing Provisions and Alcohol-Related Police Regulations

Prepared By: Janice Kraft, Neighborhood Services Administrator
Eugene Mei, Assistant City Attorney

Recommended City Council Action

Direct Staff to place on City Council's agenda for consideration and adoption at a future City Council Meeting the attached Councillor's Bill concerning various changes to the liquor license and alcohol-related Code sections as outlined in this Staff Report.

Summary Statement

- Recent state legislation has created a new class of liquor license, namely, a "vintner's restaurant license." The new classification applies to medium and small scale wineries that serve meals. The proposed ordinance would allow the Westminster Special Permit and License Board to issue this type of license.
- An ordinance amendment is needed in order to resolve a conflict between the City's ordinance and recent changes in state law regarding open alcoholic beverages in motor vehicles. The proposed ordinance would amend the City's ordinance to be consistent with state law, thereby allowing opened containers to be stored in a vehicle's trunk area and to be present in certain classes of vehicles, e.g., vehicles for hire.
- Recent state legislation has expanded the classes of liquor licensees that are permitted to "cork" the remaining portion of a single container of vinous liquor and allow customers to take that container with them. The proposed ordinance would amend the City's ordinance to be consistent with the state corking law.
- Staff recommends adopting three sections of state law regulating liquor and beer that currently are enforceable only with issuance of a summons into Adams County or Jefferson County court. Incorporation of these three sections would allow the Liquor Investigations Officer to write a municipal summons. The three sections address the following:

- Requiring a licensed establishment to post signage stating that it is illegal to sell alcohol to a person under the age of twenty-one or for a person under twenty-one to possess or attempt to purchase alcohol.
- Making it unlawful to possess an alcohol beverage, the sale of which is not permitted by the licensee's existing license.
- Making it unlawful to provide alcohol to a visibly intoxicated person by selling, permitting the sale of, or serving alcohol to that person.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Whether City Council should adopt an ordinance amending the City's Code to be consistent with recently enacted state laws concerning liquor license classifications, open alcoholic beverages in motor vehicles, and the removal of resealed bottles of vinous liquors by customers from the premises of certain alcohol beverage licensees. In addition, whether City Council should adopt state law requirements that regulate posting of signage prohibiting the sale of alcohol to any person under twenty-one years of age, possessing an alcoholic beverage that is not permitted by the class of license, and providing alcohol to a visibly intoxicated person.

Alternative

Do not adopt the ordinance. This is not recommended, since it would result in conflicts between the City's ordinance and state law, and would not facilitate enforcement by the Liquor Investigations Officer of three important liquor requirements.

Background Information

I. Recent Changes in State Law.

The state legislature recently enacted new laws regarding vintner's restaurant licenses, open alcohol containers, and "corking" as follows:

Vintner's Restaurant License – HB 04-1357 (C.R.S. sections 12-47-103(39.5), 12-47-309, 12-47-420, and other relevant sections): This law creates a new class of liquor license known as the "vintner's restaurant license." A "vintner's restaurant" is defined as a retail establishment that sells food on the premises and manufactures not more than 250,000 gallons of wine per year. The law authorizes a local liquor licensing authority to issue this type of license. The proposed ordinance would enable the Westminster Special Permit and License Board to issue such licenses.

Open Container Law – HB 05-1122 (C.R.S. section 42-4-1305): This law generally prohibits open containers in the passenger area of motor vehicles on a public highway. The corollary to the "passenger area" prohibition is that open containers are permitted in the trunk of a car, or the bed of a pickup truck. The law contains exemptions for motor homes, mobile trailers, and passengers in vehicles designed for transportation of persons for compensation (taxis, limos, etc.). Finally, the law expressly states that home rule cities can adopt ordinances no less restrictive than the state open container law.

Westminster's current open container ordinance prohibits an open liquor container anywhere in a vehicle located in any public place within the City. (W.M.C. section 6-9-3(A) and (B)). Therefore, in contrast to the new state law, the City's open container ordinance 1) is not restricted to the passenger area of a vehicle, but instead applies to the entire vehicle; and 2) applies to all vehicles with no exceptions for taxis, motor homes, etc.

If adopted, the proposed ordinance would limit the City's open container prohibition to just the passenger areas of vehicles; therefore, "corked" containers no longer need to be exempted from the City's open container ordinance as currently provided for in W.M.C. section 6-9-3(C). Furthermore, the proposed ordinance provides for exemptions for motor homes, mobile trailers and vehicles for hire in conformance with state statute.

Corking Law – SB 05-058 (C.R.S. section 12-47-421): This law operates to expand the classes of liquor licensees that are permitted to “cork” the remaining portion of a single container of vinous liquor and allow customers to take that container with them. Previously, C.R.S. section 12-47-411(3.5) allowed only hotel or restaurant licensees to cork. The new state law now expands that list to include the following licensees that serve meals: manufacturer, limited winery, beer and wine, tavern, brew pub and vintner’s restaurant.

W.M.C. section 6-9-3(C) was amended in 2004 to permit hotel or restaurant licensees to “cork.” The proposed ordinance would amend that Code section again to be consistent with the expanded classes of liquor licensees that are permitted to “cork” under state law.

II. Facilitation of Local Liquor Enforcement Efforts.

State liquor law contains three requirements that Staff believes to be important for adoption as part of the City’s ordinance to facilitate local liquor enforcement efforts. Enforcement of these three regulations currently requires a commissioned Police Officer to issue a state summons to the violator. When a state summons is issued, the issuing Police Officer is required to appear in county court located in Golden or Brighton. Adopting these three requirements as part of the City’s liquor ordinance would facilitate local liquor enforcement efforts because they would become charges that could be written to Municipal Court by the Liquor Investigations Officer. The Liquor Investigations Officer is a civilian position with limited authority to issue municipal summonses for specific violations of the City Code.

The Liquor Investigations Officer performs routine inspections at establishments that currently hold a City liquor license. Two of the state law requirements that Staff proposes for adoption are commonly encountered by the Liquor Investigations Officer during these routine inspections. The first is a requirement that a sign be posted at the premises that warns underage persons that it is illegal to attempt to purchase alcohol beverages, and warns the Licensee and patrons that it is illegal to sell, serve or provide alcohol to any person under the age twenty-one. The second prohibits a Licensee from being in possession of liquor, the sale of which is not permitted by said license. An example of a violation of this section would be a Licensee holding a Beer and Wine Liquor License but serving spirituous liquor such as tequila or vodka.

Staff is also recommending adoption of language contained in the State code that makes it unlawful to sell, serve or permit the sale or serving of any alcohol beverages to a visibly intoxicated person or to a known habitual drunkard. When the Police Department receives a call for service for a fight at a bar or tavern, the first responders are police officers whose primary purpose is to stop the disturbance and make the premises safe. There may or may not be a resulting arrest, but the police officer will report the incident to the Liquor Investigations Officer for follow-up and for creation of a record for consideration during the licensee’s liquor license renewal. During this follow-up, if the Liquor Investigations Officer is able to determine that the Licensee did in fact serve alcohol to an intoxicated person, a municipal summons would be served.

The proposed ordinance amendment also accomplishes some housekeeping items and corrects outdated references to the Colorado Revised Statutes.

The proposed ordinance has been reviewed and approved by the City's Liquor Investigations Officer, the City Prosecutor's Office, and Municipal Court staff.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. _____

SERIES OF 2006

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER
MUNICIPAL CODE CONCERNING LIQUOR LICENSING PROVISIONS
AND ALCOHOL-RELATED POLICE REGULATIONS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-14-4, subsection (A), is hereby AMENDED to read as follows:

5-14-4: LICENSE APPLICATIONS:

(A) The following licenses may be issued by the Licensing Authority under this Chapter:

1. Fermented malt beverages:
 - (a) For consumption off the premises of the licensee;
 - (b) For consumption on the premises of the licensee;
 - (c) For consumption both on and off the premises of the licensee;
 - (d) Temporary Permit, for the continuance of the sale of fermented malt beverages by a transferee pending the transfer of the permanent license;
 - (e) Temporary License for the continuance of the sale of fermented malt beverages by a licensee whose license has expired where the licensee has applied for a permanent license.
2. Retail liquor store;
3. Liquor-licensed drugstore;
4. Beer and wine;
5. Hotel and restaurant;
6. Hotel and restaurant with optional premises;
7. Tavern;
8. Club;
9. Arts;
10. Racetrack; ~~and~~
11. Temporary Permit for the continuance of the sale of alcoholic beverages by a transferee pending the transfer of the permanent license;
12. Temporary License for the continuance of the sale of alcoholic beverages by a licensee whose license has expired where the licensee has applied for a permanent license;
13. Special events permit;
14. Brew Pub License; ~~and~~
15. Bed and Breakfast Permit; AND
16. VINTNER'S RESTAURANT LICENSE.

Section 2. Section 5-14-5, subsection (B), W.M.C., is hereby AMENDED to read as follows:

5-14-5: FEES:

(B) The local license fees prescribed by C.R.S. section ~~12-46-117~~ 12-46-107 and ~~12-47-139~~ 12-47-505, as amended, shall be paid to the City annually in advance by the licensee. Such fees shall not be rebated or discounted on a proportionate basis for any license in existence or issued for less than a year. These fees shall be in addition to any license fees required to be paid directly to the State.

Section 3. Section 5-14-7, subsection (F), W.M.C., is hereby AMENDED to read as follows:

5-14-7: LICENSE DENIAL, SUSPENSION OR REVOCATION:

(F) If the Authority suspends a retail license, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having its license suspended for all or part of the suspension period. The Authority may grant the petition if the criteria and conditions of Section ~~12-47-110(3)~~ 12-47-601(3)(a) and Section 5-1-7(B), W.M.C., are met.

Section 4. Section 5-14-14, subsection (A), W.M.C., is hereby AMENDED to read as follows:

5-14-14: DISTANCE RESTRICTION ELIMINATED FOR CERTAIN SCHOOLS:

(A) The distance restriction imposed by Section ~~12-47-138(1)(d)~~ 12-47-313(1)(d), C.R.S., for hotel-restaurant licenses is hereby eliminated for institutions or facilities which serve children ~~preceeding~~ PRECEDING their entrance to the first grade in public, private or parochial schools. Such institutions or facilities include, but are not limited to, those described or known as day schools, preschools, child care centers, day care centers, day nurseries, nursery schools, kindergartens, play groups, day camps, summer camps, learning centers, child development centers, religious training programs such as Sunday schools or vacation bible schools and centers for developmentally disabled children.

Section 5. Title V, Chapter 14, W.M.C., is hereby amended BY THE ADDITION OF A NEW SECTION to read as follows:

5-14-16: REMOVAL OF VINOUS LIQUOR FROM LICENSED PREMISES:

(A) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, A LICENSEE DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY PERMIT A CUSTOMER OF THE LICENSEE TO RESEAL AND REMOVE FROM THE LICENSED PREMISES ONE OPENED CONTAINER OF PARTIALLY CONSUMED VINOUS LIQUOR PURCHASED ON THE PREMISES SO LONG AS THE ORIGINALLY SEALED CONTAINER DID NOT CONTAIN MORE THAN 750 MILLILITERS OF VINOUS LIQUOR.

(B) THE PROVISIONS OF THIS SECTION SHALL APPLY TO A LICENSEE:

1. THAT IS DULY LICENSED AS A MANUFACTURER'S LICENSEE UNDER SECTION 12-47-402, C.R.S., A LIMITED WINERY LICENSEE UNDER SECTION 12-47-403, C.R.S., A BEER AND WINE LICENSEE, A HOTEL AND RESTAURANT LICENSEE, A TAVERN LICENSEE, A BREW PUB LICENSEE, OR A VINTNER'S RESTAURANT LICENSEE UNDER SECTION 5-14-4, W.M.C.; AND

2. THAT HAS MEALS, AS DEFINED IN SECTION 12-47-103(20), C.R.S., AVAILABLE FOR

CONSUMPTION ON THE LICENSED PREMISES.

Section 6. Section 6-9-1, W.M.C., is hereby AMENDED to read as follows:

6-9-1: DEFINITIONS: As used in this Chapter, the following words and phrases shall have the following meanings:

- (A) "Public Place" shall mean any street, alley, road, highway, parking lot, public or community building, public park or sidewalk adjoining a public park; any private property open to the general public, or any place used by persons other than the owner, or owner's agent, without a special permit.
- (B) "Container" shall mean any enclosing structure or vessel, including, but not limited to, a decanter, flask, bottle, jar, thermos bottle, cup, can or jug.
- (C) "Seal" shall mean the regular and original seal applied by the United States government over the cap of a beer, malt, vinous or spirituous liquor.
- (D) "Alcoholic Beverages" shall mean any fermented malt beverages (3.2% alcohol by weight, or less), malt vinous or spirituous liquors (3.2% alcohol by weight, or more), as defined by State law.
- (E) "Open ALCOHOLIC BEVERAGE Container" shall mean any container CONTAINING ANY AMOUNT OF ALCOHOLIC BEVERAGE that is open and would allow consumption OR THE CONTENTS OF WHICH ARE PARTIALLY REMOVED, or a container of which the seal has been broken.
- (F) "MOTOR VEHICLE" MEANS A VEHICLE DRIVEN OR DRAWN BY MECHANICAL POWER AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC HIGHWAYS, BUT DOES NOT INCLUDE A VEHICLE OPERATED EXCLUSIVELY ON A RAIL OR RAILS.
- (G) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS WHILE A MOTOR VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE IN HIS OR HER SEATING POSITION, INCLUDING, BUT NOT LIMITED TO, THE GLOVE COMPARTMENT.

Section 7. Section 6-9-3, W.M.C., is hereby AMENDED to read as follows:

6-9-3: OPEN CONTAINERS OF ALCOHOLIC BEVERAGES:

- (A) It shall be unlawful for any person to drink, possess or have under his control, any alcoholic beverage in an open ALCOHOLIC BEVERAGE container, ~~or in a container, the seal of which is broken,~~ in any public place within the City's JURISDICTION, ~~or in any vehicle in a public place.~~
- (B) ~~It shall be unlawful for any person, while operating a vehicle in any public place within the City, to drink, possess, have under his control or allow any alcoholic beverage within the vehicle, in any open container, or in a container, the seal of which is broken.~~ MOTOR VEHICLES:

1. EXCEPT AS OTHERWISE PERMITTED IN PARAGRAPH 2. OF THIS SUBSECTION (B), A PERSON WHILE IN THE PASSENGER AREA OF A MOTOR VEHICLE THAT IS ON A PUBLIC HIGHWAY WITHIN THE CITY'S JURISDICTION OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY WITHIN THE CITY'S JURISDICTION MAY NOT KNOWINGLY:

- (a) DRINK AN ALCOHOLIC BEVERAGE; OR
- (b) HAVE IN HIS OR HER POSSESSION AN OPEN ALCOHOLIC BEVERAGE CONTAINER.

2. THE PROVISIONS OF THIS SUBSECTION (B) SHALL NOT APPLY TO:

- (a) PASSENGERS, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, LOCATED IN THE PASSENGER AREA OF A MOTOR VEHICLE DESIGNED, MAINTAINED, OR USED PRIMARILY FOR THE TRANSPORTATION OF PERSONS FOR COMPENSATION.
- (b) THE POSSESSION BY A PASSENGER, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN THE LIVING QUARTERS OF A HOUSE COACH, HOUSE TRAILER, MOTOR HOME, AS DEFINED IN SECTION 42-1-102(57), C.R.S., OR TRAILER COACH, AS DEFINED IN SECTION 42-1-102(106)(a), C.R.S.
- (c) THE POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN THE AREA BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK; OR
- (d) THE POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN AN AREA NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER IN A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK.

~~(C) Exception: Subsections (A) and (B) above shall not apply to the possession or control of one opened container of vinous liquor purchased and removed from a liquor licensed hotel or restaurant, pursuant to the provisions of Section 12-47-411(3.5), C.R.S., so long as the original container did not contain more than 750 milliliters.~~

~~(D)~~ (C) Nothing in this Section shall prohibit drinking or having open containers of alcoholic beverages:

1. In public areas where authorized by a properly issued special event permit.
2. Pursuant to a permit issued by the Department of Parks, Recreation and Libraries.
3. On private property authorized by the owner of such property or the guests of such owner.

~~(E)~~ (D) Notwithstanding the foregoing provisions, drinking alcoholic beverages in any vehicle is hereby prohibited.

~~(F)~~ (E) A violation of this section is a criminal offense, punishable by a fine or imprisonment, or both, as provided in Section 1-8-1 of this Code.

Section 8. Section 6-9-4, subsections (B) and (C), W.M.C., are hereby amended BY THE ADDITION OF NEW SUBSECTIONS as follows:

6-9-4: CONDUCT PROHIBITED IN LIQUOR AND BEER ESTABLISHMENTS:

(B) Prohibited Acts:

9. IT SHALL BE UNLAWFUL FOR ANY LICENSEE, MANAGER OR AGENT TO SELL, SERVE, GIVE AWAY, DISPOSE OF, EXCHANGE, OR DELIVER, OR PERMIT THE SALE, SERVING, GIVING, OR PROCURING OF, ANY ALCOHOL BEVERAGE TO A VISIBLY INTOXICATED PERSON OR TO A KNOWN HABITUAL DRUNKARD.

10. IT SHALL BE UNLAWFUL FOR ANY LICENSEE, MANAGER, OR AGENT TO HAVE IN POSSESSION OR UPON THE LICENSED PREMISES ANY ALCOHOL BEVERAGE, THE SALE OF WHICH IS NOT PERMITTED BY SAID LICENSE.

(C) Requirements and Regulations: It shall be unlawful for any licensee to fail to comply with the following requirements and regulations:

3. EACH LICENSEE SHALL DISPLAY AT ALL TIMES IN A PROMINENT PLACE A PRINTED CARD WITH A MINIMUM HEIGHT OF FOURTEEN (14) INCHES AND A WIDTH OF ELEVEN (11) INCHES WITH EACH LETTER TO BE A MINIMUM OF ONE-HALF (1/2) INCH IN HEIGHT, WHICH SHALL READ AS FOLLOWS:

WARNING

IT IS ILLEGAL TO SELL WHISKEY, WINE, OR BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME.

IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY.

IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OF AGE OR OLDER FOR YOU TO PURCHASE WHISKEY, WINE, OR BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

Section 9. This ordinance shall take effect upon its passage after second reading.

Section 10. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this ____ day of _____, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this ____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

Approved as to legal form:

City Attorney