

ORDINANCE NO. 5, SERIES 2019

AN ORDINANCE AMENDING CHAPTER 5.04 OF UPTON MUNICIPAL CODE CREATING A PROCESS FOR THE ISSUANCE, RENEWAL, SUSPENSION AND REVOCATION OF LIQUOR LICENSES BY THE GOVERNING BODY OF THE TOWN OF UPTON, WYOMING

WHEREAS, the Town of Upton shall, pursuant to Wyoming Statute § 12-4-101 *et seq.*, license and regulate the manner in which liquor licenses and permits are issued; and

WHEREAS, there must be a balance struck between the rights of license holders, economic development, and the health, safety, and welfare of all residents and visitors to the Town of Upton; and

WHEREAS, the 64th Wyoming Legislative Session resulted in a multitude of statutory amendments to Title 12, which the governing body desires to evaluate and address within our own municipal code; and

WHEREAS, after careful consideration by the governing body, including staff recommendations and input from the attorney for the Town of Upton, the following are recommended changes to Chapter 5.04 of the Upton Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF UPTON, WYOMING:

Section 1. Chapter 5.04 in Title 5 of the Upton Municipal Code is hereby repealed in its entirety and replaced.

Section 2. Section 5.04.010 of the Upton Municipal Code is hereby created to read as follows:

5.04.010 Purpose.

The purpose of the provisions of this chapter generally is to regulate and control the sale, possession, and use of alcoholic beverages within the town for the public health, safety and welfare; to minimize abuse by decreasing litter and disturbances; to prevent purchases by persons under the age of twenty-one years; and to prevent speculation in licenses, and to permit the regulated sale and use of alcoholic beverages in the town with the least possible harmful impact on the health, safety and welfare of the people.

Section 3. Section 5.04.020 of the Upton Municipal Code is hereby created to read as follows:

5.04.020 Definitions.

Except as otherwise noted below, definitions used in this chapter shall be as found in Wyoming Statutes 12-1-101, as amended.

- A. "*Clerk*" means the town clerk of the town.
- B. "*Commercial kitchen*" means a kitchen that has durable equipment designed specifically for mass food production that also incorporates safety features rarely found on equipment designed for residential use, including safety shields and finger guards. Also, including exhaust fans over cooktops and automatic fire suppression systems controlled by sensors, industrial extinguishers and/or fire retardant systems integrated into the structure of the building. A commercial kitchen is where individually priced meals are prepared and served, primarily for on-premises consumption. The establishment with a commercial kitchen shall have a dining room or rooms, a kitchen and the number and kinds of employees necessary for the preparing, cooking and serving of meals to satisfy the licensing authority.
- C. "*Enclosed*" means to surround, as with a fence, wall or other approved partition, whether permanent or temporary in nature.

- D. "*Governing body*" means a majority of those present of the mayor and council of the town.
- E. "*Licensed building*" means a building or portion of a building with a single address.
- F. "*Licensed liquor establishment*" means any place of business together with its employees, merchandise, equipment, and building structure, duly licensed by the local licensing authority and the Wyoming Liquor Division to offer for sale alcoholic beverages.
- G. "*Licensed premise*" means property adjacent and contiguous to the licensed building and owned by the license holder or included in a lease agreement between the license holder and the property owner.
- H. "*Liquor permit*" means any one of the one-day permits permissible by Title 12 of Wyoming Statutes: catering, malt beverage, malt beverage – State Fair, open container, or additional dispensing room.
- I. "*Liquor license*" means any one of the following licenses as permitted and defined by Title 12 of Wyoming Statutes: retail, bar and grill, limited retail, resort, or restaurant license, or a microbrewery, winery, satellite winery or manufacturing permit.
- J. "*Liquor licensee*" means a licensee as defined by W.S. 12-1-101 (viii).
- K. "*Liquor permittee*" means any individual having been issued a one-day permit while the permit is in effect.
- L. "*Operational*" means offering for sale on an ongoing weekly basis to the general public alcoholic liquor and malt beverages as authorized under a license or permit issued under Title 12 as defined by W.S. 12-1-101 (xxi).
- M. "*Sale*" or "*Sell*" includes offering for sale, trafficking in, bartering, delivering or dispensing and pouring for value, exchanging for goods, services or patronage or an exchange in any way other than purely gratuitously. Every delivery of any alcoholic liquor or malt beverage made otherwise than by gift constitutes a sale as defined by W.S. 12-1-101 (xvi).
- N. "*Seasonal operation*" means operational a minimum of three (3) consecutive months and not to exceed five (5) consecutive months.
- O. "*Weekly basis*" means operational for a minimum of five (5) days per week.

Section 4. Section 5.04.030 of the Upton Municipal Code is hereby created to read as follows:

5.04.030 General Provisions.

- A. **State Laws Applicable.** All licenses issued pursuant to this chapter, and all use, possession, sales, and purchases of alcoholic beverages shall be subject to all requirements, regulations and limitations prescribed by the laws of the state relating to alcoholic beverages, specifically W.S. Chapters 1, 2, 4, 5, 6 and 7 of Title 12, and are adopted by reference and amendments thereto except as is otherwise expressly set forth in this chapter. If this chapter is silent, then state statute is applicable. If there is a conflict between the state statute and this chapter, then the stricter will apply. The catch lines of the sections of this chapter, printed in boldface type, are intended as mere catchwords to indicate the contents of the sections, and shall not be deemed or taken to be titles of such sections, nor

as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catch line, is reference to a state statute.

- B. **License or Permit Required.** No person shall sell, offer for sale, manufacture, rectify, distill, traffic in, or deliver for value in any other way than purely gratuitously any alcoholic or malt liquor in the town without a license or permit, therefore.
- C. **Severability.** If any section, subsection, sentence, clause, phrase or portion of the ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.
- D. **License - Personal privilege - Annual renewal.** A license issued under this chapter shall be a personal privilege, good for one year unless sooner revoked pursuant to Section 5.04.210 and applicable state statute.
- E. **Liquor license and permit application information.** All applicants for any annual liquor license or liquor permit shall provide accurate information in conjunction with each application. Providing false information is declared to be a violation of law and may result in penalties for the offending licensee pursuant to 5.04.210 of this chapter.
- F. **Other fees.** Any licensee who requests an additional official copy of the current liquor license shall be assessed a \$25.00 fee at the time the license is provided.
- G. **Occupancy loads - Sign.** Occupancy loads, as determined by the Wyoming State Fire Marshall or designee, pursuant to the Uniform Building Code as adopted by the town, must be clearly posted via a sign to be provided by the applicant and posted in a location as required by the Fire Marshall or designee. A licensee who fails to post a sign as to the occupancy load of the licensed building and/or premises contrary to the town code and as required under this section within six (6) months of the effective date of this Ordinance is declared to be in violation of law.
- H. **Habitual violation of occupancy limits.** A licensee who has a subsequent conviction under Section 5.04.210 of the town code, within a twelve-month period, of the occupancy limits set by the State Fire Marshall is declared to be in violation of law.
- I. **Gambling in licensed building and/or on licensed premises.** No person shall gamble and no licensee (including the licensee's employees and agents) shall permit gambling in any building and/or room licensed under this chapter. "Gambling" for the purposes of this section is defined per Wyoming Statute. Section 6-7-101 et seq. A licensee who permits gambling in a licensed building and/or premise contrary to the state statute is declared to be in violation of law.
- J. **Bottle Clubs.** It is unlawful for any person to operate a bottle club in the town. As used in this chapter, "bottle club" is defined as an operation or enterprise in which no alcoholic liquor or malt beverages are sold, but where food, soft drinks and mixes are sold, and the safekeeping of alcoholic liquor or malt beverages is provided for individual club members who bring alcoholic liquor or malt beverages into the building and/or upon the premises for their own use and consumption. Income, profits or fees of the operator of a bottle club

are typically derived from sales for furnishing of mixes, ice, food or glasses, or from dues, charges, contributions, membership cards or assessments.

Section 5. Section 5.04.040 of the Upton Municipal Code is hereby created to read as follows:

5.04.040 License – Term, Hours of Operation.

- A. **Term.** Annual licenses shall be for a period of not more than one (1) year, expiring each year on March 31. Annual licenses shall be a personal privilege of the licensee. Annual licenses may be renewed after application by the licensee prior to the expiration and in accordance with a schedule established pursuant to law and as provided by the clerk to licensees.
- B. The executor or administrator of the estate of a deceased licensee, when the estate consists in whole or in part of a business selling alcoholic or malt beverages under an annual license issued by the town, may exercise the personal privilege of the deceased licensee under terms of the license until the expiration date of the license. If the license of the deceased licensee has not been transferred prior to the annual expiration date, the governing body shall consider the license of the deceased licensee as an unissued license.
- C. **Hours of Operation.** Licensees may sell alcoholic and malt beverages within the licensed building beginning six (6:00) a.m. and shall cease the sale of both alcoholic and malt beverages within the licensed building promptly at the hour of two (2:00) a.m. the following day. In addition, licensees shall clear the licensed building of all persons other than employees by two-thirty (2:30) a.m. in which the primary source of revenue from the operation of the business is obtained from the sale of alcoholic or malt beverages unless:
 - 1. The licensed establishment is operating a full-service restaurant with a commercial kitchen per Sections 5.04.020 and 5.04.080 of this Chapter.

Section 6. Section 5.04.050 of the Upton Municipal Code is hereby created to read as follows:

5.04.050 Alcohol Server Certification – Required.

All licensees and all managers and supervisory personnel employed at any licensed building and/or premises shall participate in and complete a Wyoming Liquor Division approved Alcohol Server Training Program as established in W.S. Sections 12-2-401 and 12-2-402 as amended. Such training shall be provided within three (3) months of obtaining any new or transfer liquor license, or any renewal annual liquor license; or within three (3) months of accepting employment as a manager or supervisor. Unless otherwise trained through the certified state training program above, nonsupervisory employees shall receive alcohol server training from those persons so trained at the time of employment and at least annually during the term of employment.

Section 7. Section 5.04.060 of the Upton Municipal Code is hereby created to read as follows:

5.04.060 Open container prohibited, public property-exceptions.

- A. No person shall consume or carry in open containers alcoholic liquor or malt beverages on any street or highway, on any alley, on any sidewalk, in any public park or public building, on any parking lot open to unrestricted use by the public, or in any vehicle, within the town, except:

1. Persons may consume and have in their possession alcoholic or malt beverages in the Upton city park and for other events which by resolution the Upton town council may declare.
 2. At any place where the sale or service of alcoholic liquor or malt beverages is authorized by state law or town ordinance.
 3. This section does not apply to persons within a chartered transportation vehicle which is licensed pursuant to W.S. 12-2-202, if the vehicle operating under the license has a copy of the state license conspicuously displayed in the rear of the vehicle.
- B. Open container prohibited, private property.** It is unlawful for any person to consume or carry in open containers alcoholic liquor or malt beverages upon the private business premises of another without permission of the owner or person in control of such premises.
- C. Corked Wine.** A restaurant or bar and grill licensee may permit a patron to remove one (1) unsealed bottle of wine for off-premises consumption provided that the patron has purchased a full course meal and consumed a portion of the bottle of wine with the meal within the building and/or on the premises. For purposes of this subsection the term “full course meal” shall mean a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking. A partially consumed bottle of wine that is to be removed from the building and/or premises shall be securely sealed by the licensee or an agent of the licensee and placed in a tamper-proof transparent bag which shall also be securely sealed prior to removal from the building and/or premises, so that it is visibly apparent that the resealed bottle of wine has not been tampered with. The licensee or agent of the licensee shall provide a dated receipt for the bottle of wine to the patron. Wine which is resealed in accordance with the provisions of this subsection shall not be deemed an open container under this Ordinance.

Section 8. Section 5.04.070 of the Upton Municipal Code is hereby created to read as follows:

5.04.070 Right of entry - Inspection.

- A. In addition to all other rights of inspection which the town may or hereafter possess, the town clerk, chief of police and/or State Fire Marshall or their designee(s) are empowered to enter and inspect every place of business which is licensed by the town to sell malt or alcoholic beverages or where malt or alcoholic beverages are sold, stored, or kept for the purpose of sale pursuant to a town liquor license.
- B. Entry for purposes of inspection pursuant to this section is authorized only during open business hours unless it is in the presence of the licensee or his agent, employee, representative, or unless the person making entry does so under court order, or the person making entry has reasonable grounds to believe that evidence of a violation of this chapter is within the place to be entered and emergency or exigent circumstances exist such that a warrantless search is allowed by law.
- C. The purpose of the inspection authorized by this section shall be to ascertain if the business to be inspected and its operation is in compliance with this chapter and W.S. Title 12, or other laws applicable to businesses selling, storing, keeping malt or alcoholic beverages under license issued by the town.

- D. A refusal to permit entry or inspection contrary to this section is declared to be in violation of law and this may result in penalties for offending licensee pursuant to 5.04.210 of this chapter.

Section 9. Section 5.04.080 of the Upton Municipal Code is hereby created to read as follows:

5.04.080 Persons under the age of twenty-one (21) years – Licensed Building Restrictions – Exceptions - Provisions.

- A. Licensed Building Restrictions: Except as provided in this section, no licensee or agent, employee, or server thereof shall knowingly permit any person under the age of twenty-one (21) years to enter or remain in a licensed building where alcoholic or malt beverages are dispensed unless:
1. The licensed establishment is operating a restaurant with a commercial kitchen as defined per 5.04.020 of this Chapter; that the restaurant is consistently open to the public; and the primary source of revenue for the establishment is from the sale of food and/or recreational activities such as arcade games, pool tables, bowling, or similar activities, and not from the sale of alcoholic or malt beverages. The town may require the licensee to provide proof of revenues or other information to ensure compliance with this exception.
 2. The licensed building contains a separate dispensing room(s), as approved by the licensing authority, designated for the dispensing of alcoholic and malt beverages for on premise consumption. No other dispensing of alcohol shall occur in any other location within the licensed building, and no one under the age of twenty-one (21) years of age shall be allowed to enter or remain in the dispensing room, with the following exceptions:
 - i. If the establishment operates a restaurant with a commercial kitchen as defined per 5.04.020 of this Chapter, employees of the licensee who are at least eighteen (18) years of age may serve alcoholic and malt beverages to patrons, and may enter or remain in the dispensing room in order to conduct duties required of their position of employment, including but not limited to cleaning, restocking supplies, and/or dispensing beverages other than alcoholic and malt beverages.
 3. If a licensed building contains a separate room designated for the sale of alcoholic liquor and malt beverages for off-premise consumption, commonly referred to as a package store or liquor store, a person under the age of twenty-one (21) years may temporarily be allowed within the room but must be accompanied by his or her parent or guardian who is at least twenty-one (21) years of age per W.S. 12-6-101.
 4. The establishment obtains approval from the governing body based upon submitted request in writing.
- B. If a liquor license is held by a grocery or convenience store, the licensed building shall maintain a separate area for the sale of alcoholic or malt beverages and persons under the age of twenty-one (21) years shall not be allowed in the areas of the store where alcoholic

and malt beverages are sold, except as provided in 5.04.080(3) herein. Such establishments shall maintain a separate area for the sale of alcoholic or malt beverages.

- C. At no time shall a person under the age of twenty-one (21) years be allowed to be seated at a bar at which alcoholic liquor and malt beverages are directly sold, dispensed, and/or consumed by patrons seated at the bar.

Section 10. Section 5.04.090 of the Upton Municipal Code is hereby created to read as follows:

5.04.090 Ethyl alcohol - Uses exempt from chapter. The provisions of this chapter shall not apply to ethyl alcohol intended for use or used for the following purposes:

- A. Scientific, chemical, mechanical, industrial, medicinal and culinary purposes;
- B. By those authorized to procure ethyl alcohol tax free, as provided by the acts of congress and regulations promulgated thereunder;
- C. The manufacturer of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder;
- D. The manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and industrial preparations or products, unfit for beverage purposes;
- E. The manufacture of flavoring extracts and syrups, unfit for beverage purposes.

Section 11. Section 5.04.100 of the Upton Municipal Code is hereby created to read as follows:

5.04.100 Annual license fees.

- A. The governing body is authorized to issue the following annual licenses pursuant to state law and this chapter:

1. Retail liquor license
2. Limited retail “club” liquor license
3. Resort retail liquor license
4. Restaurant liquor license
5. Bar and grill liquor license
6. Microbrewery license/permit **
7. Winery license/permit **
8. Special malt beverage permit for auditoriums, civic centers
9. Satellite Wineries
10. Motel/hotel mini bar license
11. Manufacturers Satellite Permit – Distillery or Rectifier
12. Transfer of ownership/location*

* Transfer of ownership and/or location for certain types of licenses is not allowed pursuant to Wyoming Statutes, Title 12, or this chapter.

** When dual holding of a microbrewery or winery permit with a retail, restaurant, resort or bar and grill liquor license exists, no additional fee other than the retail, restaurant, resort or bar and grill license fee is assessed.

- B. The governing body has established annual and per event license fees by resolution.

- C. No refund of all or any part of any license fee shall be made at any time following the issuance of the license.
- D. Publication costs for a new, transfer, or renewal license shall be paid at the time of application for a liquor license and will be based upon the actual cost of publishing, which the town will determine prior to publishing based upon the estimate provide by the town's designated newspaper of local distribution.

Section 12. Section 5.04.110 of the Upton Municipal Code is hereby created to read as follows:

5.04.110 Application for licenses and permits – New and Transfer.

- A. Applicants must comply with all provisions of Wyoming State Statutes 12-4-102, 12-4-103, 12-4-104, 12-4-105, and 12-4-106, as amended.
- B. An eligible licensee or permittee seeking to request a transfer of ownership and/or location of an existing annual license shall submit an application with the applicable fees, including a nonrefundable publication fee, pursuant to Section 5.04.100 of this chapter. The transfer application shall be set for public hearing and consideration by the governing body in a manner consistent with town code and W.S. Sections 12-4-104 and 12-4-601.
- C. Applicants for any new annual liquor license or for a new microbrewery or winery permit, or for the transfer of location of an eligible existing license , with the exception of a bar and grill license, which pursuant to W.S. 12-4-413 may not be transferred, or a restaurant license, which pursuant to W.S. 12-4-409 may not be transferred to another location, shall provide the governing body, as part of the application, the following information:
 - 1. A map of the town showing the proposed location and zoning or covenants of location, a site plan of the proposed construction, a proposed floor plan and a rendering or architect's drawing of the front elevation, or if the building in which the licensed room is located is in existence, a photograph of the building, an existing and proposed site plan, and an existing and proposed floor plan.
 - 2. Each individual who owns 10% or more of the licensed premises/license shall provide, at the individual's expense, a current copy of a criminal background report as maintained by the Wyoming Bureau of Investigation. The governing body may consider the existence of felony convictions when determining whether to issue a license, but is not required to deny a license in such case.

D. License – Transferability - When permitted.

- 1. No license transfer shall be approved if the license is suspended; if proceedings to suspend or revoke the license are pending; or for any other reason per W.S. 12-4-601.
- 2. No license may be transferred unless the governing body makes the findings required herein and in Title 12 of Wyoming statutes.
- 3. The town does not recognize any preference rights applicable to a transfer of location, ownership, or both.

E. License – Transferability - Generally.

Any transfer or sale of license not authorized by the governing body or contrary to the town code is declared to be in violation of law which may result in penalties issued to the offending licensee pursuant to 5.04.210 of this chapter.

- F. No person or entity may hold a license hereunder in the interest of or for the benefit of another person or entity, and the person or entity applying for the license must intend to be the true and beneficial owner thereof and may not be acting for or on behalf of another undisclosed person or entity. This provision is to be construed liberally so as to prevent evasions and subterfuges of the intent of the ordinance codified herein. The lawful ownership of a liquor license at the time of enactment of this provision may be continued even though the ownership does not conform to the requirements of this section.
- G. The governing body may in its discretion permit a commercial lending institution to have rights in more than one liquor license if those rights were obtained pursuant to the Uniform Commercial Code and the institution holds the licenses for resale. No such institution may sell alcoholic beverages under a license so held.

Section 13. Section 5.04.120 of the Upton Municipal Code is hereby created to read as follows:

5.04.120 Application for licenses and permits – Renewal.

- A. **License application - Change of ownership and other information; Compliance with all sections of W.S. 12-4-102.** Failure to update any renewed annual application information as required under this section within thirty (30) days of any change is declared to be a violation of law and may result in penalties for the offending licensee pursuant to 5.04.210 of this chapter.
- B. Upon application for a renewal liquor license, a licensee shall submit to the town clerk proof of alcohol training certification of the licensee and all managers and supervisory personnel, as well as provide an annual report to the town clerk at the time of submittal of the renewal application showing certified or dated completion of orientation training of all non-supervisory personnel.
- C. Compliance with the provisions of an alcoholic liquor and malt beverage review system, in addition to the requirements of state law and town code, will be evaluated by the governing body during the annual liquor license renewal process. Any violation or noncompliance of the provisions of the review system, state law, or town code regulations will be considered by the governing body in its decision to renew, or not renew, an annual license.

Section 14. Section 5.04.130 of the Upton Municipal Code is hereby created to read as follows:

5.04.130 Annual License – Retail license

- A. Retail liquor establishments offering pre-mixed alcoholic drinks or “slushies” shall be permitted. A “slushy” or other pre-mixed alcoholic drink that is to be removed from the building and/or premises for consumption shall be securely sealed by the licensee or an agent of the licensee and placed in a tamper-proof transparent bag which shall also be securely sealed prior to removal from the building and/or premises, so that it is visibly apparent that it has not been tampered with. A slushy which is resealed in accordance with the provisions of this subsection shall not be deemed an open container under this Ordinance.

Section 15. Section 5.04.140 of the Upton Municipal Code is hereby created to read as follows:

5.04.140 Annual License - Restaurant license

- A. Dispensing room restrictions and exceptions. Except as provided in this section, no licensee or agent, employee or server thereof shall knowingly permit any person under the age of twenty-one (21) years to enter or remain in the licensed room or rooms where alcoholic or malt beverages are dispensed. No person under the age of twenty-one (21) years shall enter or remain in the licensed room or rooms where alcoholic beverages are sold.
- B. Employees of a restaurant licensee who are at least eighteen (18) years of age may serve alcoholic and malt beverages to patrons of the restaurant.
- C. Restaurant license holders may be issued up to six (6) one-day permits per licensing term authorizing the sale of alcoholic or malt beverages in one (1) additional dispensing room in the same building licensed by the original liquor license. Application shall be made to the town on forms provided by the town and must comply with Section 5.04.120 herein.
- D. Applicants for new restaurant liquor licenses shall provide the town clerk with a copy of the menu, or proposed menu, of all food and beverage items for sale or proposed for sale during full-food service hours and a list of the hours or proposed hours of full-food service for weekdays and weekends.

Section 16. Section 5.04.150 of the Upton Municipal Code is hereby created to read as follows:

5.04.150 Annual License – Limited retail (club) license.

- A. Limited retail license holders may dispense alcoholic or malt beverage from locations outside of their licensed building as approved by the governing body for special events.
- B. Golf clubs. Any golf club as defined by W.S. 12-1-101(a)(iii)(D) which holds a retail liquor license, or a club limited retail liquor license may dispense alcoholic beverages from any location within the boundaries of the golf club premises. The premises shall be a single property within a contiguous boundary upon which the golf club is located and which shall be identified in the license.

Section 17. Section 5.04.160 of the Upton Municipal Code is hereby created to read as follows:

5.04.160 Annual License - Microbrewery or winery permit

- A. **Compliance with other laws.** All provisions of law, including but not limited to this chapter, and all health and sanitary laws and regulations of the town, the state of Wyoming, and the United States, apply to microbrewery and winery permits and microbreweries and wineries, and to distilleries and rectifiers.
- B. Following receipt of a completed application, publication, and a public hearing as required by law, the governing body shall issue or renew a microbrewery or winery permit if it finds:
 - 1. That the issuance of the permit would not cause the town to exceed the number of microbreweries or wineries allowed by W.S. 1977, 12-4-201(d), as amended.
 - 2. That the issuance of the permit would not violate the provisions of W.S. 12-4-103, except subsection (a)(vi).

3. That the issuance of the permit will not adversely affect the health, safety, and general welfare of the citizens of the town. Issuance is subject to the same findings as governing body must make for liquor licenses.

Section 18. Section 5.04.170 of the Upton Municipal Code is hereby created to read as follows:

5.04.170 One day permits - General Provisions

A. **Permit Fees.** The town clerk is authorized to issue or recommend denial of the following temporary permits pursuant to state law and this chapter:

1. Catering permit *	
3. Malt beverage permit*	
4. Additional dispensing room permit (restaurant licensees only)*	
5. Open container permit *	
6. Applications for the above-listed permits requiring a special meeting of the governing body for approval; the governing body may, at its discretion, waive the special meeting fee.	\$250.00
7. Refundable deposit required if permit is to be used on public property.	\$100.00

*Fees are established by resolution of the Town of Upton.

B. **Issuance.** The town clerk or designee may issue a one-day permit per the provisions in W.S. 12-4-502. A one day permit shall not be held by or issued to any minor; any college fraternity or organization created by one or more college fraternities; any corporation, limited liability company, limited partnership, or limited liability partnership which is not qualified to do business in Wyoming; any individual who is not a resident of the state; or any general partnership or group of two or more persons unless each person interested, directly or indirectly, is a resident or qualified to do business in the state.

C. **Hours.** A one-day permit may be issued for use between the hours of 6:00 a.m. to 2:00 a.m. of the following day.

D. **Posted sign.** The holder of any one day permit shall be required to post the approved permit in a conspicuous location at the event location and for the duration of the event. When it is a condition of the issuance of a one-day permit, the permittee shall clearly post a sign notifying patrons that they must be twenty-one years of age to enter the premises. The type of sign and location for posting shall be as required by the town. The failure to post such sign shall not be used as a defense for violations of individuals under the age of twenty-one (21). Failure to post a sign as required in this section is declared to be in violation of law.

E. **Refunds.** No refund of all or any part of a temporary license or permit fee shall be made at any time following the issuance of the license.

F. **One-day permit in conjunction with a special events permit.** A person, entity, or organization may make application for a one-day liquor permit in conjunction with a special events permit in accordance with the procedures as adopted in policy UPTON 021 on February 12, 2019. An applicant applying for a one-day liquor permit in conjunction with a special event while having a licensed premises located within a jurisdiction other than the town shall secure the written approval of the licensing authority of that jurisdiction in which the licensed premises is located prior to filing an application for a one-day permit with the town.

- G. **Denial of a one-day permit.** If the town clerk or designee recommends the denial of a one-day permit, the matter shall be scheduled for consideration at the next regularly scheduled town council meeting upon the written request of the applicant.
- H. **Extended hours permit.** An extended hours permit may be issued upon written request presented at a regular meeting preceding the event.
- I. **Other Provisions.** The town may impose additional restrictions and/or requirements as deemed necessary for public health, safety, and welfare, including but not limited to enclosure of dispensing and/or consumption areas; maps and drawings of enclosed and permitted areas; requiring specific materials to be used to enclose an area(s); additional signage; means of non-transferrable identification such as wristbands; and use of and/or prohibition of specific types of containers for consumption of alcohol.

Section 19. Section 5.04.180 of the Upton Municipal Code is hereby created to read as follows:

5.04.180 One-day malt beverage permits. A permit issued to any responsible person or organization authorizing the sale of malt beverages only for sales at a picnic, bazaar, fair, rodeo, special holiday or similar public gathering.

- A. No licensee holding a malt beverage permit for special events shall sell or permit consumption of any malt beverage off the premises described in the malt beverage permit for special events.
- B. No person or organization shall receive more than a total of twelve (12) such permits at the same premises in any one calendar year, except that this limitation shall not be applicable to malt beverage permits issued for sales at any fair, rodeo, pari-mutuel event or other similar public event conducted by a public entity upon public premises.

Section 20. Section 5.04.190 of the Upton Municipal Code is hereby created to read as follows:

5.04.190 One-day catering permits. A permit authorizing the sale of alcoholic and malt beverages to any person holding a retail or resort retail liquor license authorizing the off-premises sale of both alcoholic and malt beverages, for sale at special events such as meetings, conventions, private parties and dinners or at other similar gatherings not capable of being held within the licensee's licensed building and/or premises.

- A. No licensee holding a catering permit for special events shall sell or permit consumption of any alcoholic or malt beverage off the premises described in the catering permit for special events.
- B. No person or organization shall receive more than a total of thirty-six (36) such permits for sales at the same premises in any one calendar year.
- C. Out of jurisdiction events. (W.S. 12-4-502) Any retail or resort liquor licensee under the jurisdiction of the town applying for a catering permit as authorized by this section for a catered event to occur outside of the corporate town limits shall submit written request to and secure written authorization from the town clerk for the event prior to filing an application for a permit in another jurisdiction. The clerk shall provide the applicant written authorization of the request, and if the request is denied, the reason for said denial. An applicant may appeal the denial to the full governing body upon written request and

shall be considered at the next regularly scheduled town council meeting. Decision of the governing body to grant or deny authorization shall be final and not subject to appeal.

Section 21. Section 5.04.200 of the Upton Municipal Code is hereby created to read as follows:

5.04.200 One-day open container permit. A permit authorizing the consumption only of alcoholic or malt beverages upon public property.

- A. The approved licensee shall install barriers and post appropriate signs in public areas permitted advising the public that the possession of an open container of an alcoholic beverage or the consumption of an alcoholic beverage is permitted only within the boundaries of the barrier.

Section 22. Section 5.04.210 of the Upton Municipal Code is hereby created to read as follows:

5.04.210 Suspension/revocation of license or permit, violations, and penalties.

- A. **Purpose.** The governing body, by enactment of this ordinance, states that it is the public policy of the Town to balance the interest of its citizens and visitors to the Town against the interest of the liquor licensee in operating and maintaining their business activities upon a licensed liquor establishment building and/or premises. If the licensee fails to adhere to certain minimum standards, or fails to abide by this ordinance or applicable law of the State, the liquor licensee shall be subject to the provisions herein. To provide for an orderly administration of this ordinance, and the maintenance of existing liquor licenses or permits, the Town establishes a system for suspension and/or revocation of a liquor license or permit. Violations of this Chapter by any licensee or employee or agent of a liquor licensee, while acting in the service of the licensee, shall be imputed to the licensee for the purposes of this section.
- B. All liquor licensees, their agents, and employees must conduct the licensed liquor building and/or premises in compliance with:
 - 1. Provisions of the laws of Wyoming related to liquor;
 - 2. Town ordinances related to liquor.
- C. Proof of violation by a licensee or the licensee's agent or employee of any of the provisions in Paragraph B is sufficient grounds for suspension or recommendation of revocation of the license and licensees and permittees may be reprimanded or assessed a civil penalty at the discretion of the governing body.
- D. The governing body shall impose progressive penalties for multiple violations of any laws, ordinances and rules within the preceding three (3) year period as specified unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. The governing body shall consider the licensee's prior violation history, the licensee's good faith effort to prevent a violation, and the existence of written policies governing the licensee's employee conduct as mitigating circumstances before taking an action against a licensee who is not in compliance with the provisions of this Section.
- E. Violations include, but are not limited to, those listed on the following chart.

VIOLATION CHART	
Type Of Violation:	Code:
1. Making a false statement on a liquor license or one-day liquor permit application	UMC 15-04-030(E); W.S. 12-4-102
2. Failure to notify town of changes in application information for liquor license within thirty (30) days	W.S. 12-4-102(c)

3. Sale or transfer of liquor license without permission of town	UMC 5-04-110(E); W.S. 12-4-601(a)
4. Sales or dispensing after hours	UMC 5-04-040(C)
5. Failure to post liquor license or one-day liquor permit	UMC 5-04-170(D); W.S. 12-5-702(c)
6. Open after hours	UMC 5-04-040(C); W.S. 12-5-101
7. Refusal to permit entry or inspection	UMC 5-04-070(D); W.S. 12-5-201(a)
8. Drive-in area conditions	W.S. 12-5-301
9. Sale of alcoholic liquor or malt beverage to underage person	UMC 9-08-070; W.S. 12-6-101
10. Unauthorized minors in licensed building or dispensing room	UMC 5-04-080; W.S. 12-5-201(a)
11. Failure to post sign indicating you must be 21 years of age to enter premises for one-day liquor permits	UMC 5-04-170(D)
12. Gambling and other prohibited acts	UMC 5-04-030(I)
13. Limited retail liquor license: selling alcoholic liquor or malt beverages to non-members unless they are an accompanied guest of a member	W.S. 12-4-301)(c)
14. Failure to pay sales tax	UMC 5-04-210(F)(2); W.S. 12-7-103
15. All liquor licenses other than full retail or resort: selling alcoholic liquor or malt beverages for consumption off premises	W.S. 12-4-410; 12-5-201(e),(h), and (j)
16. Sale to an intoxicated person via a drive-in area	W.S. 12-5-301(v)
17. Allowing over-occupancy of licensed building and/or premise.	UMC 5-04-030(H)
18. Habitual violation of allowing over-occupancy.	UMC 5-04-030(H)
19. Manufacturing, rectifying, or sale of alcoholic beverages without a license or permit.	UMC 5-04-030(B); W.S. 12-8-102
20. Furnishing to a minor by allowing an employee under the age of 18 years to serve alcohol to customers.	UMC 5-04-080(A)(2)(i); W.S. 12-6-101(a); 12-6-101(i-ii)
21. Failing to comply with regulations pertaining to out-of-jurisdiction catered events	UMC 5-04-190(C)

F. Notification of licensee of liquor violation.

1. **Municipal Court.** Not later than thirty (30) days following disposition of a charge which results in a conviction for a liquor violation of subsection C herein in Municipal Court, the Court shall report the following information to the town clerk:
 - a. The fact that a licensee, permittee, or employees and/or agents of a licensee or permittee have been convicted of a violation of the Town Code as described in E., Violation Chart, herein; and
 - b. The date of the alleged violation; and
 - c. Whether the Municipal Court disposition has been appealed. For purposes of this section, a conviction includes a finding of guilt after trial, a plea of guilty, or a plea of nolo contendere.
2. **Notice of Hearing before Governing body.** Upon receipt by the town clerk of a notice from the State of Wyoming issued pursuant to W.S. §12-2-306, as amended, and/or such information from the Municipal Court, the town clerk shall notify the liquor licensee of a violation(s) and a hearing may be set before the governing body. The certified notice from the State and all evidence presented to the State in support of the certified notice and order of conviction from Municipal Court will be admitted and considered prima facie evidence of the liquor licensee's sales tax delinquency or conviction of municipal ordinance on liquor. The purpose of the hearing is to allow

the liquor licensee to offer corrections to the information; and action taken by liquor licensee to mitigate the violation and for governing body to determine whether liquor licensee should face restrictions or suspension of the liquor license. Notice of such violation shall be served by regular mail to the address of the licensee listed on the licensee's most recent liquor license application to the town, and shall include a statement:

- a. That the town received a notice for failure to pay sales tax or a criminal violation described in Paragraph D herein has occurred, and that a fine, suspension and/or revocation of the licensee's license is possible; and
- b. Summarizing the nature and date(s) of the incidents resulting in the conviction and notice for failure to pay sales tax.

G. Hearing before Governing body. The hearing before the governing body shall be conducted under the Wyoming Administrative Procedures Act (Wyoming Statutes 16-3-101 et seq.) and rules adopted by the governing body.

H. Penalties. Following the hearing described in this section, and based upon the information considered and received at such hearing, governing body may:

1. Issue a written warning and/or mitigation plan of the violation by licensee; or
2. **Order a fine and/or suspension of license:** The suspension of the liquor license shall remain in effect until the governing body lifts the suspension, a court of competent jurisdiction lifts the suspension, or the town clerk receives notice from the State of Wyoming that the sales tax liability has been satisfied. Penalties provided in this section are based on the violations of ordinances outlined in Section E herein against a liquor licensee within a three (3) year period beginning the first day of April through the last day of March of each year. Any convictions of ordinances outlined in Section E during this period of time involving the same licensed liquor building and/or premises may be used by governing body to determine a gross violation and suspension or recommend revocation of licensee's license. The maximum fine is seven hundred fifty dollars (\$750.00) per occurrence.

I. Revocation. If it appears to the governing body that a liquor license should be revoked, the governing body may authorize the Town Attorney to prepare and file with the District Court a petition to revoke the licensee's license. If a license is revoked, except as provided in Wyoming statutes section 12-7-201(d) concerning the expiration of a license while a revocation order is under appeal, the liquor licensee of such revoked license shall not be eligible to apply for a new liquor license for a period of twelve (12) months from the date of revocation. In the event a suspension occurs, the clerk shall send by certified mail one copy of each of the suspension notices to the last known address of the liquor licensee and to the Director of the Wyoming Department of Revenue. Additionally, the clerk shall post one (1) copy of the suspension notice on the liquor license or permitted building or premises. Immediately upon the posting of the suspension notice, the sale, offering to sell, distribution, or traffic of liquor or malt beverages is unlawful. Further, the licensee shall either remove all of the alcoholic liquor and malt beverages from the licensed building and/or premises or secure the alcoholic liquor and malt beverages in a manner approved in writing by the chief of police or designee.

J. Appeal. Action by Governing body suspending a liquor license of a licensee shall be subject to review in the District Court upon exhaustion of administrative appeals in accordance with the procedural rules heretofore or hereinafter adopted by the Wyoming Supreme Court concerning the review of administrative actions. Filing an appeal as provided in such rules, stays enforcement of the suspension decision pending final order on the appeal.

Section 23. Upton Municipal Code Sections 1.04.090 by reference, are incorporated herein and made a part hereof.

Passed and Approved on First Reading this 14th day of May, 2019.

Passed and Approved on Second Reading this 11th day of June, 2019.

Passed, Approved, and Adopted on third and final reading this 9th day of July, 2019.

Travis Beck, Mayor

Attest:

Kelley Millar, Clerk/Treasurer

Published: July 18, 2019

ATTESTATION

I, Kelley Millar, the Clerk/Treasurer of the Town of Upton, Wyoming, do hereby attest and state that the above ordinance was published/posted in the manner required by law and that all procedures required by Wyoming State law were complied with.

Kelley Millar, Clerk/Treasurer