

# Mapleton City Council Staff Report

Meeting Date: April 1, 2014

**Applicant:** Mapleton City  
**Prepared by:** Brian Tucker, Planner  
**Public Hearing Item:** Yes  
**Zone:** All

## **REQUEST**

Consideration of an ordinance amending Mapleton City Code (MCC) Chapter 5.16 related to beer sales and would allow beer sales on Sundays.

## **BACKGROUND**

Alcohol sales in Utah are primarily regulated by the Utah Alcoholic Beverage Control Commission, who administers the Utah Alcoholic Beverages Control Act and regulates the sale, service, storage, manufacture, distribution and consumption of alcoholic products. Enforcement activities are conducted by the state's Department of Public Safety and Bureau of Criminal Investigation but primarily by local jurisdictions through their police departments and county sheriff offices.

The regulations governing alcohol sales, including beer sales, are found in Utah Code, Title 32B. In addition to these 256 pages of state regulations most local jurisdictions require a retail license specific to beer sales. Some cities include additional operational restrictions that may include sales restrictions related to the timing of sales that are more restrictive than those found in Utah Code. Research indicates that local regulation is primarily based on the Utah Alcoholic Beverages Control Act, as Title 32B is more commonly known.

Mapleton does currently require a retail license in addition to the state license for beer sales. The language regulating beer sales is found in Mapleton City Code Chapter 5.16, which research indicates has not been updated since 1986. In addition to regulating licensure, Chapter 5.16 prohibits beer sales "on Sunday or between the hours of twelve o'clock (12:00) midnight and six o'clock (6:00) A.M." The primary change in the proposed ordinance would be to allow the sale of beer on Sundays.

## **PROPOSED AMENDMENTS**

- Since Chapter 5.16 has not been updated since 1986 many of the references to state law are outdated and much of the language is either incongruous with the Utah Alcoholic Beverages Control Act or even in conflict with that governing regulation. The proposed ordinance changes the definitions used within the ordinance to mirror those used within the State Code.
- The proposed ordinance changes references to the "liquor control act of Utah" to the more accurate "Utah Alcoholic Beverages Control Act", and "liquor control commission of Utah" to the more accurate "Utah Alcoholic Beverage Control Commission".
- References to a "person" in the context of a definition or a legal or illegal action have been changed to "person or business", "person or entity", "person, retailer, wholesaler, or other entity" or similar descriptive nomenclature, as appropriate in context.
- References to fees have been removed from the ordinance since these are more appropriately placed in an adopted fee schedule that is routinely revised and approved by the Council.
- Language regarding beer consumption on premise has been clarified with regard to the license class.
- Language requiring the submittal of a "certificate of at least five (5) resident freeholders of the city to the effect that the licensee bears a good moral character and is a fit and proper person to be granted a license" had been removed as it is outdated, is subject to abuse as discriminatory and is likely illegal as it is the prior restraint of a legal activity in a way that is arguably arbitrary and

capricious.

- Language requiring a bond has been removed as there was no reference to any legitimate governmental purpose stated for requiring the bond.
- The penalty for violating Title 5.16 has been changed from \$299 to \$1000.
- The prohibition on Sunday beer sales has been removed. At least one local convenience store would like to have the ability to sell beer on Sundays and the prohibition, once common, is now increasingly rare. Spanish Fork and Springville both allow for Sunday sales so this regulation does not make it anything more than slightly inconvenient for an adult of legal age to purchase and consume a beverage that he or she is legally entitled to consume. The lack of Sunday sales costs local businesses revenue that now goes to businesses in adjoining cities and by extension it costs Mapleton City sales tax revenue. As for the idea that the prohibition of Sunday sales might keep drunk drivers off the road, there is no reason to believe that a person who would make the poor decision to drive while intoxicated is going to forgo the trip because he or she has to travel an additional mile or two to a city where Sunday beer sales are allowed. In short staff can find no good reason to inconvenience citizens who wish to buy a legal product that business owners are willing to sell them in accordance with the free market.
- A license request may be denied if the applicant does not possess qualifications required by the Utah Alcoholic Beverages Control Act, fails to comply with the provisions of city code, or fails to comply with local health department regulations. Language that allowed the Council to refuse to grant a license for no reason has been removed since without a legitimate governmental purpose the refusal to grant a license constitutes an arbitrary and capricious misuse of the police powers granted by the constitution.
- A license may be revoked if the applicant ceases to possess qualifications required by the Utah Alcoholic Beverages Control Act, fails to comply with the provisions of city code, or fails to comply with local health department regulations. Language that allowed the Council to revoke a license without cause has been removed as it too constitutes an abuse of the police powers.
- Between the Beverages Control Act, health department regulations and the few local ordinances staff feel that enough regulatory language exists to reasonably regulate beer sales in Mapleton.

### **RECOMMENDATION**

Approve the attached ordinance.

### **ATTACHMENTS**

1. Proposed Ordinance.

## **ORDINANCE NO. 2014-**

### **CONSIDERATION OF AN ORDINANCE AMENDING MAPLETON CITY CODE (MCC) CHAPTER 5.16 RELATED TO BEER SALES AND WOULD ALLOW BEER SALES ON SUNDAYS.**

**WHEREAS**, alcohol sales are regulated primarily by the Utah Alcoholic Beverage Control Commission; and

**WHEREAS**, Mapleton City Code requires the issuance of a license to sell alcoholic beverages and has not been updated since 1986; and

**WHEREAS**, Mapleton City Code currently does not allow for the sale of beer on Sundays; and

**WHEREAS**, the proposed amendment updates City Code to be more consistent with State Code and would allow the sales of beer on Sunday.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of Mapleton, Utah, to amend Mapleton City Code (MCC) Chapter 5.16 related to beer sales and would allow beer sales on Sundays as described in Exhibit "A".

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF MAPLETON, UTAH,

This 1<sup>st</sup> Day of April, 2014.

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Brian Wall  
Mayor

ATTEST:

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Camille Brown  
City Recorder

**Publication Date:**  
**Effective Date:**

Exhibit "A"  
(Changes shown in strikeout and underline)

Chapter 5.16  
BEER SALES

5.16.010: LICENSE REQUIRED:

5.16.020: DEFINITIONS:

5.16.030: WHOLESALER'S LICENSE:

5.16.040: LICENSE PRIVILEGES:

5.16.050: APPLICATION FOR LICENSE:

5.16.060: QUALIFICATIONS OF LICENSEE:

~~5.16.070: BOND REQUIRED:~~

5.16.070: ~~5.16.080:~~ REFUSAL OF LICENSE:

5.16.080: ~~5.16.090:~~ PERMIT FROM BOARD OF HEALTH REQUIRED:

5.16.090: ~~5.16.100:~~ TRANSFER OF LICENSE:

5.16.100: ~~5.16.110:~~ FEES:

5.16.110: ~~5.16.120:~~ LICENSE RESTRICTIONS:

5.16.120: ~~5.16.130:~~ BEER CONSUMPTION ON PREMISES PROHIBITED:

5.16.130: ~~5.16.140:~~ REVOCATION OF LICENSE:

5.16.140: ~~5.16.150:~~ INSPECTION:

5.16.150: ~~5.16.160:~~ VIOLATION; PENALTY:

5.16.010: LICENSE REQUIRED:

It shall be unlawful for any person, retailer, wholesaler, or other entity engage in the business of the sale of light beer at retail, in bottles or draft, within the city without first having procured a license therefor from the council as provided in this chapter. A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licenses shall comply with the Alcoholic Beverages Control Act ~~liquor control act~~ of Utah and the regulations of the Utah Alcoholic Beverage Control Commission ~~liquor control commission~~.

5.16.020: DEFINITIONS:

The following words and phrases used in this chapter shall have the meanings ascribed to them in this section unless a different meaning clearly appears from the context:

BEER: Any beverage containing not less than one-half of one percent of alcohol by ~~weight~~ volume, but no more than 4% of alcohol by volume or 3.2% by weight and obtained by the alcoholic fermentation, ~~of an~~ infusion, or decoction of any malted grain or similar products. "Heavy beer" means beer containing more than 3.2 percent of alcohol by weight. "Light beer" means beer containing not more than 3.2 percent of alcohol by weight. Beer may or ~~may not contain hops or other vegetable products.~~ "Beer" includes a product that contains alcohol as described herein and is referred to as beer, ale, lager, stout, and porter or a malt or malted beverage.

RETAILER: For the purposes of this Chapter, "retailer" means any person or business establishment engaged in the sale or distribution of beer to the consumers whether for consumption on or off the establishment's premises and that is licensed to sell beer by the Utah Alcoholic Beverage Control Commission, by the City pursuant to this Chapter, or both.

SELL OR SALE: When used in this chapter in any prohibition, includes to solicit, or to receive an order for, to keep or expose for sale, to deliver for value or gratuitously, to peddle, to possess with intent to sell or to traffic in, for any consideration promised or obtained directly or indirectly or under any pretext or by any means whatsoever to procure or allow to be procured for any other person.

WHOLESALE: Any person other than a brewer or retailer engaged in the importation for sale or in the sale of beer in the wholesale or jobbing quantities. (1986 Code)

#### 5.16.030: WHOLESALE LICENSE:

It shall be unlawful for any person or entity to engage in the business of selling beer at wholesale within the city without first obtaining a license therefor from the Utah Alcoholic Beverage Control Commission ~~liquor control commission of Utah~~ and paying the required fee therefor.

#### 5.16.040: LICENSE PRIVILEGES:

A. Retail licenses issued under this chapter shall be of the following kinds and shall carry the following privileges and be numbered numerically commencing from the number one:

1. A class A retail license shall entitle the licensee to sell beer on the premises licensed in original containers for consumption off the premises in accordance with the Utah Alcoholic Beverages Control Act ~~liquor control act of Utah~~.
2. A class B retail license shall entitle the licensee to sell beer in the original containers on the premises for consumption on the premises and to all of the privileges granted to the holder of a class A retail license and in accordance with the Utah Alcoholic Beverages Control Act ~~liquor control act of Utah~~.
3. A class C retail license shall entitle the licensee to sell beer on draft for consumption on or off the premises and to all the privileges granted the holders of class A and B retail licenses in accordance with the Utah Alcoholic Beverages Control Act ~~liquor control act of Utah~~.
4. A "seasonal license" shall carry the privileges of a class C retail license and shall be for a period less than one year.

B. It shall be unlawful for any licensee to purchase or acquire, or to have or possess for the purpose of sale or distribution, any beer except that which he shall have lawfully purchased from a brewer or wholesaler licensed in accordance with ~~under the privileges of the~~ Utah Alcoholic Beverages Control Act ~~liquor control act of Utah~~.

5.16.050: APPLICATION FOR LICENSE:

All applications for licenses authorized by this chapter shall be verified and filed with the council and shall state the applicant's name in full, and that he has complied with the requirements and possesses the qualifications specified in the liquor control act, and if the applicant is a partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors, and must be subscribed by the applicant who must state under oath that the facts stated therein are true. ~~Applicants must furnish such information, including a certificate of at least five (5) resident freeholders of the city to the effect that the licensee bears a good moral character and is a fit and proper person to be granted a license, as and when the council shall require.~~

5.16.060: QUALIFICATIONS OF LICENSEE:

No person shall be granted a retail license unless he shall be qualified as provided in the Utah Alcoholic Beverages Control Act ~~liquor control act~~ and under the provisions of ~~section 32-4-14~~ thereof.

5.16.070: BOND REQUIRED:

~~No license shall be granted by the council until the applicant shall have filed with the council a bond which bond shall be made in the favor of the city. The amount of the bond is to be set by resolution. (1986 Code)~~

5.16.070: 5.16.080: REFUSAL OF LICENSE:

~~The council may, with or without hearing, in its discretion, refuse to grant any license applied for and in no such case need any cause be stated.~~ No license shall be issued if the applicant or licensee shall not possess all the qualifications required by the Utah Alcoholic Beverages Control Act ~~liquor control act~~, or fails to comply with the provisions of this code, or the rules, regulations and orders of the board of health of the city.

5.16.080: 5.16.090: PERMIT FROM BOARD OF HEALTH REQUIRED:

No license shall be issued until the applicant therefor shall have first produced from the board of health a permit therefor, which permit shall show that the premises to be licensed are in a sanitary condition and that the equipment used in the storage or distribution, or sale of such beer, complies with all health regulations of the city and of the state. (1986 Code)

5.16.090: 5.16.100: TRANSFER OF LICENSE:

Licenses issued under this chapter shall not be transferable, and upon revocation thereof by the council, the fee paid by the licensee to the city for the license shall be forfeited to the city. (1986 Code)

5.16.100: 5.16.110: FEES:

A. Applications provided for in this chapter shall be accompanied by an application fee and an annual license fee based upon the classification of the license in an amount set by Resolution of the City Council ~~the fees provided in this section, which fees shall be deposited in the treasury if the license is granted and returned to the applicant if denied:~~

1. ~~For class A retail license, per year, or any part thereof, two hundred dollars (\$200.00);~~

2. ~~For class B retail license, per year, or any part thereof, two hundred dollars (\$200.00);~~

3. ~~For class C retail license, per year, or any part thereof, three hundred dollars (\$300.00);~~

4. ~~For "seasonal license" at the rate of thirty five dollars (\$35.00) per month for the season for which issued.~~

B. All licenses issued under this chapter shall expire on January 1 of each year except seasonal licenses or unless sooner canceled. Failure to meet the renewal requirements shall result in automatic forfeiture of the license effective of the date the existing license expires.

#### 5.16.110: 5.16.120: LICENSE RESTRICTIONS:

A. No person shall sell beer at any public dance or to any person intoxicated, or under the influence of an intoxicating beverage. No license shall be granted to sell beer in any dance hall, theater, or in the proximity of any church or school. No person shall sell beer to any person under the age of twenty one (21) years, and it shall be unlawful to sell beer ~~on Sunday or~~ between the hours of twelve o'clock (12:00) midnight and six o'clock (6:00) A.M. ~~on any other day.~~ It shall be unlawful to advertise the sale of ~~light~~ beer except in accordance with under such regulations of as is made by the Utah Alcoholic Beverage Control Commission liquor control commission of Utah; ~~provided, that a simple designation of the fact that beer is sold under city license may be placed in or upon the window or front of the licensed premises.~~

B. No licensee shall violate the terms of the license issued, nor unless he shall be so licensed shall he sell bottled or draft beer for consumption on the premises, or permit any beer to be consumed on the premises.

#### 5.16.120: 5.16.130: BEER CONSUMPTION ON PREMISES PROHIBITED:

A. It shall be unlawful for any person to consume beer on any premises licensed under this section or to have on the premises any open vessel or container containing beer unless the establishment is the holder of a class B or class C retail license.

B. It shall be unlawful for any licensee hereunder, his agent or employee, to allow the consumption of beer or similar beverage on any premises licensed hereunder, or to allow any vessel or container containing beer or similar beverage to remain open on the premises unless the establishment is the holder of a class B or class C retail license.

#### 5.16.130: 5.16.140: REVOCATION OF LICENSE:

~~The council may with or without a hearing, at its discretion, refuse to grant any license applied for, and may revoke at any time, and in no such case need any cause be stated.~~ No license shall be issued, and any license issued shall be revoked if the applicant or licensee shall not possess, or shall cease to possess, all of the qualifications required by the Utah Alcoholic Beverages Control Act ~~liquor control act~~, or fails to comply with the provisions of this code or rules, regulations and orders of the board of health, relating to health matters.

5.16.140: ~~5.16.150:~~ INSPECTION:

All licensed premises shall be subject to inspection by any officer, agent or peace officer of the city or the Utah Alcoholic Beverage Control Commission ~~liquor control commission~~, or the state board of health, and every licensee shall at the request of the board of health of the city furnish to it samples of beer which he shall have for sale.

5.16.150: ~~5.16.160:~~ VIOLATION; PENALTY:

It shall be unlawful for any person to violate any provision in this chapter, and any person convicted of violating any provision of any ordinance contained herein shall be punished by a fine not exceeding one thousand dollars (\$1000) ~~two hundred ninety nine dollars (\$299.00)~~, or by imprisonment for a period not longer than six (6) months, or by both such fine and imprisonment.