

# CITY OF RIO COMMUNITIES

ORDINANCE NUMBER 2013-7

## AN ORDINANCE AMENDING THE SECTION 5-2 OF THE MUNICIPAL CODE (LIQUOR LICENSE) OF THE CITY OF RIO COMMUNITIES, NEW MEXICO

### SECTION 5-2

#### LIQUOR LICENSE

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**5-2-1 TITLE**

These regulations shall be known as the "Liquor License Ordinance of the City of Rio Communities, New Mexico", and shall be referred to herein as "this Ordinance".

## 5-2-2

## COMPLIANCE

The sale or possession, for the purpose of sale, offering for sale, or the manufacture or transportation of alcoholic liquors, is hereby prohibited within the Village, except on the conditions provided for in this Ordinance.

## 5-2-3

## DEFINITIONS

For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

**A. Alcoholic liquors** means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverages, including blended and fermented beverages, dilutions or mixtures of one (1) or more of the foregoing, containing more than one-half (1/2) of one percent (1%) alcohol but excluding medicinal bitters.

**B. Beer** means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops, or other cereals in water and includes porter, beer, ale and stout.

**C. Brewer** means a person who owns or operates a business for the manufacture of beer.

**D. Club** means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state, with a membership of not less than fifty (50) members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges, and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) Is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) has been granted and exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible; or

**E. Commission** means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act.

**F. Department** means the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act.

**G. Director** means the director of the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act.

**H. Dispenser** means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises.

**I. Distiller** means a person engaged in manufacturing spirituous liquors.

**J. Governing Body** means the Mayor and Council of the City of Rio Communities.

**K. Hotel** means an establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five (25) sleeping rooms.

**L. Licensed Premises** means the contiguous area(s) connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure that are under the direct control of the licensee and from which the licensee is authorized to sell, serve, or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, including a restaurant that has operated continuously in two (2) separate structures since July 1, 2013 and that is located in a local option district that has voted to disapprove the transfer of liquor license into that local option district, hotel, golf course or racetrack, licensed premises includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack.

**M. Local Option District** means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages or any incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act.

**N. Manufacturer** means a distiller, rectifier, brewer or winer.

**O. Minor** means a person under the age of twenty-one (21) years of age.

**P. Package** means an immediate container of alcoholic beverages that is filled or packed by a manufacturer or wine bottler for sale - Any container or receptacle for the purpose of containing any alcoholic liquors, beer or wine, as marked by the manufacturers or wine bottler to wholesalers.

**Q. Person** means an individual, corporation, firm, partnership, copartnership, association or other legal entity.

**R. Public Celebration** includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

**S. Rectifier** means a person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors.

**T. Restaurant** means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods.

**U. Retailer** means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises.

**V. Spirituous Liquors** means alcoholic beverages as defined in Subsection A of this section except for fermented beverages such as wine, beer and ale.

**W. Wholesaler** means a person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale of alcoholic beverages for sale by the purchaser.

**X. Wine** includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half (1/2) of one per cent (1%) nor more than twenty-one percent (21%) alcohol by volume.

**Y. Wine bottler** means a New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale.

**Z. Winegrower** means a person who owns or operates a business for the manufacture of wine.

**AA Winer** means a winegrower.

#### **5-2-4 CLUB LICENESES**

**A.** In any local option district, a club qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a club license.

**B.** Club licenses shall not be transferred from one owner to another. A club license may be transferred from one location to another upon compliance with the provisions of the Liquor Control Act. A club license shall not be leased.

C. The provisions of Section 35 [60-6A-18 NMSA 1978] of the Liquor Control Act shall not apply to club licenses.

D. Shall meet the requirements of 60-7A.13 Sales by Clubs NMSA 1978.

**5-2-5 DISPENSER'S LICENSE**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a dispenser's license for the sale of alcoholic beverages.

B. A dispenser's license, when issued shall be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to the provisions of the Liquor Control Act.

**5-2-6 SPECIAL DISPENSER'S PERMITS**

A. In addition to the state fee and if previously provided for by Ordinance, the Governing Body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars (\$25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities.

B. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business, provided that the Governing Body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve (12) hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars (\$25.00) together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premise solely because of the issuance of the special dispenser's permit.

C. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function for which the permit was sought. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

D. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the Governing Body in charge of the public celebration, provided that Governing Body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this Section.

**5-2-7 RESTAURANT LICENSE**

A. At any time after the effective date of the Liquor Control Act [60-3A-1 NMSA 1978], a local option district may approve the issuance of restaurant licenses for the sale of beer

and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the Governing Body of the local option district without a petition from registered qualified electors having been submitted.

B. After the approval of restaurant licenses by the registered qualified electors of the local option district and upon completion of all requirements the Liquor Control Act [60-3A-1 NMSA 1978] for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant license to sell, serve or allow the consumption of beer and wine subject to the requirements and restrictions of sections 60-6A-4.B.1 through 8, 60-6A-4.C. and D NMSA 1978

**5-2-8 RETAILER'S LICENSE**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a retailer's license for the sale of alcoholic beverages.

B. A retailer's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to the provisions of the Liquor Control Act.

**5-2-9 WINEGROWER'S LICENSE**

A. Exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent (50%) of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director.

B. A person issued a winegrower's license pursuant to this section may do any of the provisions as set forth in Section 60-6A.11 NMSA 1978.

C. Must meet the requirements as set forth in the City Municipal 10-1 Zoning Ordinance.

**5-2-10 DRINKING IN PUBLIC ESTABLISHMENTS; SELLING OR SERVING ALCOHOLIC BEVERAGES OTHER THAN IN LICENSED ESTABLISHMENTS**

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] and this Ordinance for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act and this Ordinance for any person not a licensee to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

**5-2-11 DISPENSING**

It is unlawful to drink or consume alcoholic liquors, or for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors at any public dance, poolroom, bowling alley, street, state or federal building, or in any other public place or any public or private club, key club or coffee house, whether operated for profit or not, except establishments having a license to dispense alcoholic liquors. It is unlawful for any licensee to give any kind of "curb service" of alcoholic liquors, except in unbroken package, outside of the building on the premises at which the licensee's business is operated, except to customers seated at tables.

**5-2-12                                    LIMITATION ON NUMBER OF LICENSES**

A.        The maximum number of licenses to be issued under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978 shall be as follows:

1.        In an incorporated municipality, not more than one (1) dispenser's or one (1) retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand (2,000) inhabitants or major fraction thereof.

B.        For the purpose of this Section, the number of inhabitants of a local option district shall be determined by annual population estimates published by the economic development department.

**5-2-13                                    MINORS IN LICENSED PREMISES; REGULATIONS.**

A.        Any person licensed pursuant to the provisions of the Liquor Control act [60-3A-1 NMSA 1978] and this Ordinance or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act and this Ordinance.

B.        A minor shall not enter or attempt to enter any area of a licensed premise that is posted or otherwise identified as being prohibited to the use of minors, except as authorized by regulation or as necessitated by an emergency. A person who violates the provisions of this subsection is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

**5-2-14                                    SALE TO MINORS**

A.        It shall be unlawful for any club, retailer, dispenser, bartender, waiter, or servant or employee of any club, retailer or dispenser, or for any taxi driver, hotel employee or any other person, except the parent or guardian or spouse of any minor or adult person into whose custody any court has committed such minor for the time, outside of the actual, visible personal presence of such minor's parent, guardian, spouse or the adult person into whose custody any court has committed such minor for the time, to do any of the following acts:

- 1.        To sell, serve or give any alcoholic liquor to a minor.
- 2.        To buy alcoholic liquor for, or to procure the sale or service of alcoholic liquor to a minor.
- 3.        To deliver alcoholic liquor to a minor.

4. To aid or assist a minor to buy, procure or be served with alcoholic liquor.

B. It shall be unlawful for any minor to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverages except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by a court, who is present at the time the alcoholic beverages are bought or received by him or possessed by him or served or delivered to him.

C. Any person not a minor, who deceives another person to believe that a minor is legally entitled to be sold, served or delivered alcoholic beverages has violated this section.

D. The term "minor" as used in this section, shall mean any person under twenty-one (21) years of age.

#### **5-2-15 SALES BY MINORS PROHIBITED**

It shall be unlawful for any person to permit any person under the age of twenty-one (21) years to sell or serve alcoholic liquors, including wines and beer.

It shall be unlawful for any retailer or dispenser knowingly to employ any person under the age of twenty-one (21) years in the sale or service of alcoholic liquors.

#### **5-2-16 OPENING HOURS**

A. The licenses of retailers of alcoholic liquors shall allow them to sell and deliver alcoholic liquors, and the licenses of dispensers of alcoholic liquors and club liquor licenses shall allow them to sell, serve, deliver and permit the consumption of alcoholic liquors on their licensed premises on Mondays from 7:00 a.m. until midnight, on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, and on Sundays after midnight of the previous day until 2:00 a.m., then from noon until midnight. Dispenser, retail and club licenses shall close their places of business during voting hours on the days of the biennial primary election of each even numbered year and the biennial general election held upon the first Tuesday in November of each even numbered year, and on the days of City elections for City officers, and on the days of such other elections as may be prescribed by rules and regulations promulgated by the director of the Department of Alcoholic Beverage Control.

B. It is unlawful for any licensed retailer of alcoholic liquors to sell or deliver alcoholic liquors, or for any licensed dispenser or club to sell, deliver, serve or permit the consumption of alcoholic liquors, on their licensed premises during hours other than those prescribed by this section.

#### **5-2-17 ANNUAL LICENSE TAX**

Municipalities within or composing local option districts may impose an annual, nonprohibitive municipal license tax upon the privilege of persons holding state liquor licenses under the provisions of the Liquor Control act [60-3A-1 NMSA 1978] to operate within such municipalities as retailers, dispenser licenses, restaurant licensees or club licensees.

The annual license tax for the City of is \$250.00 (two hundred fifty dollars).



The license tax imposed by this section shall be paid either in cash or by certified draft to the Planning & Zoning Administrator/Officer as provided prior to the sale by any such license of alcoholic liquors within the City, such tax to be payable as follows:

- A. In full payment of the aggregate amount of annual license tax due and owing to accompany any such application for license.
- B. In lieu of full payment, licensee may elect in writing to pay such annual license tax in equal semiannual installments payable on or before June 30<sup>th</sup> and on or before December 31st of each and every year.

Any person holding a retailer's, dispenser's or club license from the Department of Alcoholic Beverage Control and desiring to pay the license tax imposed by this Section shall file with the Planning & Zoning Administrator/Officer a duplicate copy of the original application filed with and approved by the Department of Alcoholic Beverage Control. The application shall be accompanied by cash or a certified draft in full for the annual license fee, or in lieu thereof, if the applicant so elects to pay by semiannual installments, in a sum equal to fifty percent (50%) of such annual license tax. Upon the filing of an application as herein provided and payment in full or, the respective pro rata semiannual installment of annual license tax as shall be due and owing, it shall be the duty of the Planning & Zoning Administrator/Officer to issue a license to such applicant for one (1) year or for one half (1/2) year as the case may be, evidencing payment of such license tax in accordance with the provisions of this Section.

Upon default in the payment in any such semiannual installment of annual license tax as herein provided, said license shall be deemed to have expired.

#### **5-2-18**

#### **LICENSE - TERM, ASSIGNMENT, TRANSFER**

The annual license fee herein imposed shall embrace the period commencing on July 1, and expiring on June 30 following. Such annual license fee will not be prorated, provided, however, that a license issued prior to the first day of October shall be subject to the full amount of the annual license fee; licenses issued on or subsequent to the first day of October and prior to the first day of January, following, shall be subject to three-fourths (3/4) of the annual fee; licenses issued on or subsequent to the first day of January and prior to the first day of April of a year shall be subject to one-half (1/2) of the annual license fee, in conformity with State law, anything herein to the contrary notwithstanding. Revocation or suspension of any retailer's, dispenser's or club license shall not entitle the licensee to the refund of any portion of the City license fee paid nor shall such licensee be relieved in anyway of the obligation for the payment of any deferred quarterly of the City police or any regular police officer, upon written order of the Mayor duly entered, to forthwith close up the place of business or any retailer, dispenser or club who has not paid or tendered the City license tax imposed by Section 5-2-4 in accordance with the terms of Sections 5-2-1 through 5-2-11. Such closing shall be in addition to any penalties which may be imposed pursuant to this Ordinance.

#### **5-2-19**

#### **PENALTIES**

Any person violating any of the provisions of this Ordinance shall, upon conviction, be subject to a fine not exceeding \$500.00 (five hundred dollars) or imprisonment for a period not exceeding ninety (90) days, or both such fine and imprisonment. Violations continued for a period of fifteen (15) days after conviction shall be prosecuted and treated as a separate offense.

**5-2-20 SEVERABILITY**

Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity and enforceability of such section, paragraph, clause or provisions shall not affect any of the remaining provisions of this Ordinance.

**5-2-21 REPEALER**

All Ordinances or Resolutions, or part thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. The Section 5-2 of the Code of the City of Rio Communities is hereby repealed and replaced.

Adoption of this Ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said Ordinance 5-2 if the violations is also a violation of the provisions of this Ordinance. The repealer shall be construed to revive any Ordinance or Resolution, or part thereof, heretofore repealed.

**5-2-22 EFFECTIVE DATE**

This Ordinance shall be in full force and effect five (5) days after its adoption, approval and publication as provided by law.

**PASSED, APPROVED AND ADOPTED** 27<sup>th</sup> **DAY OF** August, 2013.



**Mayor**  
**City of Rio Communities**

**ATTEST:**



**Mayor Pro Tem**  
**City of Rio Communities**

**Effective Date** August 27<sup>th</sup> 2013