

ORDINANCE NO. 7
Series 2003

July 15, 2003: Introduced as Council Bill 08-03 by Councilmember Doug Tisdale, seconded by Councilmember Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

August 5, 2003: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 7, Series 2003.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 8, OF TITLE 3, OF THE CITY CODE
RELATING TO ALCOHOLIC BEVERAGES**

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with article XX of the Colorado Constitution; and

WHEREAS, in accordance with the City's home rule power and upon specific authority conferred by Articles 46, 47 and 48 of Title 12, Colorado Revised Statutes, as amended, this Chapter is enacted for the purpose of promoting the health, safety and welfare of the present and future inhabitants of the City by regulating, controlling and licensing the sale of alcoholic beverages in a manner consistent with the laws of the State of Colorado; and

WHEREAS, in 1985, the City enacted and imposed an annual occupation tax on certain classes of alcoholic beverage licenses and has maintained such tax since its original enactment; and

WHEREAS, the City does not intend to alter or modify the previously adopted annual occupation tax by the adoption of this Ordinance,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

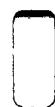
Section 1. Chapter 8, Title 3, of the City code of the City of Cherry Hills Village is amended to read as follows:

Chapter 8
ALCOHOLIC BEVERAGES

SECTIONS:

- 3-8-1 Definitions
- 3-8-2 License Required
- 3-8-3 Applications For New Licenses
- 3-8-4 Setting of Public Hearing for New Licenses
- 3-8-5 Investigation
- 3-8-6 Public Hearing
- 3-8-7 Decision on New Applications
- 3-8-8 License Renewals
- 3-8-9 Special Events Permit
- 3-8-10 Optional Premises License
- 3-8-11 Transfer Of License
- 3-8-12 Change In Manager
- 3-8-13 Notice Of Show Cause Or Non-Renewal Hearing
- 3-8-14 Procedural Rules And Regulations
- 3-8-15 License Fee and Application Fee
- 3-8-16 Fines In Lieu Of Suspension
- 3-8-17 Violations; Penalty
- 3-8-18 Hearings, Aggravating And Mitigating Factors
- 3-8-19 Annual Occupation Tax

ABJ053



3-8-1 DEFINITIONS: As used in this chapter, the following words and terms shall be defined as follows:

"*Applicant*" means and includes:

1. If an individual, that person making an application for a license under this Chapter;
2. If a partnership, the partners owning ten percent or more of the partnership that is making application for a license under this Chapter;
3. If a corporation, the president, vice-president, secretary, treasurer, the directors, manager and each stockholder owning ten percent or more of the stock of the corporation that is making application for a license under this Chapter.
4. If a limited liability company, the manager and any member owning more than ten percent interest in the company that is making application for a license under this Chapter.

"*Authority*" or "*Licensing Authority*" means the City Council of the City of Cherry Hills Village, Colorado. Such term shall also include the City Clerk where the City Clerk is delegated the authority to administratively approve an application in accordance with this Chapter.

"*Colorado Liquor Code*" means Articles 46 and 47 of Title 12 of the Colorado Revised Statutes and all rules, regulations, directives, guidelines, and codes promulgated by the State of Colorado under the authority of Articles 46 and 47 of Title 12 of the Colorado Revised Statutes.

"*Manager*" includes the person or those persons who manage, direct, supervise, oversee and administer the acts, transactions and acts of employees of the establishments governed by this chapter.

"*Operator*" means a person licensed by law to sell alcoholic beverages at retail and who is engaged at any time during the calendar year in such operation within the City.

"*Person*" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee thereof.

All other words and phrases used in this chapter shall have the meanings attached by the Colorado Statutes regulating the sale of alcoholic, or if not otherwise defined by such law, as used in their common, ordinary and accepted sense and meaning.

3-8-2 LICENSE REQUIRED: No person shall manufacture, sell, or possess for sale any alcoholic beverage within the City unless such person holds a valid and effective license issued in accordance with both this Chapter and applicable provisions of Articles 46, 47, and 48 of Title 12, Colorado Revised Statutes, as amended, and all applicable fees and taxes have been paid in full.

3-8-3 APPLICATIONS FOR NEW LICENSES:

- A. The City Clerk shall receive all applications for licenses, and shall issue licenses granted by the Licensing Authority in accordance with this Chapter, upon receipt of such license fees and occupation taxes as are required by law and this Chapter.
- B. All applications for new licenses for the sale of alcoholic liquors at retail shall be filed with the City Clerk and shall be subject to the provisions of this Chapter and Articles 46 and 47 of Title 12 of the Colorado Revised Statutes. The City Clerk shall not accept an application that is not complete in every detail. If any application is deposited with the City Clerk and found upon examination to contain any omission or error, it shall be returned to the applicant for completion or correction without further action either by the Clerk or the Licensing Authority. All



licenses granted, except special events permits, shall be valid for a period of one (1) year from the date of their issuance unless revoked or suspended. No application shall be deemed complete by the City Clerk unless accompanied by the following:

1. All items required by statute or Colorado Department of Revenue Regulation;
 2. Payment in full of the City and State of Colorado license fees and an additional fee for the actual and necessary expenses of processing the application, conducting a public hearing, investigating, and for publishing and posting the required notice of such hearing;
 3. Evidence from the Department of Community Development that the location of the proposed establishment meets the requirements of the applicable City zoning ordinance;
 4. In the event that the application is for a hotel and restaurant license, a tavern license, a club license, or a beer and wine license, evidence from the appropriate county health department that the applicant is or may be licensed to operate a restaurant;
 5. Copies of any contract or agreement that confers a power of authority upon any party to manage, operate, or supervise the affairs of the proposed establishment and the acts of its employees, whether such a contract or agreement is presently in effect or whether it is intended to become effective following issuance of a license;
 6. An affidavit stating that the proposed licensed premises is not located within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary;
 7. If any petitions signed by parties in interest that demonstrate the needs of the neighborhood and the reasonable requirements of the neighborhood regarding issuance of the license are to be submitted to the Licensing Authority at the public hearing, such petitions shall be submitted to the City Clerk not less than fifteen (15) days prior to the date of the public hearing on the application; and
 8. Any other information, document, or form that the Licensing Authority deems necessary to carry out its duties as set forth in Title 12, Articles 46, 47 and 48 of the Colorado Revised Statutes, as amended, and all applicable regulations;
- C. Other provisions in this section notwithstanding, where an applicant pursuant to a previous application under this Chapter has submitted documentation and such documentation is complete, current, and in the possession of the City Clerk, the City Clerk may waive resubmission of such documentation;
- D. It shall be the obligation of the applicant to post notices required by the Colorado Liquor Code except that, at the applicant's request and upon the applicant's payment of a reasonable administrative fee for posting as established by the City Clerk, the City Clerk may post such notice(s) on behalf of the applicant. The City Clerk shall be responsible for preparing the required notice(s) for new applications.

3-8-4 SETTING OF PUBLIC HEARING FOR NEW LICENSES:

- A. Upon the City Clerk's administrative determination that the application is complete, the City Clerk shall schedule a public hearing upon the application to be heard not less than thirty (30) days from the date the application is accepted. The date of acceptance of the application by the City Clerk shall be deemed to be the date of the City Clerk's determination that the application is complete for the purposes set forth in the Colorado Revised Statutes.
- B. The boundaries of the City of Cherry Hills Village are hereby declared to establish the neighborhood affected by a proposed liquor license for purposes of the processing of a new license application. An applicant may request in writing that the Licensing Authority administratively consider alternative boundaries of the



neighborhood for purposes of a specific application and, in the event of such request, consideration of the application shall be continued or postponed until the Licensing Authority administratively considers and establishes the appropriate neighborhood boundaries for purposes of the application. Prior to the Licensing Authority's administrative consideration, the applicant may submit a written statement to the Authority supporting the establishment of boundaries of the neighborhood as advocated by the applicant.

- C. The City Clerk shall prepare an official map showing the location of the proposed outlet and all outlets within the defined neighborhood to be presented at the public hearing.

3-8-5 INVESTIGATION:

- A. Within seven (7) days after the application has been accepted by the City Clerk, the following individuals shall present themselves to the Police Department to be photographed and fingerprinted:

1. If the applicant is a natural person, that person;
2. If the applicant is a partnership, those partners who have a ten (10) percent or more financial interest in the partnership;
3. If the applicant is a corporation, both the officers and directors, together with any person owning more than ten (10) percent of the stock thereof;
4. If the applicant is a limited liability company, the manager and those members having more than a ten (10) percent interest in the company; and
5. Irrespective of the identity of the applicant, the manager of the proposed establishment having a tavern license or a hotel and restaurant license.

- B. The Police Department shall make background investigations of the above-named individuals, and for this purpose such individuals shall provide all information necessary for the investigation. Where a partner or corporate officer, director or stockholder, member or manager lives at such a distance from the City that travel would impose undue expense or inconvenience, the Chief of Police shall have the discretion to make other suitable arrangements in order to obtain the necessary photographs, fingerprints and information. Where a background investigation has been previously made of any individual enumerated in this section either by the Police Department or another law enforcement agency, the Chief of Police shall have the discretion to employ such investigation and may waive the fingerprinting and photographing required by this section.

- C. The Police Department shall obtain additional information as necessary to properly carry out the provisions of Title 12, Articles 46, 47 and 48 of the Colorado Revised Statutes, as amended, the rules and regulations promulgated by the Colorado Department of Revenue, the ordinances of the City, and the rules and regulations of the Licensing Authority.

- D. Any reports of the results of any investigation conducted by any department shall be delivered by the respective departments or officials to the City Clerk at least ten (10) days prior to the date of the public hearing. Not less than five (5) days prior to the date of the hearing on the application, the report of the findings based on the investigation shall be mailed by the City Clerk to the applicant and to other interested parties upon request.

3-8-6 PUBLIC HEARING:

- A. The applicant and a representative, if any, shall attend the public hearing on the application.
- B. The Licensing Authority may establish written procedures for the conduct of public hearings in conformity with the laws of the State of Colorado and ordinances and resolutions of the City. In the absence of such written procedures, the Licensing



Authority shall act in accordance with common practices and procedures employed in the conduct of other quasi-judicial public hearings.

- C. The Licensing Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing that the Licensing Authority is authorized to conduct. It is unlawful for any person to fail to comply with any subpoena issued by the Licensing Authority in the proper conduct of its hearings.
- D. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State of Colorado. Upon failure of any witness to comply with such subpoena, the City Attorney shall, at the direction of the Licensing Authority:
1. Petition a judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or
 2. Petition the District Court in and for Arapahoe County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

3-8-7 DECISION ON NEW APPLICATIONS: Following the public hearing on a new application, the Licensing Authority shall render its decision no later than thirty (30) days of the date of the public hearing; provided, however, that the Licensing Authority may continue the hearing from time to time as may be required to gather necessary facts and evidence and to permit witnesses to testify, and the time limit for the decision on a new application shall run from the date of the conclusion of the hearing, as continued.

3-8-8 LICENSE RENEWALS:

- A. All renewal applications for alcoholic beverage licenses shall be submitted to the City Clerk on the prescribed forms no later than forty-five (45) days prior to the date on which the license expires, except that the Licensing Authority, for good cause, may waive the time requirement set forth in this section. The forms shall be accompanied by all the required fees and such additional materials as the Licensing Authority deems necessary to carry out the provisions of the Colorado Liquor Code, this Chapter, and all applicable regulations. The City Clerk shall not accept an application unless the application is complete in every detail. If any application is deposited with the City Clerk and found upon examination to contain any omission or error, it shall be returned to the applicant for completion or correction without further action either by the Clerk or the Licensing Authority.
- B. The City Clerk is authorized to administratively review and approve an application for the renewal of any previously approved liquor license where, after a reasonable investigation by the City Clerk and consultation by the Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found by the City Clerk to exist:
1. The applicant has timely and properly submitted a complete license renewal application and tendered all required fees and taxes in accordance with this Chapter and the provisions of Title 12 of the Colorado Revised Statutes.
 2. The applicant's license is in good standing with the City and the State of Colorado and no violation of law has occurred over the previous year.



3. To the knowledge of the City Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises.
4. There is no other information or knowledge available to the City Clerk that would cause the Clerk, in his or her reasonable belief, to believe that no other violation of applicable law has occurred and the license should not be renewed.

C. The City Clerk shall retain the discretion to refer and forward any renewal application to the Licensing Authority for review and renewal decision when, in the Clerk's sole discretion, the renewal application presents questions or issues more appropriately considered by the Licensing Authority.

3-8-9 SPECIAL EVENTS PERMIT: The Licensing Authority may issue special events permits for sale of alcoholic beverages as set forth in Title 12, Article 48 of the Colorado Revised Statutes, as amended, and the regulations promulgated by the State of Colorado. An application for a special events permit shall be accompanied by payment of all applicable state fees as well as a fee to cover the costs to the City of investigation and issuance of a permit. When an event is held on premises owned or controlled by the City, proof of insurance acceptable to the City Attorney must be filed with the application. Notice of the City's receipt of an application for special events permit and the ability to protest the issuance of the permit shall be posted on the property subject to the proposed special event permit not less than ten (10) days prior to the date of approval of the permit by the Licensing Authority. It shall be the obligation of the applicant to post notices required by the Colorado Liquor Code except that, at the applicant's request and payment of a reasonable administrative fee for posting as established by the City Clerk, the City Clerk may post such notice. The City Clerk shall be responsible for preparing the required notice for special events permits. A hearing by the Licensing Authority on the special event permit application shall not be necessary unless a protest to the application is filed in accordance with section 12-47-107 of the Colorado Revised Statutes.

3-8-10 OPTIONAL PREMISES LICENSE: The Licensing Authority may issue optional premises licenses as set forth in Title 12, Article 47 of the Colorado Revised Statutes, as amended, and the regulations promulgated by the State of Colorado. The standards for issuing an optional premises license shall be those standards set forth in Title 12, Article 47 of the Colorado Revised Statutes, as amended.

3-8-11 TRANSFER OF LICENSE: An application for a transfer of ownership of a licensed premises shall be on forms prepared and furnished by the state Licensing Authority. No application shall be accepted unless complete and unless all applicable fees have been paid. A hearing by the Licensing Authority on the application shall not be necessary, unless the City opposes the transfer or unless the Licensing Authority determines a hearing would benefit the public.

3-8-12 CHANGE IN MANAGER:

- A. Any change in the manager of a licensed establishment shall require approval of the Licensing Authority. The licensee seeking a change in manager shall file the prescribed forms with the City Clerk within thirty (30) days of such change and the new manager shall present himself or herself to the Police Department for photographing, fingerprinting, and background investigation.
- B. The City Clerk may administratively approve a change of manager for any licensed establishment upon a finding by the Clerk, after consultation with the City Manager and the Chief of Police, that there is no information or knowledge available to the Clerk that could support denial of the application for change in manager. The City Clerk shall refer any application for change of manager to the Licensing Authority for the Authority's review and decision where the Clerk finds that information may support denial of the application.

3-8-13 NOTICE OF SHOW CAUSE OR NON-RENEWAL HEARING: The Licensing Authority may suspend or revoke a license in accordance with the Colorado Liquor Code. When the Licensing Authority issues an order to show cause why a license should not be suspended or revoked, the Licensing Authority shall give the licensee reasonable advance notice of the time and place of the hearing, the authority and jurisdiction under which the



hearing is to be held, and the violation(s) alleged to support the complaint. Such notice shall be mailed by the City Clerk to the licensee by first-class mail, postage prepaid.

3-8-14 PROCEDURAL RULES AND REGULATIONS: The Licensing Authority may promulgate reasonable procedural rules and regulations for carrying out the provisions of this Chapter, provided that the rules and regulations are not in conflict with the Colorado Liquor Code or any other provision in this Chapter.

3-8-15 LICENSE FEE AND APPLICATION FEE:

- A. There shall be levied and assessed for each year an annual City liquor license fee upon the business of selling alcoholic beverages in the City based on the type of license held by the licensee. The license fee shall be levied in an amount as set forth in 12-47-505 of the Colorado Revised Statutes, as amended.
- B. There shall be levied and assessed an application fee for all applications submitted to the City for a license or other form of approval pursuant to the Colorado Liquor Code. The amount of such application fee shall be the maximum authorized by the State of Colorado. In the event that no maximum fee is specifically established by the State of Colorado, the application fee shall be administratively established by the City Clerk based on the actual and necessary expenses associated with the City's processing of the application. In no event shall the application fee for the following applications be less than set forth below:

New license:	\$ 500.00
License renewal:	\$ 50.00
Modification of premises:	\$ 100.00
Transfer of ownership:	\$ 500.00
Transfer of location:	\$ 500.00
Change of corporate structure:	\$ 100.00
Special events permit (malt, vinous, spirituous liquors):	\$ 25.00
Special events permit (malt beverage):	\$ 10.00
Temporary permit:	\$ 100.00
Manager's Registration	\$ 75.00
Late Renewal	\$ 500.00

3-8-16 FINES IN LIEU OF SUSPENSION: The Licensing Authority is empowered to impose fines in lieu of the suspension of a license to sell alcoholic beverages as provided for in the Colorado Liquor Code.

3-8-17 VIOLATIONS; PENALTY: Penalties for violations of this Chapter shall be as provided for in Section 1-4-1 of this City Code and shall be in addition to any special penalty provided for in this Chapter. Each twenty four (24) hour period during which such violation occurs shall constitute a separate offense and violation of this Chapter. Notwithstanding any other penalty that may be levied, any licensee, his manager or agent, who violates the terms of this Chapter shall be subject to suspension or revocation of his liquor license pursuant to the Colorado Liquor Code.

3-8-18 HEARINGS, AGGRAVATING AND MITIGATING FACTORS: In all cases where a hearing is held regarding the referred to issue, suspension, revocation or nonrenewal of any license issued pursuant to this Chapter, the Licensing Authority shall consider the following factors in mitigation or aggravation:

- A. Seriousness of the violations (affront to the public).
- B. Corrective action(s) taken (if any).

ABJ053



- C. Prior violations and offenses at the licensed premises and effectiveness of prior corrective action.
- D. Prior violations and offenses by this licensee.
- E. Violation as a repeated course of conduct or as a single event.
- F. Likelihood of recurrence.
- G. Willfulness of the violations.
- H. Hardship on this licensee for the sanction imposed.
- I. Length of time a license has been held by this licensee.
- J. Previous sanctions imposed against this licensee.
- K. Other factors making the situation with respect to the licensee or premises unique.

3-8-19 ANNUAL OCCUPATION TAX:

A. The City Council finds, determines and declares that considering the nature of the business of selling alcoholic beverages and the relationship of such business to the municipal welfare, as well as the relationship thereof to the expenditures required of the City, and a proper, just and equitable distribution of the tax burdens within the City and all other matters properly to be considered in relation thereto, the classification of such business as a separate occupation is reasonable, proper, uniform, non-discriminating and necessary for a just and proper distribution of the tax burdens within the City.

B. For purposes of imposing an annual occupations tax, the following classes of licenses shall be defined:

Class "A" Operators: All operators licensed to sell alcoholic beverages for consumption on the premises, either as hotels or restaurants or taverns shall be Class "A" operators.

Class "B" Operators: All operators licensed to sell alcoholic beverages for consumption on the premises and at an optional premise location at hotels or restaurants, taverns or clubs (Classes A and C) shall be Class "B" operators, which shall be supplemental to their primary class of license.

Class "C" Operators: All operators licensed to sell alcoholic beverages as clubs are Class "C" operators.

Class "D" Operators: All operators licensed to sell alcoholic beverages after the hour of eight o'clock (8:00) P.M. and until midnight on Sundays and Christmas either as hotels or restaurants, taverns, or clubs (Classes A and C) shall be Class "D", which shall be supplemental to their primary class of license.

C. The following annual occupation tax shall be levied and assessed by this Chapter as follows:

For all Class "A" operators	\$2,000.00
For all Class "B" operators (supplemental)	\$200.00
For all Class "C" operators	\$2,000.00
For all Class "D" operators (supplemental)	\$800.00

Such occupation taxes shall be in addition to the annual license fees and application fees paid to the City and the State of Colorado and shall be paid prior to the issuance of the City license. No refund of any tax paid in accordance with this Chapter shall be made to any person who discontinues or sells his business during the duration of the license; provided, however, that the new owner of any establishment, when approved as the new licensee, shall be credited on a monthly basis for any occupation tax paid by the previous owner for the term of the previous owner's license.

ABJ053



D. In addition to any other remedy provided by this Chapter, the City shall have the right to recover all sums due and owing under this Chapter by any civil remedy available under existing laws.

Section 2. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable.

Adopted as Ordinance No. 07, Series 2003, by the City Council of the City of Cherry Hills Village, Colorado this 5th day of August, 2003.

By: Viola Lahana
Viola Lahana, Mayor Pro-tem

ATTEST:

Jennifer Fettinger
Jennifer Fettinger, City Clerk

APPROVED AS TO FORM:

Robert C. Widner
Robert C. Widner, City Attorney

MNB302

