TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 17, SERIES 2018

AN ORDINANCE AMENDING AND RESTATING CHAPTER 2, ARTICLE 7 OF THE TIMNATH MUNICIPAL CODE PERTAINING TO LOCAL LICENSING AUTHORITY

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the "Charter") and the Town’s Municipal Code (the "Code"). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, a "Local Licensing Authority" means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution (See Section 44-3-103(27), C.R.S.); and

WHEREAS, the Local Licensing Authority possess all the powers of the local licensing authority as set forth in the Colorado Liquor Code (Section 44-3-101, et seq., C.R.S.), the Colorado Beer Code (Section 44-4-101, et seq., C.R.S.), and the Special Events Permits Code (Section 44-5-101, et seq., C.R.S.) ; and

WHEREAS, pursuant to state law, the Local Licensing Authority is not required to conduct a hearing, under certain circumstances on applications for license renewal, modification of premises, temporary permits, special events permits and routine licensing matters; and

WHEREAS, the Local Licensing Authority has the discretion to delegate the authority to administratively process and approve such applications, without a hearing, upon certain terms and conditions as the Local Licensing Authority may establish consistent with state law; and

WHEREAS, the Local Licensing Authority finds that the administrative processing and approval of applications for renewal, modification of premises, temporary permits and routine licensing matters is the most efficient and cost-effective manner of action on such applications when there does not appear to be any cause for the Local Licensing Authority to review such applications; and

WHEREAS, the Local Licensing Authority wishes to delegate to the Town Clerk the authority to administratively process and approve applications for renewal, modifications of premises, temporary permit, special event permits and certain routine licensing matters under the terms and conditions set forth in this Ordinance; and

WHEREAS, the Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:
ARTICLE 1 - The Town Council hereby approves the attached amendment to Chapter 2, Article 7 of the Code of the Town of Timnath as set forth in Exhibit A.

ARTICLE 2 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 3 – EFFECTIVE DATE

This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON NOVEMBER 13, 2018 AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON DECEMBER 11, 2018 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 13TH DAY OF NOVEMBER 2018.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON DECEMBER 11, 2018.

TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

Chapter 2 - Administration

Article 7 - Local Licensing Authority

Sec. 2-7-10. - Creation.

There shall be and is hereby created a Liquor Licensing Authority, hereafter referred to in this Chapter as the "Authority."

Sec. 2-7-20. - Composition.

The Authority shall have two divisions as follows:

(a) The Town Council shall serve as the Authority for all new liquor license applications, applications for transfer of ownership, applications for modification, renewals of existing liquor licenses and all other liquor licensing matters.

(b) The Municipal Judge shall serve as the Authority for show-cause orders, hearings on suspensions and revocations and other disciplinary actions.

Sec. 2-7-30. - Town Clerk duties.

The Town Clerk shall:

(a) Issue all licenses granted by the Liquor Licensing Authority upon receipt of such license fees as are required by law;

(b) Serve as the secretary of the Liquor Licensing Authority;

(c) Establish a calendar of regular meetings for the Liquor Licensing Authority which calendar may be modified by the Authority;

(d) Process all license renewal applications, including late renewal applications, on behalf of the Liquor Licensing Authority upon receipt of a completed application and such license fees as are required by law;

(e) Process all change in corporate structure, trade name change and corporate name change report forms on behalf of the Liquor Licensing Authority upon receipt of a completed form and such license fees as are required by law; and

(f) Process all transfer of ownership applications in which no new principals are being added to the ownership, on behalf of the Liquor Licensing Authority upon receipt of a completed application and such license fees as are required by law.

(g) Process all applications for special event permits on behalf of the Liquor Licensing Authority pursuant to Sec. 2-7-90.
(h) Administratively approve an application for renewal when, after Town Staff has completed its investigation and evaluation of the application, the Town Clerk finds that:

1. No violations of State or Town liquor licensing statutes, rules, regulations, ordinances or resolutions have occurred on the license premises in the twelve (12) months preceding the date of application;

2. The Timnath Police Department has advised the Town Clerk that it has no objection to or concerns with the renewal; and

3. All applicable application and license fees have been paid.

(i) Administratively approve an application for modification of premises only when the modification of premises does not enlarge the licensed area, and after Town Staff has completed its investigation and evaluation of the application, the Town Clerk finds that:

1. The license has the right to possess the premises, as modified, by ownership, lease, rental or other arrangement;

2. The modified premises will comply with all applicable zoning laws;

3. The modified premises will comply with all applicable requirements of Title 44, Article 3, Article 4, and Article 5, C.R.S. and the regulations promulgated thereunder, including but not limited to the distance requirements; and

4. All applicable application and license fees have been paid.

(j) Administratively approve an application for a temporary permit when, after Town Staff has completed its investigation and evaluation of the application, the Town Clerk finds that:

1. The application was timely filed, no later than thirty (30) days after the filing of the application for transfer of ownership;

2. The Timnath Police Department has completed its initial investigation and background check and has no objection to or concerns with issuance of the temporary permit; and

3. All applicable application, license and permit fees have been paid.

(k) If the Town Clerk fails to find any of the administrative approval criteria applicable to a particular application, the Town Clerk shall refer the application to the Authority for a decision. The Town Clerk may elect to refer any application to the Authority for decision, even when such applicable is eligible for administrative approval, in his or her sole discretion.

Sec. 2-7-40. - Functions.
(a) The Authority shall have the duty and authority to grant or refuse licenses for the possession, sale and offering for sale of malt, special malt, vinous or spirituous liquors and fermented malt beverages as provided by law, to conduct investigations as are required by law and to levy penalties against licensees in the manner provided by law.

(b) The Authority shall have all the powers of the Local Licensing Authority as set forth in Title 44, Article 3, Article 4, and Article 5 of C.R.S.

(c) The Authority shall have the power to promulgate rules and regulations concerning the procedures for hearings before it and the presentation of evidence at hearings.

(d) The Authority shall have the power to require any applicant for a license to furnish any relevant information required by the Authority.

(e) The 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 which the Authority is authorized to conduct. It shall constitute a violation of this Code for any person to fail to comply with any subpoena issued by the Authority in the proper conduct of its hearings. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State.

Sec. 2-7-50. - Conduct of hearings.

(a) All hearings before the Authority shall be public and shall be conducted according to the rules and regulations concerning the procedure for hearings promulgated by the Authority.

(b) No testimony shall be offered at a hearing unless the same is given under oath.

Sec. 2-7-50. - Public notice of hearings.

The applicant shall cause to be posted the public notice required pursuant to Section 44-3-311, C.R.S., for all hearings to be held on applications for the sale of malt, special malt, vinous or spirituous liquors and fermented malt beverages. The applicant shall provide to the Town Clerk evidence of such posting, which shall consist of a photograph of the posted sign in place together with a signed statement evidencing posting.

Sec. 2-7-60 - Hearings on new license and change of location applications.

(a) Applicants and all other parties-in-interest may appear in person or be represented by counsel. At any hearing held by the Authority for purposes of establishing the needs, desires and requirements of the neighborhood, only a party-in-interest and agents responsible for petition circulation shall be allowed to present evidence, testify or cross-examine witnesses.

(b) The Authority may limit the presentation of evidence tending to be repetitious or immaterial.

(c) As applicable, the applicant may introduce evidence with regard to the following:
(1) Information regarding the applicant’s character, reputation and other matters relating to the personal qualifications of the applicant or any other person whose personal qualifications are relevant pursuant to law;

(2) The applicant’s relevant financial and management associations and the relevant interests of other persons in the business;

(d) The type of building in which the business is to be conducted and the facilities which will be used by the applicant, including a floor plan of the proposed premises;

(e) The neighborhood affected by the application. There is a rebuttable presumption that the relevant neighborhood most likely to be affected by the applicant’s proposed establishment is that area surrounding such establishment within a one-mile radius. The Town Clerk shall notify the applicant of the boundaries of the neighborhood pursuant to this presumption, which boundaries shall be accepted or rejected by the applicant, in writing, within five (5) days thereafter. If the proposed boundaries are rejected, the matter shall be scheduled for a boundary hearing before the Authority, at which time evidence may be presented by any party-in-interest for the purpose of modifying the geographic extent of the presumed relevant neighborhood.

(f) The reasonable requirements of the neighborhood and the desires of its inhabitants for the type of license for which application has been made.

(1) Petitions favoring or opposing the license applied for may be presented at the hearing. Petitions may be circulated only within the neighborhood affected by the application. Every person signing the petition shall sign only their own name, address and their age or otherwise indicate that such person is at least of legal age to purchase or consume the malt, special malt, vinous or spirituous liquors or fermented malt beverages which are the subject of the license applied for. The date when the signature is affixed to the petition shall be put on the petition by the party signing the same. No signatures will be considered which are dated prior to the date the application was received by the Town Clerk.

(2) Each petition shall contain a verified statement signed by the circulator of the petition indicating that the circulator personally witnessed each signature appearing on the petition and that, to the best of his or her knowledge, each signature is the signature of the person whose name it purports to be and that the address given opposite that person’s name is the true business or residence address of the person signing the petition.

(g) The proposed establishment meets the zoning and planning requirements of the Town.

(h) Any other pertinent matters affecting the qualifications of the applicant and the location of the proposed premises.

(i) Any party-in-interest may introduce evidence with regard to any pertinent matter affecting the application.
(j) The Authority may make such independent investigation as it deems necessary or advisable in connection with any application for a license.

Sec. 2-7-70. - Show cause hearings.

(a) When matters are brought to the attention of the Authority which, if substantiated, constitute a violation of this chapter or of Title 44, Article 3, Article 4, or Article 5, C.R.S., or the rules and regulations relating thereto, the Authority shall promptly notify the licensee, in writing, by mail or personal delivery, of the date and time established for a show cause hearing at which time the licensee will be required to show cause why a penalty should not be levied if a violation is found.

(b) Such notice shall contain a brief description of the grounds for conducting the hearing. The hearing shall be held as soon as is reasonably possible after notice has been mailed or delivered to the licensee.

(c) At the hearing, the City shall present matters into evidence and the licensee shall have an opportunity to present evidence on the licensee's behalf and to comment upon the evidence. The licensee shall be entitled to be represented by counsel. The Authority shall furnish the licensee its decision in writing within thirty (30) days following the hearing. In the event of suspension or revocation of the license, no portion of the annual license fee paid pursuant to § 3-75 shall be refunded.

Sec. 2-7-80. - Aggravating and mitigating factors considered at show cause hearings.

In all cases where a violation of the applicable state or local laws is found at a show cause hearing, the Authority shall consider evidence and statements in mitigation and in aggravation of the violation prior to determining the appropriate penalty. Such evidence and statements may relate to and include, but not be limited to, the following factors:

(a) Seriousness of the violation;

(b) Corrective action taken by the licensee after the violation;

(c) Prior violations at the licensed premises by the licensee or the licensee's employees and the effectiveness of prior corrective action;

(d) Prior violations at the licensed premises by a prior licensee or the prior licensee's employees, and the sanctions imposed for such violations, if the current licensee or any of the current licensee's owners, partners, shareholders, directors, officers or managers held an ownership interest of five (5) percent or more in the entity holding such prior license.

(e) Whether the violation is part of a repeated course of conduct or is an isolated occurrence;

(f) Likelihood of recurrence;

(g) All circumstances surrounding the violation;
(h) Willfulness of the violation;

(i) Length of time the license has been held by the licensee;

(j) Previous sanctions imposed against the licensee; and

(k) Other factors making the situation with respect to the licensee or the licensed premises unique.

Sec. 2-7-90. - Special event permit.

(a) The Town Clerk may, pursuant to Section 44-5-101 et seq., C.R.S., and the Colorado Code of Regulations 1 C.C.R. 203-2, 47-1000 through 47-1020, approve an application for a special event permit for the sale, by the drink only, of fermented malt beverages, or of malt, spirituous or vinous liquors to qualified organizations and political candidates. Such special event permit shall authorize a permittee to sell such alcohol beverages at the location and for the duration of time specified on the issued permit.

(b) If the Town Clerk receives an objection to the issuance of a special event permit from one (1) or more parties in the designated neighborhood as determined by the Town Clerk's Office, the matter will be scheduled for a hearing before the Authority at its next regularly scheduled meeting, at which time the Authority shall consider any and all objections, and it may, pursuant to Section 44-5-101 et seq., C.R.S., and the Colorado Code of Regulations 1 C.C.R. 203-2, 47-1000 through 47-1020, either approve or deny the special event permit application.

(c) If the Town Clerk decides to deny the application for a special event permit applied for under this Section, and the applicant wishes to contest the denial, the applicant shall be entitled to a hearing before the Authority at its next regularly scheduled meeting, at which time the Authority shall consider whether the City Clerk properly applied the law pursuant to Section 44-5-101 et seq., C.R.S., and the Colorado Code of Regulations 1 C.C.R. 203-2, 47-1000 through 47-1020, and whether to uphold the decision of the City Clerk or overturn it and approve the special event permit application.