

**CITY OF CREEDE, COLORADO
ORDINANCE NO. 445**

AN ORDINANCE OF THE CITY OF CREEDE, COLORADO AMENDING CHAPTER 6, ARTICLE 1 AND CHAPTER 10, ARTICLE 8 OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO TO CONFORM WITH CHANGES TO THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE AND SPECIAL EVENT LIQUOR PERMITS MADE BY THE COLORADO LEGISLATURE IN 2018, AND PROVIDING FOR THE ISSUANCE OF A LICENSE FOR THE POSSESSION OF AN OPEN CONTAINER ON CITY OWNED PROPERTY DURING CERTAIN PUBLIC EVENTS SANCTIONED BY THE CITY.

WHEREAS, the City of Creede is authorized by the general assembly of the State of Colorado to exercise its police powers for the protection of the economic and social welfare and the health, peace, and morals of the people of the state; and

WHEREAS, the general assembly revised the Colorado Liquor Code and the Colorado Beer Code in 2018; and

WHEREAS, it is the intent of the Board of Trustees of the City of Creede to revise Chapter 6, Article 1 and Chapter 10, Article 8 of the Creede Municipal Code to conform to current statutes;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, AS FOLLOWS:

Section 1. “Chapter 6, Article 1, Section 10 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 6-1-10. Definitions.

(a) As used in this Article, unless the context indicates otherwise, certain words shall have the following meanings:

Retail License means a grantor licensee to sell fermented beverages pursuant to the Colorado Beer Code (Article 4 of Title 44, C.R.S.) for a grant to a licensee to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 3 of Title 44, C.R.S.).

Retail licensee or *licensee* means the holder of a license to sell fermented malt beverages pursuant to the Colorado Beer Code (Article 4 of Title 44, C.R.S.) By the holder of a license to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 3 of Title 44, C.R.S.), who is engaged at any time during the calendar year in such operation in the City.

(b) All other terms shall be defined as set forth in the provisions of the Colorado Beer Code, the Colorado Liquor Code and Special Events Permits, as the definitions presently exist or may hereafter be amended.”

Section 2. Chapter 6, Article 1, Section 20 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec.6-1-20. Application of state statutes.

Pursuant to declaration by the General Assembly, the Colorado Beer Code, Section 44-4-101, et seq., C.R.S., the Colorado Liquor Code, Section 44-3-101, et seq., C.R.S., and Special Event Permits, Section 44-5-101, et seq., C.R.S., as they presently exist or may hereafter be amended, shall apply to the sale of fermented malt beverages, alcoholic beverages, special malt liquors, spirituous liquors and vinous liquors in the City.”

Section 3. Chapter 6, Article 1, Section 30 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 6-1-30. Power and purpose.

The Board of Trustees hereby finds, determines and declares that it is empowered by Section 44-3-505, C.R.S., to fix and collect certain fees in connection with the application for issuance, transfer and renewal of certain types of beer, wine and liquor licenses. The Board of Trustees further finds that the fees imposed by the State are in an amount sufficient to cover actual and necessary expenses incurred by the City in connection with the handling of such licenses and applications therefore.”

Section 4. Chapter 6, Article 1, Section 50 (b)(1) of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“(b)(1) Eligible facilities. Outdoor sports and recreational facilities as defined in Section 44-3-103 (33), C.R.S., are eligible for licensing as an optional premise or optional premises for a hotel and restaurant.”

Section 5. Chapter 10, Article 8, Section 10, *private property* of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“*Private property* means any dwelling and its curtilage which is being used by a natural person for habitation and which is not open to the public, and privately owned real property, which is not open to the public. Private property shall not include:

- a. Any establishment, which has or is required to have a license pursuant to Article 3, 4 or 5 of Title 44, C.R.S.;
- b. Any establishment which sells alcoholic beverages or upon which alcoholic beverages are sold; or
- c. Any establishment, which leases, rents, or provides accommodations to members of the public generally. ”

Section 6. Chapter 10, Article 8, Section 60 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 10-8-60. Sales near schools.

It is unlawful for any hotel or restaurant license, as defined in Section 44-3-413, C.R.S. to be issued for any premises within a distance of one hundred (100) feet from any private, public or parochial school. It is unlawful for any other class of license, as listed in Section 44-3-401, C.R.S. to be issued for any premises within a distance of two hundred sixty (260) feet from any private, public or parochial school. Said distance to be computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the

building in which liquor is to be sold, using a route of direct pedestrian access. However, this prohibition shall not affect the rights of any person holding, at the time of the initial ordinance codified herein, a lawful permit or license to conduct such business within the restricted area hereby established; nor shall such prohibition prevent the renewal upon the expiration thereof of any license in effect at such time authorizing such business within the restricted area hereby established.”

Section 7. Chapter 10, Article 8, Section 80 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 10-8-80. Open container.

(a) It is unlawful for any person to possess or consume by open container any alcoholic beverage, whether such possession is actual or constructive, in any public place as defined in Section 10-8-10 of this Chapter, upon property owned, operated, leased or maintained by the State or any political subdivision or agency thereof, or upon property owned, operated, leased or maintained by the City; provided, however, that it shall not be a violation of this provision to store or consume any alcoholic beverage in conformance with, and pursuant to the terms of, any validly issued permit or license. For the purpose of this Section, an unsealed or open container shall not include a container of vinous liquor that has been resealed pursuant to the provisions of Section 44-3-423, C.R.S., and is clearly recognizable to a peace officer as a container that has been resealed by the hotel or restaurant license holder.

(b) Except as otherwise authorized by this Article, it shall be unlawful for any person within the jurisdiction of the City to possess an open container of or consume any fermented malt or alcoholic beverages in public, except upon premises licensed or permitted under provisions of the Colorado Liquor Code, as amended.

(c) For the purpose of this Section, *open container* means any container which is either opened so that the contents can be removed or upon which the seal, cork, pull tab or any type of cap applied by the manufacturer has been broken. A container shall be deemed an open container even if such container is resealed by any type of cap or seal.

(d) For the purposes of this Section, the term *in public* means:

(1) In or upon any public highway, street, alley, walk, parking lot, building, park or other property or place which is owned or leased by the City or other governmental entity, whether in a vehicle or not; and

(2) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain. If such express or implied license is subject to time or conduct restrictions, consumption or prohibited possession of fermented malt or alcoholic beverages on such property shall be deemed to be *in public* regardless of the time of day.

(e) For the purpose of this Section, the term *possess* or *possession* means exercising physical control over or holding such container, but also means exercising dominion and control over the place where such containers are found.

(f) The City Manager, or designee, may, as provided in this Subsection, grant express written permission to persons to consume fermented malt beverages, or malt or vinous liquors,

on City owned property for the following special functions: artistic events; civic events; cultural events; receptions; private parties; or other type function at the discretion of the City Manager.

(1) The City Manager shall adopt an administrative directive specifying the City properties or portions thereof upon which fermented malt beverages, or malt or vinous liquors, may be consumed.

(2) The City Manager shall grant such permission to persons applying for a permit if, considering the type of function, the City Manager finds that:

a. The application is filed with the City not later than thirty (30) days prior to the date of the event.

b. The time, location and duration of the function are not likely to significantly interfere with public traffic or services, including public safety services.

c. Procedures are proposed that are likely to ensure that underage persons and persons under the influence of alcohol will not obtain or consume fermented malt beverages, or malt or vinous liquors, served at the function.

d. Procedures are proposed that are likely to secure and supervise the area and the participants during the function.

e. The applicant agrees to be personally responsible for and provide financial guarantees to ensure the cleaning, trash disposal or repairs necessary as a result of the event for which the permit was granted. The City Manager, or designee, shall determine the amount of required financial guaranty based upon the location of the event, the duration of the event, the number of persons anticipated to attend, the failure of the applicant to clean or repair City property in conjunction with past events and the financial resources of the applicant.

f. The applicant agrees to indemnify and hold harmless the City, its employees and agents for all liability claims arising out of the event, and to provide general liability insurance, with minimum liability limits equal to that established by the Colorado Governmental Immunity Act (Section [24-10-101](#), et seq., C.R.S.) to guarantee indemnification. The City Manager, or designee, may waive or reduce this insurance requirement if the applicant affirmatively establishes that the risk of liability to the City as a result of the function does not present the City with any significant additional risk of liability.

(3) The City Manager, or designee, may issue a permit for consumption of fermented malt beverages, or malt or vinous liquors, on City-owned property based upon the following criteria:

a. The request is for or on behalf of a City sponsored or cosponsored civil event using any City-owned property; and

b. The proposed event meets all the criteria as set forth in this Section.

(4) The City Manager, or designee, shall deny permission on the grounds that:

a. There is insufficient data presented by the applicant to make the findings required in Paragraph (2) of this Section.

b. Approval would be detrimental to the public safety, health, morals, order or welfare by reason of the nature of the event, the likelihood that the event would create a public nuisance, an unreasonable risk of violence or public disorder or result in the consumption of alcohol beverages by minors; or alternatively, the proximity of the event to schools or the failure of the applicant to conduct past events in compliance with this Section and the applicable rules and regulations.

c. Another event has previously been scheduled for the same location on the same day and time.

d. The event would unreasonably interfere with normal activities and customary and general use and enjoyment of the facility.

(5) The granting of permission by the City Manager under this Section does not relieve the applicant from the responsibility of obtaining any license or special event permit as may be required by state law or City ordinance.

(6) This Section is not intended to create a right of use or possession of City-owned or leased property in any person or group; rather, this Section relates only to permission to consume fermented malt beverages, or malt or vinous liquors, by an individual or group who otherwise has the lawful right to use or possess City-owned or leased property pursuant to City policy.”

Section 8. Effective Date. This ordinance shall be published and become effective as provided by law.

Section 9. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The City Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

Section 10. Repealer. All ordinances or resolutions and motions of the Board of Trustees of the City of Creede or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 7TH DAY OF MARCH 2023.

ATTEST:


Sarah Efthim-Williamson, City Clerk

CITY OF CREEDE

By 
Jeffrey Larson, Mayor

