

ORIGINAL ORDINANCE NO. 1897

INTRODUCED BY: Kempert

ENROLLED ORDINANCE NO. 1682

AN ORDINANCE AMENDING SECTION 5.09.800 LMC ENTITLED "POINT SYSTEM FOR ALCOHOLIC BEVERAGE LICENSE VIOLATIONS AND SUSPENSIONS"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, WYOMING:

Section 1. Section 5.09.800 shall read as follows:

5.09.800 Point system for alcoholic beverage license violations and suspensions.

A. Purpose.

The city by enactment of this section, states that it is the public policy of the city to balance the interest of its citizens and visitors to the city against the interest of the liquor license holders in operating and maintaining their business activities upon licensed establishment premises. If the license holder fails to adhere to certain minimum standards, or fails to abide by this section or applicable law of the state, the liquor establishment license holder shall be subject to the provisions herein. To provide for an orderly administration of this section, and the maintenance of existing licenses, the city establishes a point system for suspension and revocation of alcoholic beverage liquor licenses. The scheme of points is listed according to the type of alcoholic beverage violation, and the accumulation of points may lead to a suspension, revocation, non-renewal and/or fine of a liquor licensee who repeatedly violates the city code and state law as set forth herein.

B. Violations.

Violations of this chapter by an employee or agent of a licensee, while acting in the service of the licensee, shall be imputed to the licensee for the purposes of this section. Accordingly, a licensee will acquire points upon the conviction of his or her employees and/or agents for violations of this chapter committed while acting in the service of the licensee. References to "violations by a licensee," "convictions of a licensee," "points acquired by a licensee," and similar references shall be construed in a manner consistent with this intent. Upon conviction for any offense specified in subsection C. of this section, the number of points specified in subsection C. of this section shall be acquired by the licensee. Points shall be considered "acquired" by a licensee on the date this violation is assessed against a licensee. In attributing points to a licensee, the section number of the city code which the licensee is convicted of violating and the points ascribed to the violation by subsection C. of this section or by the hearing examiner are controlling.

C. Point Schedule.

The number of points specified below will be acquired by a licensee as a result of a conviction of the licensee, the licensee's employees or agents acting in the service of licensee for violations of the corresponding sections of this chapter of the city code.

Type of Violation	Code	Point Value
<u>1.</u> Making a false statement on a liquor license or temporary liquor permit application	L.M.C. <u>5.09.125</u>	25
<u>2.</u> Failure to notify city of changes in application information for liquor license or temporary liquor permit	L.M.C. <u>5.09.130</u>	25
<u>3.</u> Sale or transfer of liquor license without permission of city	L.M.C. <u>5.09.185</u>	50
<u>4.</u> Sales or dispensing after hours	L.M.C. <u>5.09.425/5.09.435</u>	25
<u>5.</u> Failure to post liquor license or special events liquor permit	L.M.C. <u>5.09.405</u>	<u>10</u>
<u>6.</u> Failure to check identification of underage person	L.M.C. <u>5.09.630</u>	25
<u>7.</u> Unlawful sale of alcoholic liquor by liquor license holder or permittee of a catering or malt beverage permit (dispensing area)	L.M.C. <u>5.09.450</u>	25
<u>8.</u> Open after hours	L.M.C. <u>5.09.425/5.09.435</u>	<u>10</u>
<u>9.</u> Refusal to permit entry or inspection	L.M.C. <u>5.09.400</u>	25
<u>10.</u> Drive-in area conditions	L.M.C. <u>5.09.500</u>	25
<u>11.</u> Sale of alcoholic liquor or malt beverage to underage person	L.M.C. <u>5.09.600/5.09.635</u>	25
<u>12.</u> Underage person on premises	L.M.C. <u>5.09.610/5.09.635</u>	25
<u>13.</u> Failure to post sign indicating you must be 21 years of age to enter premises for special events liquor permits	L.M.C. <u>5.09.410</u>	<u>10</u>
<u>14.</u> Gambling	L.M.C. <u>5.09.445</u>	<u>10</u>
<u>15.</u> Club retail liquor license: selling alcoholic liquor or malt beverage for consumption off the licensed premises	L.M.C. <u>5.09.310</u>	25

16. Restaurant liquor license: selling alcoholic beverages or malt liquor for consumption off premises	L.M.C. <u>5.09.310</u>	25
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Accrual of Points for Timely Reporting of False Identification Presentation.

Any licensee whose has an employee report to the police at the time of occurrence when a patron presents a false or suspected false identification card shall be credited with 5 points. These points may be used to offset any assignment of points for violations noted under C of this section. Additionally, and in cooperation with local advocacy entities and the Police Department, if funds exist, the licensee may be credited up to one and a half times the amount if the licensee can provide documentation of the existence of a reward program for the identification and confiscation and timely reporting to the Police Department of any false identifications used by patrons of the licensee. It shall be the responsibility of the Police Department to effectively establish such a program and to justify, in the case a program cannot be established, why this is so.

All licensees can gain a credit of 5 points per meeting by attending quarterly Tavern Owners Group meetings that will be arranged by the Police Department.

D. Notification of licensee of alcoholic beverage violation.

1. **Municipal Court.** Not later than thirty days following disposition of a charge which results in a conviction for an alcoholic beverage violation noted herein in municipal court, the court shall report the following information to the city clerk:

- a. The fact that a licensee, or employees and/or agents of a licensee have been convicted of a violation of the city code as described in subsection C. of this section;
- b. The date of the alleged violation; and
- c. Whether the municipal court disposition has been appealed. For purposes of this section, a conviction includes a finding of guilt after trial, a plea of guilty, or a plea of nolo contendere.

2. **City Clerk.** The city clerk upon receiving such information from the municipal court shall provide the licensee with notice of alcoholic beverage violation and opportunity for a hearing before a hearing examiner as outlined in subsection E. of this section. Notice of such violation shall be served by regular mail to the address of the licensee listed on the licensee's most recent liquor license application to the city, and shall include a statement:

- a. That a criminal violation described in subsection C. of this section, has occurred and that as a result points may be acquired by the

licensee and that a fine, suspension and/or revocation of the licensee's license is possible;

b. Summarizing the nature and date(s) of the incidents resulting in the criminal conviction and the number of points that may be attributed to the licensee;

c. That the licensee may request a hearing within ten days. The purpose of the hearing is to allow the licensee to offer corrections to the information; demonstrating such points should not be assessed and action taken by licensee to mitigate the violation;

d. That if the licensee does not request a hearing, the city clerk will upon expiration of ten days from the licensee receiving said notice of violation from the city clerk, send notification to the licensee assessing the points as outlined in subsection C. of this section for said violation and shall assess the penalty against licensee as indicated in subsection H. of this section. If the penalty involves a suspension of the license, the city clerk shall specify the dates of the suspension. If the decision involves a fine, the city clerk shall specify the date of payment of fine to the city clerk or city clerk shall specify the points acquired to licensee;

e. That should the licensee want a hearing the licensee has ten days from receiving said notice of violation from the city clerk to make a written request of the city clerk for a hearing. Upon the city clerk receiving a request from the licensee, the city clerk shall set a hearing before a hearing examiner within thirty days of receipt of licensee's request for a hearing.

E. Hearing.

1. City council shall appoint one or more hearing examiners to conduct any hearing called for by this section. When a hearing is requested by a licensee on a violation described in subsection C. of this section, the hearing examiner may assess the points as outlined in subsection C. of this section for said violation and assess the penalty against licensee as indicated in subsection H. of this section.

2. At a hearing, a licensee may appear in person or through counsel. A licensee will be given an opportunity to present evidence and argument on the relevant issue. Evidence shall consist of information commonly relied upon by reasonably prudent people in the conduct of their serious affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A record shall be made of the proceeding and shall include the following:

a. All notices and intermediate rulings;

- b. Evidence received or considered by the hearing examiner(s) including information officially noticed and received from the city clerk;
- c. Questions and offers of proof, objections and rulings therein;
- d. Any proposed findings and exceptions thereto; and
- e. Any opinion, findings, decision or order of the hearing examiner.

F. Penalties. Following the hearing described in this section, and based upon the information considered and received at such hearing, and the sanctions described in subsections C. and H. of this section, the hearing examiner shall:

1. Order no assessment of points against licensee's license for said violation and no penalty; or
2. Order the assessment of points against licensee's license as described in subsection C. of this section and issue a warning, fine or suspension as outlined in subsection H. of this section; or
3. Order the assessment of points against licensee's license as described in subsection C. of this section and order no penalty due to mitigation of the violation by licensee;

G. Findings and Appeal.

The hearing examiner shall prepare findings of fact and conclusions of law, which shall be delivered to the licensee by regular mail at the address listed on the licensee's most recent liquor license application to the city. If the decision involves a suspension of the license, the hearing examiner shall specify the dates of the suspension. If the decision involves a fine, the hearing examiner shall specify the date of payment of fine to the city clerk. A licensee may appeal a decision of a hearing examiner to city council within ten days of receiving the decision of the hearing examiner. City council shall hear the matter and shall be the final appeal for any assessment of points and/or fine or suspension. A suspension or fine assessed by a hearing examiner may be stayed pending final order on the appeal. The hearing examiner's action may be set aside by the city council if it finds the action to be:

1. Arbitrary, capricious, or otherwise not in accordance with law;
2. Without observance of the procedure required by law; or
3. Unsupported by substantial evidence.

H. Penalties for the Accumulation of Points.

Penalties provided in this section are based on the accumulation of points against a licensee within a twelve-month period beginning the first day of March through the last day of February of each year. Also, any points accumulated during this period of time involving the same licensed premises may be used by city council to determine a gross violation and/or the basis for filing a complaint in district court for revocation of the licensee's license as provided herein and in subsection I of this section. Points accumulated during this twelve-month period of time shall expire upon the last day of February and the violation and assessed points shall no longer be part of the point system or considered in any future twelve-month period of time for suspension, revocation, or non-renewal of license involving the same licensed premises. If the licensee accumulates the following points in a licensed period, the hearing examiner may penalize the licensee as follows:

1. Twenty-five points in a twelve-month period shall receive a two hundred fifty dollar fine and any costs for a hearing;
2. Fifty points in a twelve-month period shall receive a five hundred dollar fine and any costs for hearing;
3. Seventy-five points in a twelve-month shall have license suspended for not more than three days and any costs for the hearing shall be paid to the city;
4. One hundred points in a twelve-month period shall have license suspended for not more than five days;
5. It is declared to be a gross violation, both of this chapter and for the purposes of license revocation as provided in W.S. Title 12, Chapter 7, for a licensee to have its license suspended three times in any twelve-month period. In the event of a gross violation, the city council may authorize the city attorney to file a petition to the district court pursuant to W.S. 12-7-201 to revoke a licensee's license.

I. Revocation.

If it appears to the city council that a licensee has acquired sufficient points to result in a revocation of his or her license, the city council may authorize the city attorney to prepare and file with the district court a petition to revoke the licensee's license. If a license is revoked, except as provided in W.S. 12-7-201(d) concerning the expiration of a license while a revocation order is under appeal, the holder of such revoked license shall not be eligible to apply for a new license for a period of twelve months from the date of revocation.

J. Appeal

Action by city council suspending a licensee's license shall be subject to review in the district court upon exhaustion of administrative appeals in accordance with the procedural rules heretofore or hereinafter adopted by the Wyoming Supreme Court concerning the review of administrative actions. Filing an appeal as provided in such rules, stays enforcement of the suspension decision pending final order on the appeal. The city council's action may be set aside by the district court if it finds the action to be:

1. Arbitrary, capricious, or otherwise not in accordance with law;
2. Without observance of the procedure required by law; or
3. Unsupported by substantial evidence.

Section 2. This ordinance shall become effective after passage, approval and publication.

PASSED AND APPROVED THIS 20th day of August, 2014.


David A. Paulekas, Mayor and President
of the City Council of the City of
Laramie, Wyoming

ATTEST:


Sue Morris-Jones, MMC
City Clerk

First Reading: July 15, 2014
Public Hearing: N/A
Second Reading: August 05, 2014
Third/Final Reading: August 20, 2014

Duly published in the Laramie Daily Boomerang this 02nd day of June, 2015.