

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

ITEM NUMBER: 31

DATE: June 6, 2006

**STAFF: Aimee Jensen
Teresa Ablao
Robert Younger**

SUBJECT

Second Reading of Ordinance No. 087, 2006, Amending Chapter 3 of the City Code to Allow Alcohol Beverage Tastings.

RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

EXECUTIVE SUMMARY

This Ordinance amends the City Code to allow beer and wine tastings at retail liquor stores. The number of tasting events for a retail liquor store license will be limited to 52 days per year. It was adopted on First Reading on May 16, 2006 with a vote of 6-1 (Nays: Ohlson).

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 30

DATE: May 16, 2006

STAFF: Aimee Jensen
Teresa Ablao
Robert Younger

COPY

SUBJECT

First Reading of Ordinance No. 087, 2006, Amending Chapter 3 of the City Code to Allow Alcohol Beverage Tastings (Options A and B).

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

This Ordinance will set an application fee of \$150 to defray the administrative costs of issuing and tracking tasting permits. Revenue received will be placed in the City's General Fund.

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EXECUTIVE SUMMARY

This Ordinance will amend the City Code to allow alcohol beverage tastings at retail liquor stores. Staff is presenting two options for Council consideration. Option A will limit alcohol beverage tastings to beer and wine. Option B will allow tastings of spirituous liquors as well as beer and wine. The number of tasting events for a retail liquor store license would be limited to 52 days per year.

BACKGROUND

In 2004, the Colorado General Assembly adopted, and the Governor signed into law, House Bill 04-1021 [now codified as C.R.S. §12-47-301(10)] permitting local jurisdictions to allow retail liquor stores and liquor-licensed drugstores to conduct sample tastings of alcohol beverages (beer, wine and liquor) in their establishments without charging for such samples. This bill also requires that, if a local government desires to allow such tastings in its jurisdiction, the local governmental body must do so by ordinance.

In response to requests from several Councilmembers, staff reviewed tastings ordinances from other jurisdictions and weighed the advantages and disadvantages of permitting tastings in Fort Collins, the cost to the City to do so, and safety and law enforcement concerns.

After discussion at the April 25, 2006 work session, Council reviewed information regarding alcohol beverage tastings and directed staff to present two optional versions of a tastings ordinance.

Option A - Limits Alcohol Beverage Tastings to Beer and Wine

This option will result in minimal additional staff and police services. It is estimated that 16+ staff hours would be required annually for administration and enforcement. The administrative costs (Deputy City Clerk, Assistant City Attorney and Municipal Judge) would be approximately \$600, depending on how many stores apply for a permit. There are currently 29 retail liquor stores in Fort Collins.

A fee would be imposed for the issuance of a tastings permit. Staff is recommending the fee for processing an initial application be in the amount of \$150 with a renewal fee of \$50.

State law prohibits the City from taking law enforcement costs into consideration in determining the amount of the application fee. Enforcement would be driven by complaint only. A proactive approach to enforcement (random compliance checks) would increase administrative costs to \$1200 (32+hours).

Larimer County has opted to limit retail liquor store licenses to beer and wine tastings only and, to date, has issued two tastings permits in unincorporated Larimer County - one in south Fort Collins and one outside of Loveland. See spreadsheet (Attachment 2) for other jurisdictions' fees and limitations.

Option B - Allows Tastings of Spirituous Liquors as Well as Beer and Wine

This option will require staff and police resources of 16+ hours annually (approximate administrative cost \$600), depending on how many stores apply for a permit. State statute allows a local jurisdiction to impose stricter requirements than the State requirements regarding the days on which tastings can be held, the duration of a tastings and the number of tastings that can be held each year per licensee.

During the April 25th work session, staff recommended the following requirements and restrictions to alcohol beverage tastings. These recommendations are included in both options.

- Tastings will be limited to 52 days per year per licensee (to minimize chance of violations).
- Tasting samples will be served in clear containers (to facilitate visual monitoring of product samples).
- The Authority could deny the application for a tastings permit if the applicant had a previous liquor code violation in the preceding two years or if he or she could not demonstrate an ability to conduct the tastings in accordance with the law and without creating a safety risk to the neighborhood.

- The applicant will need to provide a schedule of the anticipated tastings and a log of completed tastings upon renewal (to ensure that licensees do not exceed allowable days and hours).
- Enforcement will be by complaint only (reactive) due to limited staff and financial resources.

Questions from Work Session

At the Council Work Session, staff was asked to respond to the following questions:

- **What do micro-breweries think of the tasting ordinance?**

Comments from three local breweries ranged from neutral to supportive. Anheuser-Busch will submit its comments at a later time, and those comments will be provided to Council under separate cover as soon as they are received.

- **How is it that micro-breweries can offer tastings now?**

The term "micro-breweries" is not defined by the State Liquor Code.

The State has given local jurisdictions the authority to grant, deny, and disciplinary actions against retail liquor licenses (i.e., hotel-restaurant, tavern, retail liquor stores, brew-pubs, etc.). Brew-pubs are allowed to host tastings since they are licensed for 'on-premise' consumption, meaning patrons can consume alcohol inside the brew-pub (i.e., CooperSmith's, C.B. & Potts, and Conor O'Neills). Retail liquor stores hold "off-premise" licenses, which do not permit consumption within a store unless there is a tastings permit in place.

According to the State Liquor Authority, beer manufacturers are allowed to have "sales rooms", allowing them to conduct tastings, serve and sell food, sell general merchandise and beverages to be taken off the premises by the consumer.

- **Why did Larimer County not include spirituous liquors?**

According to Gael Cookman, Staff Services Manager, the Larimer County Board of Commissioners opted to limit tasting permits to beer and wine for two reasons. First, it was concerned with the high alcohol content of spirituous liquors as opposed to beer and wine, and, second, none of the interested retail licensees requested spirituous liquors be included - the licensees were interested in beer and wine only.

The Board of Commissioners stated it may consider adding spirituous liquors to its tastings ordinance in the future.

• **What licensing fees does the State allow?**

C.R.S. §12-47-505 (4)(a) states that each application for a license must be accompanied by an application fee (with limits set by the State) in an amount determined by the local licensing authority to cover actual and necessary expenses attendant to processing the applications. Application fees are separate from license fees, which are also determined by the State. These fees are paid to the City of Fort Collins.

Application Fees	New License	\$500.00 (maximum allowed by State)
	Transfer of Ownership	\$400.00 (maximum allowed by State is \$500 - staff could not justify a transfer application fee of \$500)
	Renewal Fee	\$50.00 (maximum allowed by State)

Under separate cover, the City Attorney's Office will be responding to additional questions regarding cost recovery and fees and taxes.

ATTACHMENTS

1. State statute authorizing tastings
2. Matrix of other jurisdictions fees and limitations
3. work session summary

COPY

ORDINANCE NO. 087, 2006
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 3 OF THE CODE OF THE
CITY OF FORT COLLINS TO ALLOW ALCOHOL BEVERAGE TASTINGS

WHEREAS, in 2004, the Colorado General Assembly adopted and the governor signed into law House Bill 04-1021 (now codified at C.R.S. §12-47-301(10), permitting local jurisdictions to allow retail liquor stores and liquor-licensed drugstores to conduct sample tastings of liquor and malt and vinous (beer and wine) beverages in their establishments without charging for such samples; and

WHEREAS, House Bill 04-1021 requires that an ordinance be enacted by any local jurisdiction that wishes to allow such beer and wine tastings; and

WHEREAS, the City Council desires to adopt an ordinance authorizing the beer and wine tasting of malt and vinous beverages (beer and wine) at retail liquor stores and liquor-licensed drugstores within the City subject to certain limitations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the Code of the City of Fort Collins is hereby amended by the addition of a new Section 3-87 which shall read in its entirety as follows:

Sec. 3-87. Beer and wine tastings authorized; permit required.

(a) Beer and wine tastings on the licensed premises of a retail liquor store licensee or of a liquor-licensed drugstore licensee are authorized to be conducted within the city in accordance with C.R.S. Section 12-47-301(10) and subject to the provisions of this Chapter.

(b) The Authority is authorized to issue beer and wine tasting permits in accordance with the requirements of this Chapter.

(c) It shall be unlawful for any person to conduct beer and wine tastings within the city without having first received a permit issued in accordance with this Section.

(d) Retail liquor store licensees and liquor-licensed drugstore licensees desiring to conduct tastings shall submit a tasting permit application to the City Clerk accompanied by a one hundred and fifty dollar (\$150.) application fee.

(e) The Authority shall establish the procedures for obtaining a beer and wine tasting permit which procedures shall include, without limitation, conducting a noticed public hearing before the Authority at which hearing the applicant must establish that the applicant is able to conduct beer and wine tastings without violating

the provisions of this Chapter. The Authority may deny the application and any renewal application if it finds that the applicant has violated any provision of the liquor code, rules and regulations, or the City Code pertaining to alcohol sales and service in the previous two (2) years, or if the applicant has not established the ability to conduct beer and wine tastings in accordance with the provisions of this Chapter, or if the Authority finds that the proposed beer and wine tastings would create a public safety risk to the neighborhood. The notice required for the public hearing shall be the posted and published notices required by C.R.S. Section 12-47-311.

(f) The forms for the beer and wine tasting permit application, the renewal application, and the beer and wine tasting permit shall be those prescribed by the Authority. These forms shall include, without limitation, a schedule of the dates and times of the beer and wine tastings to be conducted on the licensed premises and by whom during the term of the permit. The licensee may deviate from the approved schedule provided that: (1) the licensee gives the City Clerk and the city's liquor enforcement officer seven (7) days prior written notice of such deviation; and (2) such deviation does not violate any provision of this Chapter, the Colorado Liquor Code, Code of Regulations or any other state law or municipal ordinance or regulation. An applicant for a beer and wine tasting permit must also include with the filing of the initial and any renewal application, and keep current with the City Clerk's office at all times, written proof that the licensee and each employee of the licensee who will be conducting the beer and wine tastings have completed a server training program for beer and wine tastings that meets the standards required by state law.

(g) Renewal of beer and wine tasting permits shall be concurrent with the renewal of licenses for retail liquor stores and liquor-licensed drugstores. A licensee's initial beer and wine tasting permit shall expire on the same date as the date of the licensee's retail liquor store or liquor-licensed drugstore license expires. The initial beer and wine tasting permit application fee shall not be prorated if the permit expires in less than a year. Beer and wine tasting permit renewal forms shall be submitted to the City Clerk accompanied by a fifty dollar (\$50.) renewal fee. The City Council may change this fee by resolution.

(h) Beer and wine tasting permits shall be conspicuously and prominently posted by the licensee on the licensed premises at all times during business hours.

(i) A beer and wine tasting permit shall only be issued to a retail liquor store or a liquor-licensed drugstore licensee whose license is valid, not subject to a current or pending enforcement action by the city or the state and in full force and effect.

Section 2. That the Code of the City of Fort Collins is hereby amended by the addition of a new Section 3-88 which shall read in its entirety as follows:

Sec. 3-88. Limitations on beer and wine tastings.

(a) Beer and wine tastings within the city shall be subject to the following limitations:

- (1) Beer and wine tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the liquor enforcement division of the Colorado Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of a licensee, and only on a licensee's licensed premises;
- (2) The alcohol used in beer and wine tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to C.R.S. Section 12-47-403 at a cost that is not less than the laid-in cost for such alcohol;
- (3) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor;
- (4) Beer and wine tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive;
- (5) Beer and wine tastings shall be conducted only during the operating hours in which the licensee on whose premises the beer and wine tasting occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m.
- (6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample;
- (7) The licensee shall promptly remove all open and unconsumed beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the beer and wine tastings;
- (8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated;
- (9) The licensee shall not serve more than four (4) individual samples to a patron during a beer and wine tasting;

- (10) The alcohol samples used in the beer and wine tastings shall be served in clear, open containers and shall be provided to a patron free of charge;
- (11) Beer and wine tastings may occur on no more than two (2) of the six (6) days from a Monday to the following Saturday, not to exceed fifty-two (52) days per year;
- (12) The licensee shall maintain on the licensed premises a log of all beer and wine tastings on forms proscribed by the Authority to be submitted to the City Clerk each year with the beer and wine tasting permit renewal application and during all business hours the log shall be subject to inspection by city and state officials authorized to enforce the Colorado Liquor Code and/or the Fort Collins City Code upon request; and
- (13) No manufacturer of spirituous or vinous liquor shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a beer and wine tasting and the licensee shall bear the financial and all other responsibility for a beer and wine tasting.

Section 3. That the Code of the City of Fort Collins is hereby amended by the addition of a new Section 3-89 which shall read in its entirety as follows:

Sec. 3-89. Violations.

(a) A violation of a limitation specified in §§ 3-87 and 3-88 or in C.R.S. Section 12-47-301(10) by a retail liquor store or a liquor-licensed drugstore licensee, whether by the licensee's employees, agents or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the beer and wine tasting.

(b) Retail liquor store and liquor-licensed drugstore licensees conducting a beer and wine tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to those licensees by the Authority. The Authority shall conduct a hearing with regard to any violation of § 3-87 through § 3-88 in accordance with this Code, the Authority's rules, regulations and C.R.S. Section 12-47-601.

(c) Nothing in this Chapter shall affect the ability of a Colorado winery licensed pursuant to C.R.S. Section 12-47-402 or 12-47-403 to conduct a beer and wine tasting pursuant to the authority of C.R.S. Section 12-47-402(2) or 12-47-403(e).

Section 4. That Section 3-74(a) of the Code of the City of Fort Collins is hereby amended to add a new Subsection (10) to read as follows:

Sec. 3-74. Application Fees.

(a) Application fees shall be payable to the city as follows:

Fees

(10) Beer and wine tastings permit.....150.

Introduced, considered favorably on first reading, and ordered published this 16th day of May, A.D. 2006, and to be presented for final passage on the 6th day of June, A.D. 2006.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 6th day of June, A.D. 2006.

Mayor

ATTEST:

City Clerk