

O-2022-1

AN ORDINANCE

ESTABLISHING TITLE 5, CHAPTER 39, OF THE MUNICIPAL CODE OF THE CITY OF LAKEWOOD, COLORADO, IN CONNECTION WITH THE ESTABLISHMENT OF ENTERTAINMENT DISTRICTS, COMMON CONSUMPTION AREAS, AND ASSOCIATED PROMOTIONAL ASSOCIATIONS

WHEREAS, the City of Lakewood ("Lakewood" or "City") is a home rule municipality organized under Article XX of the Colorado Constitution and the authority of the Home Rule Charter for the City of Lakewood (Charter);

WHEREAS, Sections 1.2 and 2.1 of the Charter vests all municipal legislative powers in the City Council, and authorizes the City Council to establish those laws necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof;

WHEREAS, pursuant to C.R.S. § 44-3-301(11)(a) of the Colorado Liquor Code the governing body of a Local Licensing Authority may provide for the establishment of Entertainment Districts within which Common Consumption Areas may be created under the direction of Promotional Associations;

WHEREAS, Entertainment Districts are an economic development tool intended to allow established commercial entities that serve alcoholic beverages to partner with neighboring businesses that serve food to create identified outdoor dining spaces called Common Consumption Areas where food and beverages from any or all of the attached food and/or beverage retailers may be lawfully consumed;

WHEREAS, the City desires to establish application procedures, fees and hours of operation applicable to establishment of Entertainment Districts, Common Consumption Areas, and Promotional Associations within the City;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Establishment of Title 5, Chapter 39. Title 5, Chapter 39 of the Lakewood Municipal Code shall be added as follows:

## **Chapter 5.39      Entertainment Districts**

### **Section 5.39.010 - Purpose**

The purpose of this Chapter is to authorize the designation of entertainment districts in the City, to provide for the creation of common consumption areas within such entertainment districts, and to establish provisions for the certification and regulation promotional associations, all in accordance with C.R.S. 44-3-101, *et seq.*

### **Section 5.39.020 - Definitions**

As used in this Chapter, the following terms shall have the following meanings:

- A. *Attach(ed)* means the connection, as authorized by the Authority, of any of the liquor licensed premises, as identified in this Section, to an adjoining common consumption area to provide alcohol beverages for consumption within the common consumption area.
- B. *Application* means a form provided by the Lakewood City Clerk's Office allowing an applicant to request designation of an entertainment district, create a common consumption area or certify a promotional association.
- C. *Application fee* means an administrative fee, the amount of which is set by City Council resolution, imposed on each application submitted pursuant to this Chapter.
- D. *Authority* means the Liquor Licensing Authority of the City of Lakewood.
- E. *Colorado Liquor Code* means Articles 3, 4 and 5 of Title 44 of the Colorado Revised Statutes, as amended, and the rules and regulations therefor set forth in the Colorado Code of Regulations at 1 CCR 203-2, as amended.
- F. *Common consumption area* means an area defined in C.R.S. § 44-3-103(11), as amended, where persons over twenty-one (21) years of age may consume alcohol beverages outside of a liquor licensed premises.
- G. *Designated neighborhood* means the neighborhood(s), as designated by the City Clerk, within and immediately adjacent to a proposed entertainment district or immediately adjacent to a proposed common consumption area, as applicable to a particular application.
- H. *Entertainment district* means an area within the City designated by City Council Resolution as an entertainment district, which is comprised of no more than one hundred (100) acres and contains, at the time the entertainment district is designated, at least twenty thousand square feet (20,000 s.f.) of premises licensed as a tavern, hotel and restaurant, brew pub, distillery pub, vintner's restaurant, beer and wine licensee, manufacturer or beer wholesaler that operates a sales room, or limited winery. See C.R.S. 44-3-301(15).
- I. *Liquor licensed premises or licensed premises* means the location authorized to serve or sell alcohol pursuant to a liquor license.

- J. *Liquor license* means a license issued pursuant Chapter 5.38 of the Lakewood Municipal Code but excluding special event permits issued pursuant to Section 5.38.120 thereof.
- K. *Non-liquor licensed business* means a business or occupation that does not possess a liquor license pursuant to Chapter 5.38.
- L. *Person/People* means a partnership, association, company, corporation, organization or individual (natural person), or a manager, agent, servant, officer or employee thereof.
- M. *Promotional association* shall have the same meaning as set forth in C.R.S. § 44-3-103(39), as amended, and is generally understood to mean an association that is incorporated within Colorado, organizes and promotes entertainment activities within a common consumption area, and is organized or authorized by two or more people who own or lease property within an entertainment district.
- N. *Regulations* means those Regulations promulgated by the City Clerk to carry out the intentions of this Chapter.

#### **5.39.030 - Entertainment Districts; Application**

The City Council, by Resolution and in accordance with the requirements of this Chapter, may designate specific areas within the City as individual entertainment districts.

##### **A. General.**

- 1. Entertainment districts shall have perpetual existence unless the City Council otherwise sets a specific term in the authorizing Resolution. The City Council, at any time during the term of the entertainment district, may terminate the authorizing Resolution to remove the area's entertainment district designation for violation of the terms of this Chapter or the terms of the Resolution.
- 2. No entertainment district shall include any area zoned for single family dwelling units, as such are defined in Chapter 17.14 of the Lakewood Municipal Code. Entertainment districts shall avoid inclusion of any area with a residential zoning classification.

##### **B. Application.** A request to designate an area within the City as an entertainment district shall be made by application submitted to the Lakewood City Clerk's Office, which shall include the following:

- 1. The proposed name of the entertainment district;
- 2. A detailed area map of the proposed entertainment district including the following:
  - a. The boundaries of the proposed entertainment district outlined in red;
  - b. The total acreage of the proposed entertainment district; and
  - c. The name, address, license type and square footage (excluding temporary modifications) of each liquor licensed premises within the proposed entertainment district.
- 3. The application fee.

4. A certification that the proposed entertainment district meets the minimum requirements established by this Chapter, including, but not limited to: size of district, percentage of area within proposed district containing premises licensed for alcohol sale, and any other certifications deemed necessary by the City Council, or as set forth within the regulations promulgated by the City Clerk.

#### **5.39.040 – Review of Applications for Certification, Recertification or Attachment**

- A. Common consumption areas. The Authority may approve an application for a common consumption area within a designated entertainment district, subject to the provisions of this Chapter.

1. General.

- a. The size of the common consumption area shall not exceed the area approved as the entertainment district within which the common consumption area is located. However, the common consumption area may be smaller than the area of the entertainment district.
  - b. Each common consumption area shall include no fewer than two (2) attached premises licensed to sell liquor or alcohol beverage.
  - c. As part of the process for approving a common consumption area, the Authority may place limits on such common consumption area, including, but not limited to: the size, security or hours of operation of a common consumption area. The Authority is also empowered to eliminate a common consumption area if there is no certified promotional association in the associated entertainment district. Unless specifically modified by the Authority, common consumption areas and their attached liquor licensed premises may sell and serve alcohol, and customers may consume alcohol, only during the hours between 8:00 a.m. and 2:00 a.m.
  - d. In the event a common consumption area has no certified promotional association for a period of twelve (12) consecutive months, such common consumption area shall automatically be deemed abandoned and no longer in existence, and no affirmative action by the City shall be required.
  - e. A common consumption area shall be approved for a term as established by the Liquor Licensing Authority, not to exceed twelve months. Except where the City Clerk has received a complete renewal application along with the requisite fees, it shall be unlawful for any certified promotional association to operate a common consumption area after the expiration date recorded upon the face of the common consumption area license.
  - f. The Authority may terminate a common consumption area certification for violation of any specific term of such common consumption area certification, or in the event a violation results in termination pursuant to Section 5.39.110 of this Chapter.
2. Application. A request to create a common consumption area shall be made by application submitted to the Lakewood City Clerk's Office. Applications shall include the following:

- a. The name of the entertainment district in which the common consumption area would be located and a map indicating the location of the common consumption area within the entertainment district;
- b. A site plan for the common consumption area indicating the following:
  - (1) The boundaries of the proposed common consumption area outlined in red;
  - (2) All liquor licensed premises to be attached to the common consumption area, including addresses, contact names and liquor license number;
  - (3) Identification of any liquor licensed premises that are adjacent, but not to be attached, to the common consumption area;
  - (4) All non-liquor licensed businesses whose premises are included within the boundaries of the common consumption area; and
  - (5) The location of all physical barriers, entrances and exits of the common consumption area;
- c. Proof that notice of the application for a common consumption area was served on the owner of each non-liquor licensed business located within the proposed consumption including the date and time of the hearing to be held regarding the establishment of such consumption area, such service to be either in person or by registered mail;
- d. A description of the proposed days and hours of operation and, for common consumption areas that will operate on an event basis only, all dates for any event occurring within the then-current calendar year, or the following calendar year if the common consumption area will have no events during the year of its creation;
- e. The names and addresses of all liquor licensed premises to be attached to and provide alcohol beverages for consumption within the proposed common consumption area;
- f. Evidence of community support, which may include any additional operational requirements that the registered neighborhood organization(s) within the designated neighborhood, if any, desire in order to protect the health, safety, and welfare of the surrounding community;
- g. A parking and transportation plan;
- h. A health and sanitation plan;
- i. A security and admission control plan, including evidence of training and approval of personnel, a detailed description of security arrangements and the approximate location of security personnel within the common consumption area during operating hours;
- j. Any required permits or authorizations including, but not limited to, right-of-way, street closure, zoning, fire and building permits; and
- k. The application fee.

B. Promotional association certification.

1. General.

- a. The Authority is authorized to certify and decertify promotional associations and allow the attachment of licensed premises to common consumption areas; provided, however, if an applicant is seeking the creation of a common consumption area concurrently with certification of a promotional association, the Authority shall have the authority to both certify the promotional association and create the common consumption area pursuant to standardized criteria set forth in regulations promulgated by the Authority.
  - b. A member of each licensed premises to be attached to the proposed common consumption area shall serve as a director on the promotional association's board.
  - c. Certification of a promotional association shall be valid for twelve months, subject to re-certification as set forth in in this Chapter.
2. Application. A request to certify a promotional association shall be made by application submitted to the Lakewood City Clerk's Office. Applications shall include the following:
- a. The name of the promotional association to be certified;
  - b. The name and address of each individual on the board of directors of the promotional association;
  - c. A copy of the promotional association's articles of incorporation and bylaws, as well as a list of all officers and employees, if any;
  - d. Proof of liability insurance carried by the promotional association with coverages for general liability and liquor liability, naming the City as an additional insured, in a minimum amount of one million U.S. dollars (\$1,000,000.00);
  - e. A description of any disciplinary action against any attached liquor licensed premises within the five (5) years prior to the date of the application;
  - f. The application fee; and
  - g. Any other information and documents the Authority may reasonably require.
- C. Rules and Regulations. The Authority may promulgate rules and regulations necessary to establish the criteria and carry out the duties and requirements of this Section. Any such criteria, rules and regulations shall be incorporated into and included with any rules and regulations promulgated by the City Clerk to carry out the duties and requirements of the balance of this Chapter.

#### **5.39.050 - Investigation; Results**

- A. The City Clerk shall designate one or more investigators to conduct applicant investigations regarding the information provided with the application. Investigators are authorized to acquire additional information as necessary to ensure compliance with the provisions of this Chapter.
- B. Upon completion of the investigation, the investigator(s) shall deliver the results thereof to the City Clerk.
- C. Not less than ten (10) days prior to the date of the hearing on the application, the City Clerk shall:

1. Mail to the applicant a report of the findings of the investigation;
2. Post such report on the City's website; and
3. Provide the application, the report and all documentation to the Authority.

The City's failure to mail or post such findings as set forth in this subsection shall not preclude a later determination that the application should be approved or denied.

**5.39.060 - Public hearing – applications for Entertainment Districts, Common Consumption Areas, and Promotional Associations.**

A. Timing; Public notice.

1. Upon receipt of a complete application(s) pursuant to this Chapter, the City Clerk will schedule a quasi-judicial public hearing upon such application(s), to be held not less than forty-five (45) days from the date the City Clerk deems the application(s) complete. Such public hearings will be held before the body authorized to review and approve such application(s). In the event an applicant submits concurrent applications for an entertainment district, a common consumption area and a promotional association, 1) all three applications must be complete before any may be accepted, 2) the entertainment district application will be reviewed and decided by the City Council prior to review of the other applications by the Authority, and 3) the foregoing forty-five-day period shall not begin to run for the common consumption area or promotional association until the next business day following approval of the application for the entertainment district by the City Council, or shall be dismissed if such entertainment district is denied.
2. For any application submitted to the City Clerk pursuant to this Chapter the City Clerk shall post and publish the public notice thereof not less than thirty (30) days prior to such hearing.
3. Additional notice applicable to application for a common consumption area. Public notice shall also be given by the conspicuous posting of a sign at each liquor licensed premises to be attached to the common consumption area and by publication in a newspaper of general circulation, as set forth in C.R.S. § 44-3-311.

B. Entertainment district - Conduct of public hearings - Findings and decision. At the public hearing for review and determination of an application for an entertainment district held pursuant to this subsection B, the City Council shall consider the reasonable requirements of the abutting neighborhood(s), the desires of the adult inhabitants of the abutting neighborhood(s) and of the business owners of the included commercial area as evidenced by petitions, statements for and against such application, and all other evidence submitted as otherwise provided and deemed relevant. Upon conclusion of the hearing, the City Council shall deliberate in public, make findings of fact and law as to those matters set forth in herein, and either approve a Resolution specifically incorporating the findings of fact and law or deny the application.

C. Common consumption area or promotional association - Conduct of public hearings - Findings and decision. At the public hearing for review and determination of an application for either a consumption area or a promotional association held pursuant to this subsection C, the Liquor Authority shall consider the reasonable requirements of the neighborhood, the desires of the adult inhabitants of the abutting

neighborhood(s) and of the business owners of the included commercial area as evidenced by petitions, statements for and against such application, and all other evidence submitted as otherwise provided and deemed relevant. Upon conclusion of the hearing, the Authority shall have ten days to make written findings of fact and law as to those matters set forth herein, and either approve or deny the application. Any such findings of fact and law shall be provided to the applicant within fifteen days following the close of the hearing, but failure of the applicant to receive such findings within that time shall not be grounds for modifying or changing the decision of the Authority.

### **5.39.070 - Causes for denial of application**

An application may be denied if:

A. For entertainment districts, common consumption areas and promotional associations:

1. Evidence shows that approval of the application will adversely impact the health, welfare or public safety of the designated neighborhood.
2. The application fails to comply with applicable state and local laws, and any rules and regulations adopted pursuant thereto.

B. For common consumption areas:

1. The applicant has violated, or the application does not meet or has failed to comply with, any of the terms, conditions or provisions of the Colorado Liquor Code or any rules and regulations promulgated pursuant thereto, this Chapter or any rules and regulations promulgated by the City Clerk pursuant to thereto, any special terms placed upon a previously issued license for such consumption area, or fails to comply with all state and local laws, and any rules and regulations adopted pursuant thereto;
2. The applicant has failed to establish and maintain evidence of community support of its adult inhabitants;
3. The information and evidence available to and considered by the Authority fails to reasonably establish that the proposed procedures for security and admission control will prevent the consumption of alcohol beverages by underage persons;
4. The proposed common consumption area does not have adequate physical barriers to close the area to motor vehicle traffic and limit pedestrian access;
5. If a certified promotional association has received notice of disciplinary action against any of a common consumption area's attached liquor licensed premises the application for renewal shall include a notice
6. The proposed common consumption area is not a single contiguous area; or
7. The proposed common consumption area overlaps with another common consumption area.

C. For promotional associations:

1. The promotional association board is not composed of at least one (1) director from each liquor licensed premises attached to the common consumption area;
2. Any member of the promotional association has failed to comply with any special terms or conditions placed on its liquor license; or



3. Any member of the promotional association has had its liquor license suspended or revoked in the twelve (12) months immediately preceding the date of the application.
4. Decertification of a promotional association shall be in the manner provided in C.R.S. § 44-3-301(11).

#### **5.39.080 - Re-certification of promotional association**

- A. Not less than sixty (60) days prior to the expiration of its certification, a promotional association shall submit to the City Clerk's Office an application for re-certification.
- B. Applications for re-certification shall include the same information as required in Section 5.39.040(B)(2) of this Chapter.
- C. The City will conduct applicant investigations as set forth in Section 5.39.050 of this Chapter.
- D. A public hearing shall not be required unless the City Clerk determines that one or more causes for denial under Section 5.39.070(C) of this Chapter might exist.

#### **5.39.090 - Transfer of ownership; promotional association structure change; detachment from a common consumption area; Other**

- A. In general. Applications to change the composition of the board of directors of a certified promotional association shall be made upon forms provided by the City Clerk. The City Clerk may refuse to authorize a change in the certified promotional association membership for any of the reasons for which the City Clerk would refuse to certify a new promotional association.
- B. Change in ownership of attached liquor licenses. A change in ownership of a liquor license attached to the common consumption area does not require recertification of a promotional association certification. The certified promotional association shall submit the name and address of each proposed director to the City Clerk within thirty (30) days of such a change.
- C. Nontransferable. No license or certification granted pursuant to this Chapter shall be transferable from one (1) person or entity to another.
- D. Detachment from a Common Consumption Area. A Promotional Association may request that the Authority approve the detachment of one or more of the associated licensed entities from a Common Consumption Area operated by such Promotional Association, if the remainder of the elements of the Common Consumption Area continues to meet the minimum requirements necessary to establish a Common Consumption Area. Approval of the request shall be in conformance with rules and regulations promulgated by the Authority.

#### **5.39.100 - Unlawful acts**

It is unlawful:

- A. For any person to operate a common consumption area between the hours of 2:00 a.m. and 8:00 a.m.
- B. For any promotional association to change or modify, or attempt to change or modify, the boundaries of a common consumption area except in accordance with this Chapter.

- C. For any liquor licensed premises not attached to a common consumption area to allow its patrons to consume alcohol beverages in such common consumption area.
- D. For a promotional association or any liquor licensed premises attached to the common consumption area to sell or store alcohol within the common consumption area other than within the licensed premises in accordance with the Colorado Liquor Code.
- E. For any promotional association to permit its patrons to remove an open alcohol beverage from the common consumption area.
- F. For any non-liquor-licensed business or person located with the boundaries of the common consumption area to sell or serve alcohol.

### **5.39.110 - Disciplinary actions - administrative**

The Authority shall hear, rule on and impose administrative sanctions for violations of this Chapter in accordance with this Section.

- A. Show cause hearing. In addition to any other penalties prescribed by the Lakewood Municipal Code, the Authority may, on its own motion or on complaint, and after investigation and a show cause hearing at which the alleged violator is afforded an opportunity to be heard, decertify a promotional association; temporarily or permanently close a common consumption area; or temporarily suspend a license or certification, as applicable, for any of the following:
  - 1. A violation of Section 5.39.100 of this Chapter;
  - 2. A fact or condition exists that would result in denial of an application of the same type, as identified in Section 5.39.070 of this Chapter;
  - 3. A promotional association, either knowingly or without the exercise of due care to prevent the same, has violated any condition placed on the common consumption area;
  - 4. A promotional association, or any agent, servant or employee thereof, has violated any City, state or federal law or ordinance constituting a misdemeanor or higher-level offense or has permitted such a violation by any other person; or
- 5. Any of the standards set forth in C.R.S. 44-3-301(11)(c)(III).
- B. Suspension. No suspension under this Section shall be for a longer period than six (6) months.
- C. Notice. Notice of a show cause hearing shall be given in the same manner as provided for in Section 5.38.130 of the Lakewood Municipal Code.

### **5.39.120 - Cumulative and concurrent remedies.**

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction of violation of this Chapter in the municipal court of the City, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any criminal activity, civil offense, or nuisance found to exist upon any property licensed hereto.

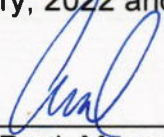
Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the

commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

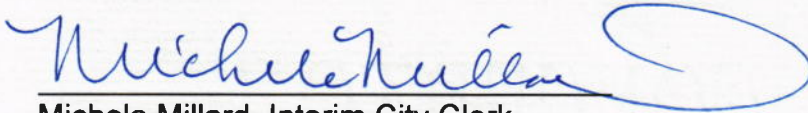
SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 14th day of February, 2022; published by title in the Denver Post and in full on the City of Lakewood's website, [www.lakewood.org](http://www.lakewood.org), on the 17th day of February, 2022; set for public hearing to be held on the 28th day of February, 2022, read, finally passed and adopted by the City Council on the 28th day of February, 2022 and, signed by the Mayor on the 1st day of March, 2022.



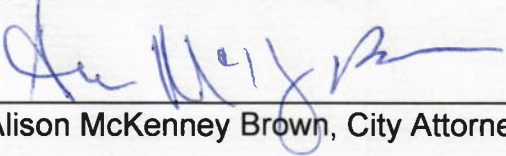
Adam Paul, Mayor

ATTEST:



Michele Millard, Interim City Clerk

APPROVED AS TO FORM:



Alison McKenney Brown, City Attorney

