

ORDINANCE NO. 29B

AN ORDINANCE SUPPLEMENTING ORDINANCE NO. 29A RELATING TO
LICENSING OF THE SALE OF ALCOHOLIC BEVERAGES

WHEREAS Ordinance No. 29A provides for the issuance of two Class A licenses to sell beer within the Town of Boulder but also expressly provides that the ordinance shall not operate to reduce the number of businesses licensed to sell beer at the time the ordinance was enacted, and

WHEREAS it has been established by court action that three (3) rather than two (2) businesses should be licensed to sell beer within the Town of Boulder, and

WHEREAS Ordinance No. 29A provides that licenses issued pursuant to the ordinance shall not be transferrable, and

WHEREAS the Town Council believes it is in the best interests of the Town that there be stability and continuity in the business location and business operation where licenses to sell beer are exercised, and

WHEREAS the Town Council desires to clarify and to establish additional criteria for granting, denying, suspending or revoking licenses granted under Ordinance No. 29A:

NOW THEREFORE IT IS HEREBY ORDAINED AS FOLLOWS:

1. The total number of licenses that can be issued for the sale of beer within the boundaries of Boulder Town as allowed by Ordinance 29A shall be three (3) Class A licenses rather than two (2).

2. A holder of a license to sell beer within the boundaries of Boulder Town issued pursuant to Ordinance No. 29A will be allowed to renew the license for subsequent years provided timely application is made for renewal in accordance with the renewal provisions of Ordinance No. 29A and provided the license holder maintains the qualifications and requirements of Ordinance No. 29A and this ordinance. Provided, however, that the Town Council reserves the right to excuse the late filing of a renewal application by the most recent license holder if the late filing is shown to be the result of excusable neglect and if the showing is made to the Town Council no later than sixty (60) days following the expiration date of the license. Such business is nevertheless required to close the business for the sale of beer from the date of expiration until such time as the license is renewed.

3. Although licenses issued pursuant to Ordinance No. 29A to sell beer within the boundaries of Boulder Town are not transferrable, and each business owner must apply for and be granted a license in accordance with the terms of Ordinance No. 29A, a preference for the issuance of a license will be given to a subsequent business owner who: (1) purchases or otherwise acquires ownership of the business for which the prior license was issued, and (2)

intends to continue operation of the same or substantially the same business at the same location as the prior license holder. If the successor business owner otherwise qualifies for issuance of the license, such owner will be given a preference for issuance of a license over all other qualified applicants. The most recent license holder or the successor business owner may exercise the preference by filing an application for the issuance of a license pursuant to Ordinance No. 29A and by informing the Town Clerk and Town Council in writing of the change or proposed change in ownership of the business. The application and notice can be filed at any time prior to the time the new license is issued.

4. Upon receipt of an application filed with the Town Clerk for issuance of a license to sell beer within the boundaries of Boulder Town, the Town Clerk shall within a reasonable period of time from the receipt of such application determine if any of the three (3) licenses authorized to be issued pursuant to Ordinance No. 29A and this ordinance are unissued. If any licenses are unissued, the Clerk will submit the application to the Town Council for consideration. If there are no unissued licenses, the Town Clerk will within a reasonable period of time inform the applicant that no licenses are currently available for issuance. The Town Clerk shall keep the application on file, and the application will be considered to be “active” for a period of six (6) months from the date the application is received by the Clerk. If no licenses become available within a period of six (6) months from the date the application is received by the Clerk, the application will expire and Boulder Town will have no obligation to consider the application further.

5. A license authorized under Ordinance No. 29A will be deemed to be available for issuance: (1) on the first business day following sixty (60) days after the expiration of a license issued to another license holder if a renewal application was not timely filed with the clerk in the time period required by Ordinance No. 29A and the Town Council has not excused the late filing; (2) on the first business day following the final revocation of a license by the Town Council under the provisions of Ordinance No. 29A; or (3) on the first business day following the date the Town Council determines (based on credible and substantial information) that a prior license holder has abandoned the license.

6. After reasonable inquiry and determination made by the Town Council that an applicant for issuance of license to sell beer within Boulder Town has met the qualifications and requirements of Ordinance No. 29A, and upon a determination made by the Town Council and Clerk that a license is available for issuance, the license shall be issued to the applicant with the highest priority based on the following:

First, to the holder of a preference granted by this ordinance for issuance of a license.

Second, to the applicant with the earliest filed “active” application as of the date the license is deemed to be available for issuance.

The license application fee will be due and payable at the time the license is issued.

7. In addition to the revocation or suspension provisions of Ordinance No. 29A, the

Town Council may revoke or suspend a license to sell beer to any license holder that is determined by the Town Council, after a hearing, to not meet the qualifications and requirements of Ordinance No. 29A. Suspensions under Ordinance No. 29A and this ordinance shall be granted in the discretion of the Town Council and shall be temporary and not exceed six (6) months in duration. Revocations shall terminate the license and all preferences that would otherwise accompany the license.

8. All provisions of Ordinance No. 29A not modified by this ordinance shall remain in full force and effect.

This ordinance shall take effect upon passage.

DATED this 8th day of October, 1999.

By:

/s/ Keith L. Gailey
MAYOR

Attest:

/s/ Judith Davis
TOWN CLERK