

**ORDINANCE NO. 22, 2013**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WISE,  
VIRGINIA PERMITTING DULY ORGANIZED NONPROFIT  
CORPORATIONS AND ASSOCIATIONS TO SELL BEER AND/OR WINE IN  
TOWN STREETS, SIDEWALKS, PUBLIC RIGHTS-OF-WAY, AND BIG  
GLADES COMMUNITY SQUARE UNDER CERTAIN CONDITIONS; AND  
PRESCRIBING REGULATION THEREOF**

**WHEREAS**, pursuant to Virginia Code §15.2-1806, as amended, the Town of Wise is authorized to establish rules and regulations for the operation of its parks, recreation areas, and playgrounds and pursuant to Virginia Code §15.2-2000 et.seq, as amended, the Town of Wise is authorized to prescribe terms and conditions for use of municipal streets, sidewalks, and public rights-of-way; and, pursuant to Virginia Code §4.1-308 et.seq, as amended, it is lawful for persons to drink alcoholic beverages in areas approved by the Virginia Alcoholic Beverage Control Board at events for which a banquet-special event license has been granted; and,

**WHEREAS**, the Wise Town Council wishes to establish a Wise Special Beverage Service Permit with regulations to allow duly organized and existing nonprofit corporations and associations to sell beer and/or wine in Town streets, sidewalks, public rights-of-way, and Big Glades Community Square under certain conditions; and,

**WHEREAS**, notice, advertisement, and public hearing have been provided.

**NOW, THEREFORE BE IT ORDAINED AND ENACTED** by the Town Council of the Town of Wise, Virginia that there is hereby established a Wise Special Beverage Service Permit as follows:

**Sec. 1. – Definitions**

The Banquet-Special Event License referred to in this Ordinance shall be as defined by the Alcoholic Beverage Control Act of the state, as amended, and the terms "beer" and "wine" wherever used in this section shall have the meaning ascribed to them by such act. The term "permit" shall mean the Wise Special Beverage Service Permit.

**Sec. 2 - Policy**

Except as provided herein, no person or entity shall hold, organize or sponsor any event that includes the sale of beer and/or wine in Town parks, streets, sidewalks, and public rights-of-way unless a Wise Special Beverage Services Permit has been granted by the Town of Wise. No such permit shall be issued by the Town until the applicant has obtained a Banquet-Special Event License or a Remote License from the Virginia Department of Alcoholic Beverages as required by the Alcoholic Beverage Control Act.

**Sec. 3. – Permit Qualifications**

The following minimum qualifications must be met before a Wise Special Beverage Service Permit may be issued:

- A. The applicant must be a duly organized nonprofit corporation or association.
- B. The special event must be a Town-approved public or private event conducted for an athletic, charitable, civic, or educational purpose.
- C. The event and beer and/or wine sales may not be for personal monetary gain.
- D. The applicant must provide proof of liability insurance underwritten by insurers acceptable to the Town Attorney, indemnifying the applicant against any perils, suits, claims and losses which may arise in connection with the proposed activity. Such coverage shall include a liquor liability rider, have at a minimum, a \$1.0 million liability limit, and include the Town of Wise as an "additional insured" by endorsement.
- E. The applicant shall have proper controls in place to assure that the proposed activity does not present a safety or health risk to participants, spectators or the public, or an environmental hazard.
- F. No Town resources (personnel, funds, etc.) will be required to conduct the beer and/or wine sales. Applicant must provide their own beverage service area equipment and furnishings including tables, chairs, trash cans, etc. Any tents utilized must be weighted and secured without use of stakes.
- G. The location of the proposed beer and or wine beverage service area (garden) must be specified, approved, and fenced by the Town.
- H. Only one beer and/or wine garden shall be permitted for any one event.

**Sec. 4. – Application Procedures; Issuance**

Application for a permit shall be made upon forms provided by the Town and shall be verified by the affidavit of the applicant made before a notary public or other *person* duly authorized by law to administer oaths. The application shall require the applicant to state whether he or any member, agent, or employee of the applicant organization has, during the preceding year, committed any act or permitted any condition for which a Virginia Department of Alcoholic Beverage License was, or might have been, revoked or suspended. The application shall be submitted not less than thirty (30) days nor more than six (6) months prior to the date of the proposed sale of beer and/or wine on municipal property and shall be accompanied by a twenty-five dollar (\$25.00) application fee. Applications fees are not refundable under any circumstance. The application must include a letter of support from the special event sponsor.

If an application is submitted after the filing deadline set forth in the preceding paragraph, the Town Manager or his or her designee may modify the requirements of Section 4 upon a demonstration by the applicant, in writing, that circumstances giving rise to the proposed event did not reasonably allow the applicant to apply for a permit within the time prescribed.

If from the statements and information provided in the application the applicant appears to possess all requisite qualifications under law, including a statement that he has not during the preceding license year, committed any act or permitted any condition for which his license was, or could have been revoked or suspended, the Town Manager or his or her designee shall issue the applicant a permit. In issuing a permit, the Town Manager or his or her designee may impose, as conditions to granting a permit, such additional requirements and restrictions as will reasonably protect the public health, safety, welfare, peace and order.

**Sec. 5 - Regulations**

- a. The applicant shall be responsible for items left in the approved beverage service area by guests. All personal property placed on, or in the facility, shall be at the risk of the applicant. The Town of Wise assumes no responsibility for any items left by the applicant or their guests in the beverage service area (garden).
- b. The applicant shall leave the public property in the same condition it was received and trash is to be removed from the beverage service area by the applicant.
- c. A certificate of insurance must be received no later than 5 days prior to the scheduled event. Insurance must include: Bodily injury and property damage in the amount of \$1,000,000 per person and per occurrence, naming the Town of Wise as "additional insured" by endorsement. Failure to provide the required insurance will result in termination of approval of the Wise Special Beverage Service Permit with or without notice.
- d. All applicants must be at least twenty-one years of age and must be present during the event.
- e. The Town shall supply wrist bands with tear off tabs which must be used by the applicant to serve beer and or wine beverages. Tabs torn off for each beverage service shall be retained by the applicant and returned to the Town along with unused bracelet in order to provide a full accounting of activity generated by the Wise Special Beverage Service Permit.
- f. The beverage service area (garden) shall have one combined entrance/exit which shall be monitored at all times by applicant staff. This single entrance/exit shall serve as a photo ID check point and as the sole site for issuance and recording of wristbands. The applicant must provide their own

- beverage service area equipment and furnishings including tables, chairs, trash cans, etc.
- g. Alcoholic beverages must be served in unlabeled paper, or plastic containers. Glass containers are prohibited for use in beverage service.
- h. A maximum of three alcoholic drinks may be served to any one individual under this permit.

**Sec. 6 – Grounds for Denial**

The Town of Wise may deny an application for a Wise Special Beverage Service Permit for reasons including but not limited to the following:

- a. Failure to submit a complete application, submit an application in a timely manner, or failure by an applicant to supply any requested documents.
- b. Objection to the permit by event sponsor or co-sponsors.
- c. When, in the sole opinion of the Town Manager
  - a. the requested site for the beverage service area is unacceptable.
  - b. the proposed sale of beer and/or wine presents a safety or health risk to participants, spectators or the public, or an environmental hazard.
- d. The application contains a material falsehood or misrepresentation, intentional or otherwise.
- e. The proposed sale of beer and/or wine is prohibited by any law, ordinance, statute or regulation.

**Sec. 7 - Termination**

The Town of Wise reserves the right to cancel any permit, with or without notice, in case of extreme necessity and/or to deny use of municipal property in such instances where such use is determined to not be in the Town's best interest. The Town of Wise reserves the right to interrupt, terminate, or cancel a sale of beer and/or wine on municipal property, when in the judgment of the Town of Wise or any acting law enforcement officer within the Town of Wise, such action is necessary for the interest of public safety, violation of an ordinance or law, or in violation of any element of this policy. In such case, the applicant waives any claims for damages or compensation should the special sale of beer and/or wine on municipal property be interrupted, terminated or canceled and the applicant releases the Town for all claims.

**Sec. 8 - Liability Disclaimer/Indemnification**

Applicant and all agents of the applicant and all guests of the applicant will comply with all statutes, laws, ordinances, rules and regulations of the Federal, State, County and Town governments applicable to the use of the facility. Applicant shall indemnify and hold harmless the Town of Wise from and against any and all loss, cost, (including

statutory liability and liability under Workmen's Compensation Laws) in connection with claims for damages as a result of injury or death of any person or property by Applicant and all other persons which arise from, or in any manner grow out of, any act or neglect on or about the facilities provided hereunder by Applicant and all members of its party, their agents, employees, customers, invites, contractors and subcontractors. The applicant shall be responsible for all claims, injuries (including death), damages or accidents occurring in any part of the facility caused by any act, omission, default, subcontractor, patron, guest, or the applicant itself. The applicant will pay the Town of Wise in cash upon demand, a sum equal to the cost of repairing and restoring the facility to its condition as of the commencement of the alcoholic beverage sale, or at the option and approval of the Town of Wise, will make such restoration and repairs at their own expense. Applicant agrees to indemnify and hold harmless the Town of Wise from any such actions and damages. Furthermore, the Town of Wise shall have no responsibility for injuries to any persons using the facility or to any vehicles parked at the facility.

**Sec 9. – Duration**

Every permit issued under this Ordinance shall expire upon conclusion of the approved event.

**Sec 10. – Other Requirements**

The granting of any permit required by this Ordinance shall not eliminate applicant responsibility for collection and remittance of lawful taxes or any requirement for any business license, any other permit(s) which may be prescribed by any other federal, state or local statutes, ordinances, rules or regulations, or compliance with any other applicable federal, state or local statutes, ordinances, rules or regulations.

**Sec. 11. - Adminsitration**

The Town Manager may designate one (1) or more officers or employees of the Town to administer the provisions of this section.

**Sec 12. – Violations; Penalties For**

Any person who shall violate any provision of this section shall be guilty of a Class 1 misdemeanor.

**Sec 13. – Exemptions**

- a. Wine and beer tasting events held on public or private property in the Town under a Virginia Department of Alcoholic Beverage License do not require a Wise Special Beverage Service Permit.
- b. Parties leasing the Big Glades Amphitheater for a private event are not required to obtain a Wise Special Beverage Service Permit for the serving of alcoholic beverages inside the facility carried out under an appropriate license from the Virginia Department of Alcoholic Beverages.

**Sec 14. – No Agency**

No joint venture or agency relationship or status of any kind shall exist or be created between the Town and the Applicant.

**BE IT FURTHER ORDAINED AND ENACTED** by the Town Council of the Town of Wise, Virginia, that any previous Ordinance or Resolution, or portion thereof, in conflict herewith is hereby repealed.

**VOTING "AYE":** Gaynor Smith, Jr., Billy Bartlett, Jr., Jeff Dotson

**VOTING "NAY":** Erra Sutherland, Teresa Adkins

**ABSENT:** - None -                      **ABSTENTIONS:** - None -

**ADOPTED, ORDAINED, ENACTED, and EFFECTIVE** on this the 26th day of November, 2013.

**TOWN OF WISE, VIRGINIA**

Erra Sutherland  
**MAYOR**

**ATTEST:**

Rebecca M. Bryant  
**CLERK OF COUNCIL**