

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER NOSLER BECK
COUNCIL BILL NO. 18
ORDINANCE NO. 1748
Series 2022

TITLE: AN ORDINANCE AMENDING SECTIONS 2-89 AND 11-565 OF THE WHEAT RIDGE CODE OF LAWS TO PROVIDE AN ADMINISTRATIVE SUBPOENA PROCESS FOR HOTEL LICENSING

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, the Council has previously adopted hotel licensing regulations, codified as Wheat Ridge Municipal Code ("Code") Article XVI of Chapter 11, to regulate hotel businesses in order to reduce illegal and criminal activity in the establishments and ensure they are operated in a manner compatible and consistent with other City licensed businesses; and

WHEREAS, the current hotel licensing system does not currently provide clear authority for authorized City Staff to issue subpoenas to inspect records and documents necessary to determine compliance with the Code, nor is there a process to appeal such a subpoena; and

WHEREAS, the Council finds and determines that amendments of the Code to include procedures for the issuance and appeal of administrative subpoenas is necessary to protect the rights of hotel licensees and to effectively administer the City's hotel licensing system.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 2-89 of the Wheat Ridge Code of Laws, concerning failure to obey an administrative subpoena, is hereby amended as follows:

Sec. 2-89. - Failure to obey subpoena.

It is unlawful for any person to refuse to obey a subpoena issued by an AHO, UNLESS SUCH PERSON IS A PARTY TO A PENDING ADMINISTRATIVE APPEAL CONCERNING THE SUBPOENA. Failure to obey a subpoena constitutes contempt and may be criminally prosecuted and have penalties imposed in the same manner as violation of a Municipal Court subpoena.

Section 2. Section 11-565 of the Wheat Ridge Code of Laws concerning the process to approve or deny a Hotel License application, is hereby amended by the addition of new subsections (d) and (e), to read in their respective entireties as follows:

Sec. 11-565. Approval or denial of application; SUBPOENA POWERS.

(D) THE TREASURER OR THE TREASURER'S DESIGNEE IS AUTHORIZED TO ISSUE ADMINISTRATIVE SUBPOENAS REQUIRING THE PRODUCTION OF DOCUMENTS, RECORDS AND OTHER EVIDENCE RELEVANT TO A DETERMINATION OF A LICENSEE'S OR APPLICANT'S COMPLIANCE WITH THIS ARTICLE. ADMINISTRATIVE SUBPOENAS MAY BE APPEALED TO AN ADMINISTRATIVE HEARING OFFICER UNDER THE APPEALS PROCESS SET FORTH IN ARTICLE V OF CHAPTER 2 OF THIS CODE. THE SOLE ISSUE ON AN APPEAL OF AN ADMINISTRATIVE SUBPOENA IS WHETHER THE ISSUING OFFICER EXCEEDED HIS/HER AUTHORITY IN ISSUING THE SUBPOENA. THE STANDARD OF PROOF IS A PREPONDERANCE OF THE EVIDENCE, AND THE BURDEN OF PROOF SHALL REST WITH THE CITY TO ESTABLISH THAT THE SUBPOENA AT ISSUE LIES WITHIN THE ISSUING OFFICER'S AUTHORITY.

(E) THE PARTY ISSUING A SUBPOENA MAY MAINTAIN POSSESSION OF SUBPOENAED DOCUMENTS IF THERE IS REASONABLE SUSPICION THAT TAMPERING OF SUCH RECORDS MAY OCCUR WHILE AN APPEAL HEARING REQUESTED UNDER SUBSECTION (D) ABOVE IS PENDING. DURING THE PENDENCY OF ANY SUCH HEARING, THE SAFEGUARDED RECORDS SHALL NOT BE INSPECTED OR OTHERWISE USED BY THE CITY.

Section 3. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 10th day of October 2022, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for November 14, 2022 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 14 day of November, 2022.

SIGNED by the Mayor on this 21st day of November, 2022.



Bud Starker, Mayor

ATTEST:



Stephen Kirkpatrick, City Clerk

Approved as to Form



Gerald E. Dahl, City Attorney

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