

CITY OF DEARBORN HEIGHTS

ORDINANCE NO. H-15-05

AN ORDINANCE OF THE CITY OF DEARBORN HEIGHTS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF DEARBORN HEIGHTS, BE AMENDED BY AMENDING ARTICLE II OF CHAPTER 4 TO DESIGNATE IT AS PERTAINING TO RETAIL SALE LICENSE AND REGULATION; AMENDING SECTIONS 4-26, 4-27, AND 4-28; AND ADDING SECTIONS TO BE NUMBERED 4-29, 4-30, 4-31, 4-32, 4-33, 4-34, 4-35, AND 4-36; IN ORDER TO MORE APPROPRIATELY REGULATE RETAIL SALE LICENSES AND RETAIL SALES OF ALCOHOLIC LIQUOR IN THE CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEARBORN HEIGHTS, THAT THE CODE OF ORDINANCES OF THE CITY OF DEARBORN HEIGHTS, MICHIGAN, IS HEREBY AMENDED BY AMENDING THE DESIGNATION OF ARTICLE II OF CHAPTER 4; SECTIONS 4-26, 4-27, AND 4-28; AND ADDING SECTIONS TO BE NUMBERED 4-29, 4-30, 4-31, 4-32, 4-33, 4-34, 4-35, AND 4-36; ALL OF WHICH SHALL READ AS FOLLOWS:

SECTION I.

ARTICLE II. RETAIL SALE LICENSE AND REGULATION

Sec. 4-26. - Purpose; licensing policy.

(1) Statement of purpose. The purposes of this article are (a) to allow the City to more particularly establish and administer a policy for the issuance and transfer of liquor licenses and permits in accordance with liquor laws, regulations and ordinances and (b) to provide for the enforcement of liquor laws, regulations and ordinances more particularly associated with retail sales of alcoholic liquor.

(2) Licensing policy. New licenses or permits, transfers of ownership of existing licenses, transfers into the city of new licenses, and relocations or expansions of an existing licensed establishment will be approved at the sole discretion of the City Council. No person shall sell alcoholic liquor for consumption without obtaining the following approvals:

(a) On-premises. No person shall sell alcoholic liquor for consumption on the premises within the City without applying for approval to the City Council and obtaining the express approval of the City Council for such license in accordance with this article, and applying for approval to the State Liquor Control Commission and obtaining the express approval of the State Liquor Control Commission for such license in accordance with state law. This provision shall not, in any event, apply to applications for special licenses granted by the Michigan Liquor Control Commission or 1-day permits as allowed by statute.

(b) Off-premises. No person shall engage in the business of selling alcoholic liquor for consumption off premises except in accordance with the terms of a license issued by the State Liquor Control Commission in accordance with state law.

(c) Business license. No person shall engage in the business of selling alcoholic liquor in the City unless the person shall also comply with the requirements of Chapter 8 of this Code pertaining to business licensing and business registration. This provision shall not be deemed to require a person to obtain a business license if the person is not otherwise required to obtain a business license to comply with the requirements of Chapter 8 of this Code.

Sec. 4-27. - Definitions.

(1) Alcoholic liquor means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing $\frac{1}{2}$ of 1% or more of alcohol by volume which are fit for use for beverage purposes. For purposes of this article, this definition of alcoholic liquor shall be used instead of the definition set forth at Section 4-1 of this Code should there be deemed or considered to be any inconsistency between this definition and the definition set forth at Section 4-1 of this Code.

(2) Any bodily alcohol content means either of the following:

(a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(3) Diligent inquiry means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, a State of Michigan personal identification card, or any other bona fide picture identification which establishes the identity and age of the person.

(4) Fraudulent identification means a driver's license or identification card that is false, forged, altered or fictitious, or any genuine driver's license or identification card that has been issued to a person other than the person presenting it as their own.

(5) Minor means a person less than 21 years of age.

(6) Plan of operation means an operational statement outlining the proposed manner in which a business establishment applicant for a liquor license will be operated, including, but not limited to, the format, schedule of the hours of operation, crowd control, security, alcohol management, use of the facilities, parking provisions, plan for interior use and layout, and any other pertinent information as requested by the City Council.

(7) PID means personal identification card.

(8) State law means the Michigan Liquor Control Code of 1998

(9) School property means a building, playing field, vehicle, or other property used for functions and events sponsored by a public school, except a building used primarily for adult education or college extension courses.

Sec. 4-28. - Selling or furnishing to minors.

(1) No person shall knowingly sell or furnish alcoholic liquor to a minor or shall fail to make diligent inquiry as to whether the person is a minor.

(2) A retail licensee shall not directly, individually, or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a minor except as otherwise provided by state law.

Sec. 4-29. - Consumption in public.

No person shall consume alcoholic liquor on the public streets, in a public parking lot, in a public parking structure or in the portion of any business premises open to the public if that business is not licensed to sell alcoholic liquor for consumption on the premises. A business or organization having permission from the Liquor Control Commission for outdoor sales may, with the approval of the City Council, sell or deliver alcoholic liquor for consumption on a designated area of public streets, parking structures or parking lots, subject to such restrictions as to time, dates and location as may be imposed by the City Council. It shall not be a violation of this section for a person to consume alcoholic liquor obtained from such a business or organization if such consumption is made in the designated area.

Sec. 4-30. - Application for approval of a new license or transfer of location review procedures; grounds for denial.

Each applicant for a new license, the transfer into the city of a new license, or an applicant seeking to relocate or alter the size of the physical structure of an existing licensed premises shall make a request to the City in accordance with the following procedures:

(1) Application. Each applicant must submit to the City Clerk an application on a form provided by the City, and all supplemental reports or data required by the application, which may include a plan of operation, design plans showing the entire structure, premises and grounds and in particular the specific areas where the license is to be utilized, parking, lighting, refuse disposal facilities and, where appropriate, plans for screening and noise control, a written statement explaining in detail how their proposal meets the factors as listed in the application and Section 4-33 of this Code and any other information deemed relevant by the Liquor Control Commission in evaluation of the applicant or the premises.

(2) Administrative review. Upon receipt of an application, the City Clerk will refer same to the City Council which shall cause a thorough review and investigation of the applicant by appropriate City officers or employees, including but not limited to a complete history of past

business experience and liquor law violations, if any, to be made of the persons and/or premises which must meet or exceed codes. The applicant shall provide all requested information to and fully cooperate with all city officers and employees requesting any and all additional information. The findings resulting from such review and investigation shall be reported to the City Council.

(3) Application fee. An application for a liquor license shall be accompanied by a non-refundable fee. The amount of such fee shall be set by resolution of City Council.

(4) Grounds for denial. No such license shall be approved for:

(a) Any person, for any location, which the City Council determines, by majority vote, is unsuitable for on-premises consumption of alcoholic liquor, considering:

i. The proximity of other premises licensed to sell alcoholic liquor for on-premises consumption.

ii. The lack of any other facilities or use on the premises to be licensed which are compatible with a license for on-premises consumption of alcoholic liquor (e.g. restaurant, hotel).

iii. The distance from public or private schools for minors.

iv. The proximity of an inconsistent zoning classification or land use.

v. Any other relevant factors as the City Council may deem appropriate.

(b) Any person, for any premises which does not comply with the applicable building, electrical, mechanical, plumbing, or fire codes, applicable zoning regulations, or applicable public health regulations; provided, however, the City Council may approve an application subject to compliance with the applicable codes and regulations within 60 days.

(c) Any person, corporation, limited liability company, limited partnership, partnership, or co-partnership which, at the time of application for such approval or transfer is delinquent in the payment of any taxes, fees, or other charges owed to or collected by the City.

(d) Any law enforcing public official or any member of the City Council and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale, or distribution of alcoholic liquor.

(e) A person who has been convicted of a violation of any federal or state law concerning the manufacture or sale of alcoholic liquor.

(f) A person whose liquor license has been revoked or not renewed for cause under this chapter, or a comparable city or township ordinance or state law, whether in Michigan or otherwise.

(g) Any person based upon such other relevant factors as the City Council may deem appropriate.

(5) Selection among qualified applicants. When any such license shall be available for issuance to a new applicant, either by lapse of a current license or by the authorization and allocation of additional licenses to the City, and there exist more qualified applicants for said license or licenses than the number of new licenses available for issuance, the City Council shall choose the most qualified applicant(s) for approval based upon the following criteria:

(a) The location of the proposed new business and its desirability in light of its location, the superiority of locations in business districts as opposed to outlying locations, the surrounding land uses, and its proximity to other premises licensed for on-premises location;

(b) The experience of the applicant;

(c) The other uses proposed to be included on the premises or in the development (e.g. restaurant, hotel);

(d) The cost and size of the overall project and number of new jobs to be created by the new business;

(e) The relative suitability of the design and size of the new business to the property on which it is proposed to be located; as evidenced by any building and grounds layout diagram required to be submitted with the application;

(f) The overall development or redevelopment of the city; and

(g) Any other relevant factors as the City Council deems appropriate.

(6) Conditional approval. Approval of a license shall be for the period of 1 year with renewal subject to the provisions of Section 4-33 of this Code. Approval of a license shall be upon the condition that any necessary remodeling or new construction for the use of the license required by the City Council or indicated on the design diagram submitted with the application shall be completed within 6 months of the approval of the license by the City Council or prior to the commencement of business, whichever occurs first, unless a timely request for extension for good cause shown is received and approved by City Council. Approval of a license shall also be upon the condition that any work on the premises necessary to comply with the applicable codes and regulation be completed within 60 days of the City Council approval of the license.

Sec. 4-31. - Permits; transfers of ownership.

(1) Permits. Requests for permits for dance, entertainment, or dance and entertainment shall be reviewed by the City Council and approved in the sole discretion of the City Council after an evaluation of the factors listed in Section 4-30, Subsections (4) and (5) of this Code.

(2) Transfers of ownership; grounds for denial. Requests for transfer of ownership of existing licensed establishments shall be reviewed by the City Council and approved or disapproved by City Council. The City Council may hold a public hearing. If the continuation of an existing operation is contemplated, the applicant must present a plan relating to how it will deal with any existing problems created by the business. The City Council shall not approve the transfer of a

license for sale of alcoholic liquor for on-premises consumption if the owner is delinquent in the payment of any taxes, fees, or other charges owed to or collected by the City. A transfer shall not be approved unless provision is made to secure the payment of the delinquent obligation.

Sec. 4-32. - Reservation of authority.

No applicant for a liquor license has the right to the issuance of such license to the applicant or to the entity the applicant represents, and the City Council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such license.

Additionally no applicant for a liquor license has the right to have such application processed and the City Council further reserves the right to take no action with respect to any application filed with the City. The City Council further reserves the right to maintain a list of all applicants and to review same when, in its discretion, it determines that the issuance of an additional liquor license is in the best interest of the City at large and for the needs and convenience of its citizens.

Sec. 4-33. - Annual renewal; license revocation, appeal and fees.

(1) The City Council shall annually review before March 30 each licensee's on-premises liquor license to determine whether or not to object to the State Liquor Control Commission's renewal of the license, and investigations and recommendations as to each renewal request shall be undertaken and provided by the Police, Fire, Building and any other service units as the City Council deems appropriate, which service units shall make written recommendations as to the liquor license renewal. On receipt of the written recommendations, the City Council shall review the recommendations and shall decide whether to approve or to revoke and not to renew the on-premises liquor licenses of each licensee's on-premises liquor license. City Council may seek the revocation of the liquor license and may object to renewal of the liquor license for any of the following reasons:

(a) Failure to comply with all standards plans and conditions established and approved at the time of the issuance of the license or at a time of later City approval.

(b) Failure to timely pay all personal property taxes and all real property taxes and all other obligations due and payable to the city or have outstanding any personal property tax or real property tax or obligation due and payable to the City as of the date of the annual review.

(c) Repeated violation of the state liquor law.

(d) Violations of this chapter or other City ordinance.

(e) Maintenance of a nuisance upon or in connection with the licensed premises, including but not limited, to any of the following:

i. Existing violations of the building code, electrical code, fire prevention code, mechanical code, plumbing code, health code or other applicable code.

ii. Violation of the zoning ordinance.

- iii. A pattern of patron conduct in the neighborhood of the licensed premises which is in violation of the law and/or disturbs the peace, order and tranquility of the neighborhood.
- iv. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining properties.
- v. Entertainment on the licensed premises without a permit and/or entertainment which disturbs the peace, order and tranquility of the neighborhood of the licensed premises.
- vi. Any advertising, promotion, or activity in connection with the licensed premises which by its nature causes, creates or contributes to disorder, disobedience of rules, ordinances or laws, or contributes to the disruption of normal activity of those in the neighborhood of the licensed premises.
- vii. Numerous police contact with the licensed premises or the patrons of the premises.
- viii. Repeated reports that the licensee is serving minors or intoxicated persons.
- ix. Failure by the licensee to permit the inspection of the licensed premises by the City's employees, agents and/or representatives in connection with the enforcement of this chapter or this article.

(2) Prior to filing with the Liquor Control Commission a recommendation to revoke a liquor license and/or an objection to the renewal of a liquor license, the City Council shall do the following:

- (a) Serve written notice on the licensee, which shall include:
 - i. Notice of the proposed action and the reasons for the action.
 - ii. Date, time and location of hearing on the matter and a statement that at the hearing licensee may present evidence and arguments on its behalf, confront witnesses and may be represented by a licensed attorney.
- (b) Hold a hearing no earlier than 10 days after service of the written notice on the licensee. The hearing may be conducted by the City Council as a whole or by a Hearing Officer or Hearing Board appointed by the City Council for such purposes. If a Hearing Officer or Board is appointed, it shall be the Officer or Board's responsibility to make a recommendation to City Council for the City Council's final review and decision.
- (c) The City Council shall make a written resolution as to its findings and determination and mail same to licensee and the Liquor Control Commission.

(3) A nonrefundable fee, in an amount determined by Resolution of City Council, to cover the cost of annual investigation and review by the City shall be established and payable before March 30 each year by licensees.

Sec. 4-34. - Possession on public street.

Except in those areas where consumption of alcoholic liquor is permitted by this chapter or article, no person shall possess alcoholic liquor in an open, uncapped, or unsealed container on a public street.

Sec. 4-35. - Penalties for liquor violations.

(1) Licensees shall comply with all applicable state and City laws, ordinances, and regulations; this chapter; this article; and the plan of operation approved by the City Council. Any change to the Plan of Operation shall be approved by the City Council prior to implementation of the change by the licensee. Failure of such compliance or variance from an approved plan is a violation of this chapter and this article and may result in the City Council recommending to the State Liquor Control Commission that the license be revoked and not renewed.

(2) Any person who violates any provision of this article shall be guilty of a misdemeanor punishable by a fine and costs not to exceed \$500.00 or imprisonment not to exceed 90 days or by both such fine and imprisonment.

Sec. 4-36. - Furnishing or using false identification.

(1) No person shall furnish fraudulent identification to a minor. Notwithstanding Section 4-4, a minor who uses fraudulent identification to purchase or attempt to purchase alcoholic liquor, is guilty of a misdemeanor and is subject to the penalty set forth in Section 4-35(2) of this Code.

(2) A minor who furnishes fraudulent identification to gain entry into any business that is licensed to sell alcoholic liquor for on-premises consumption and which restricts entry to persons 21 years of age or older, or who furnishes fraudulent identification to secure the right to purchase alcoholic liquor at any business that is licensed to sell alcoholic liquor for consumption on the premises, is guilty of a misdemeanor and is subject to the penalty set forth in Section 4-35(2) of this Code.

(3) No person shall:

(a) Display, cause or permit to be displayed, or otherwise use any altered, counterfeited, forged, or duplicated State of Michigan personal identification card or a PID of another state substantially corresponding to a State of Michigan PID.

(b) Have in his or her possession any altered, counterfeited, forged, or duplicated State of Michigan PID or a PID of another state substantially corresponding to a State of Michigan PID.

(c) Loan to another person, or knowingly permit the use of, by one not entitled to its use, a State of Michigan PID or a PID of another state substantially corresponding to a State of Michigan PID.

(d) Display or represent as one's own any State of Michigan PID issued to another or a PID of another state substantially corresponding to a State of Michigan PID issued to another person.

SECTION II.

REPEAL

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION III.

SEVERABILITY

Should any section, subsection, clause, or phrase of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

SECTION IV.

EFFECTIVE DATE

This ordinance shall become effective upon publication as provided by law.

SECTION V.

AUTHENTICATION

This is to certify that the undersigned do hereby authenticate the foregoing record of the ordinance herein set forth.

DANIEL S. PALETKO, Mayor

WALTER J. PRUSIEWICZ, Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of this ordinance adopted by the Council for the City of Dearborn Heights at a regular meeting of the Council held on the 28th day of April, 2015, and became effective by publication in the official newspaper of the City of Dearborn Heights on the 27th day of May, 2015.

WALTER J. PRUSIEWICZ, Clerk

Publication Date: May 27, 2015.