

**CITY OF AUBURN HILLS
COUNTY OF OAKLAND
STATE OF MICHIGAN
ORDINANCE NO. 12-841**

AN ORDINANCE TO AMEND CHAPTER NO. 6, ALCOHOLIC LIQUORS

THE CITY OF AUBURN HILLS ORDAINS:

Section 1.

Chapter 6 of Auburn Hills Code of Ordinances, as amended, is hereby amended and shall read as follows:

Chapter 6 – ALCOHOLIC LIQUORS

Sec. 6-1. – Purpose.

The purpose of this Chapter is to emphasize and clarify the City's policies for the issuance, transfer, renewal, revocation and enforcement of liquor licenses and to provide an orderly and nondiscriminatory procedure for the review and approval by the City for any and all requests for liquor licenses or any matters relating thereto, including the issuance, transfer, renewal, revocation and enforcement of liquor licenses.

(Ord. No. 505, § 2, 9-9-91)

Sec. 6-2. – Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Alcoholic liquor means any spirits, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented and by whatever name called, containing one-half of one percent or more of alcohol by volume which are fit for use for beverage purposes.

Beer means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

Class C license means a license to sell at retail beer, wine, mixed spirit drink and spirits for consumption on premises.

Off-premises license means a license to sell at retail alcoholic liquor for consumption off the licensed premises, and includes SDD and SDM licenses.

On-premises license means a license to sell at retail alcoholic liquor for consumption on the licensed premises and includes class C, tavern and resort licenses.

Person means an individual, organization, group, association, partnership, corporation, trust, business entity, or any combination of the above.

Resort license means a license issued by the Liquor Control Commission in a resort area for a period not to exceed 12 months, without regard to other Liquor Control Commission quota requirements, and in accordance with the state Liquor Control Act, Act No. 8 of the Public Acts of Michigan of 1933 (MCL 436.1 et seq., MSA 18.971 et seq.), as amended.

Spirits means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, and solution, and includes wine containing an alcoholic content of more than twenty-one percent (21%) by volume, except sacramental wine.

Tavern license means a license to sell at retail only beer and wine for consumption on the premises.

Wine means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes or any other fruit with the usual cellar treatment, and containing not more than twenty-one percent (21%) of alcohol by volume, including fermented fruit juices other than grapes.

(Ord. No. 505, § 3, 9-9-91)

Sec. 6-3. – Application for New On-Premises Licenses.

A. In addition to the application required by the State Liquor Control Commission for licensing by the State, application for an on-premises license shall be made to the City to sell alcoholic liquor, beer, wine or spirits on premises in the City.

B. Every applicant for on-premises liquor license approval must complete and file an application with the City Clerk's office on forms that will be provided by the City. At the time of filing an application for on-premises liquor license approval and/or on-premises liquor license renewal with the City Clerk, the applicant must pay to the City Clerk a nonrefundable application fee in an amount to be established by resolution of the City Council, the amount of such fee to include, but not limited to, the cost for all investigations and reviews required by this Chapter.

C. The application for on-premises liquor license approval shall include the following information:

1. The name, age and address of the applicant in the case of an individual; or in the case of a partnership the names and addresses of the partners; or in the case of a corporation, the names and addresses of the officers and directors, and any and all individuals applicable to MLCC R 436.1109 qualifications.
The name and address of the resident agent for accepting service of process, if the applicant is a corporation.
3. The citizenship of the applicant, his place of birth; and if a naturalized citizen, the time and place of his naturalization.
4. The character of business of the applicant and the length of time that the applicant has been in business of that character. In the case of a corporation, the date when its charter was issued and the objects for which the corporation was formed.
5. The names and address of the financial institution wherein the applicant's funds for establishment and operation of the entity sought to be licensed are deposited.
6. The sources of all funds which will be relied upon in the establishment and operation of the entity sought to be licensed.
7. The location, legal description, address and zoning classification of the premises which is to be operated under the proposed license.
8. A statement of whether the premises which is to be operated under the proposed license is located within 500 feet of a church or school building.
9. The criminal record, if any, of the applicant, including all partners, if a partnership, and all officers and directors, if a corporation.
10. A statement regarding whether the applicant has made application for a liquor license other than described in the application, and the disposition of such application.
11. An accurate record and history of any liquor license complaint violations by the applicant, by a corporation or entity the applicant has worked for or had a substantial interest in, or by parent or subsidiary corporation of the applicant for the preceding five years.
12. A statement that the applicant is not disqualified to receive a liquor license by reason of any matter or thing contained in this Chapter or the laws of the State.
13. A statement that the applicant will not violate any of the laws of the State or of the United States or any ordinance of the City in the conduct of its business.
14. Whether a new building is proposed or whether an existing structure will be utilized.
15. Site plan, floor plan, seating arrangement plan, building elevation plan and plans for future building alterations and all other pertinent plans showing the physical features for existing buildings or proposed building in which the applicant's business will be conducted.
16. Details of the applicant's experience and financial capability as a licensee.
17. A general operational statement outlining the proposed manner in which the business for which the license is being proposed will be operated, including a schedule of the hours of operation, food service, crowd control, use of facilities, parking facilities and cost of development.

18. A statement that the location proposed and the methods of operation will not detrimentally and unreasonably impact nearby property owners, businesses and residents.
19. A statement that the proposed use would be compatible with the surrounding land uses and compatible with abutting roadways and will not cause an interference to traffic and/or impair traffic flow.
20. Any other information relevant to a determination by the City.

(Ord. No. 505, § 4, 9-9-91)

Sec. 6-4. – Restrictions on Licenses.

No license shall be issued to:

1. A person whose liquor license has been revoked or not renewed.
A co-partnership or partnership, unless all of the members and partners of such co-partnership or partnership would be eligible to receive a license under this chapter.
3. A corporation, unless all officers, directors and shareholders owning ten percent or more of the shared of stock of the corporation would be eligible to receive a license under this chapter.
4. A person who is convicted of a violation of any of the following:
 - A. A felony
 - B. A crime involving the excessive use of alcoholic liquor.
 - C. A crime involving any of the following:
 - a. Gambling
 - b. Prostitution
 - c. Weapons
 - d. Violence
 - e. Tax Evasion
 - f. Fraudulent Activity
 - g. Controlled Substances
 - D. A misdemeanor of such a nature that it may impair the ability of the applicant to operate a licensed business in a safe and competent manner.
5. Sentencing for any of the offenses specified in this sub-rule after a plea of nolo contendere.
6. A person who does not own the premises for which a license is sought or does not have a lease therefore for the full period for which the license is issued.
7. Any entity or person for any premises where there exists a violation of the City Zoning Ordinance, building code, electrical code, mechanical code, plumbing code, fire prevention code and/or any and all other applicable codes and ordinances, including, but not limited to, public health codes and regulations.
8. Any entity or person for any premises where the sale of beer, wine or spirits is not incidental and subordinate to other permitted business uses upon the site such as, but not limited to, food sales, motel operations and recreational activities.
9. Any entity or person for any premises where it is determined by a majority of the City Council that the premises do not or will not reasonably soon after commencement of operations comply fully with all City Ordinances, including having adequate off-street parking, lighting, refuse disposal facilities, screening, noise and nuisance control and sewage facilities.
10. Any entity or person for any premises where it is determined by a majority of the City Council that the proposed location is inappropriate, consider; the desirability of establishing a location in developed commercial areas, in preference to isolated underdeveloped areas; the compatibility with adjacent uses of land, traffic safety; accessibility to the site from abutting roads; capability of abutting roads to accommodate the commercial activity; distance from public or private schools for minors; distance from churches; proximity of inconsistent zoning classifications; and accessibility from primary roads or state highways.

(Ord. No. 505, § 5, 9-9-91)

Sec. 6-5. – Investigations.

Upon receipt of the fully completed application for an on-premises liquor license approval and/or on-premises liquor license renewal and application fee as provided in this Chapter, the City Clerk shall forward the application to the Police Department, Fire Department, Building Department and such other departments as the City Manager deems appropriate, which departments shall make written recommendations as to the liquor license approval, such recommendations to be filed with the City Clerk prior to final action by the City Council.

(Ord. No. 505, § 6, 9-9-91)

Sec. 6-6. – Hearing.

A. Upon the receipt by the City Clerk's Office of the written recommendations required by section 6-5, the Clerk shall cause the application for an on-premises liquor license approval to be placed upon the agenda of the City Council for hearing. The hearing shall be held by the City Council within 60 days after the receipt of the application from the applicant in the office of the City Clerk. The City Clerk shall mail to the applicant, by first class mail, written notice of the date, time and location of the hearing before the City Council.

B. At the hearing before the City Council, the applicant shall have the right to present evidence, witnesses and arguments on his behalf. After the hearing, the City Council shall make its decision with respect to the liquor license, and the City Council shall put its decision and the reasons therefore in writing. The City Clerk shall mail the same by first class mail to the applicant.

(Ord. No. 505, § 7, 9-9-91)

Sec. 6-7. – License Approval; Denial.

A. If the City Council determines after holding its hearing that the applicant does not meet all of the criteria set forth in this Chapter, it may deny the applicant's request for approval of an on-premises liquor license. If the City determines that the applicant meets all of the criteria set forth in this Chapter, it may approve the applicant's request for the on-premises liquor license, subject to the satisfaction of the conditions stated in this Section which will be set forth in the City Council's resolution for approval of the license. Approval of the license shall be granted with the following conditions:

1. In the City Council's discretion, issuance of the license may be restricted to a tavern license.
2. The issuance of the license shall be contingent upon the application for and receipt of site plan approval, building permits, zoning changes and all other necessary approvals required by the City within six months after the date of issuance of the license.
3. Construction shall be pursued within nine months after the issuance of the license, at which time the progress of the applicant in meeting all of the conditions stated in subsections (1) and (2) of this Section shall be reported by the City Manager to the City Council.
4. The City Council may extend, upon a showing by the applicant of special or unusual circumstances that are not the fault of the applicant, the time periods set forth in subsections (2) and (3) of this Section.
5. No floor plan, building elevation, site plan, seating arrangement, kitchen layout or other pertinent plans, drawings, documents or facts submitted to the City by the applicant may be changed, unless the change is approved by the City Council.
6. When the building or remodeling is complete, it must meet all State, County and local regulations.
7. Failure of the applicant to meet any of the conditions of this Chapter shall be reason for the City Council to deny the renewal of the license issued.

(Ord. No. 505, § 8, 9-9-91)

(Ord. No. 505, § 9, 9-9-91)

Sec. 6-8. – Inactive Licenses.

The City Council may object to the renewal of any license which has not been activated by the licensee by the date of the City Council's annual review for renewal of the license.

(Ord. No. 505, § 10, 9-9-91)

Sec. 6-9. – Transfer.

Applications for the transfer of an on-premises liquor license shall proceed and be reviewed pursuant to the procedures of the new license provisions of this Chapter, except that the following additional factors may be considered by the City Council:

1. Consideration shall be given to whether or not the operation is expected to change from the existing operation.
2. If continuation of an existing operation is contemplated, the applicant must present a plan relating to how it will deal with existing problems created by the business, including, but not limited to, insufficient parking and nuisances created on-site or off-site.

(Ord. No. 505, § 11, 9-9-91)

Sec. 6-10. – Renewal

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 Liquor Control Commission's renewal of the license, and investigations and recommendations as to each renewal request shall be undertaken and provided pursuant to the procedures and requirements of Section 6-5. The City Council may object to renewal of the liquor license if the following standards are not met:

1. Compliance 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.
2. All personal property taxes and all real property taxes and all other obligations due and payable to the City shall be timely paid and not outstanding.
3. The City Council may also object to renewal based on the criteria set forth in section 6-12.

(Ord. No. 538, § 1, 3-29-93)

Sec. 6-11. – Revocation.

The City Council may at any time request that the Liquor Control Commission revoke an on-premises liquor license for any of the following reasons:

1. Failure to comply with any of the standards, conditions, requirements, plans or agreements entered into in consideration for the issuance of the license.
2. Repeated violations of the state liquor laws.
3. Violations of the chapter.
4. Violations of State law or City Ordinances.
5. Maintenance of a nuisance upon or in connection with the licensed premises, including, but not limited, to any of the following:
 - a. Existing violations of the building code, electrical code, fire prevention code, mechanical code, plumbing code, health code or other applicable codes.
 - b. Violation of the Zoning Ordinance.
 - c. 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.
 - d. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris or refuse blowing or being deposited upon adjoining properties.
 - e. Entertainment on the licensed premises without a permit and/or entertainment which disturbs the peace, order and tranquility in the neighborhood of the licensed premises.
 - f. 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 licensed premises.
 - g. Numerous police contact with the licensed premises or the patrons of the premises.
 - h. Repeated reports that the licensee is serving minors or intoxicated persons.
 - i. 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.

(Ord. No. 505, § 13, 9-9-91)

Sec. 6-12. – Procedure for Objecting to Renewal or Requesting Revocation of Liquor License or Permit.

Prior to filing an objection with the Liquor Control Commission to renew or request for revocation of a liquor license, the City Council shall do the following:

1. Serve the licensee by first class mail, at least ten days prior to the hearing a written notice of the hearing, which notice shall contain the following information:
 - a. Notice of proposed action;
 - b. Reasons for the proposed action;
 - c. Date, time and location of hearing; and
 - d. A statement that at the hearing the licensee may present witnesses, evidence and arguments on his behalf and confront adverse witnesses and that the licensee has the right to be represented by counsel.

Hold a hearing as scheduled with the licensee present. The licensee shall be given an opportunity to be represented by counsel and to present witnesses, evidence and arguments and shall be allowed to confront adverse witnesses.

3. Following the hearing, the City Council shall make a written resolution as to its findings and determination and shall by first class mail forward a copy of the same to the licensee and the Liquor Control Commission.
4. If the City Council determines that a recommendation of nonrenewal and/or request for revocation is to be filed with the Liquor Control Commission, it shall forward the following documents to the Liquor Control Commission:
 - a. A certified copy of the notice of hearing sent to the licensee.
 - b. A certified copy of the resolution adopted by the City Council objecting to the renewal of the license and requesting that the license be revoked and, if there is a separate statement of findings, a certified copy of the statement of findings shall be included.
 - c. A copy of this Chapter, including the date of adoption of the Ordinance from which this Chapter was derived and the date of publication of such Ordinance.
 - d. A proof of service demonstrating that the notice of hearing was sent to the licensee.

(Ord. No. 505, § 14, 9-9-91)

Sec. 6-13. – Request for Revocation of Off-Premises License.

The City Council may, by resolution, request the Liquor Control Commission to revoke the license of a licensee which is licensed to sell alcoholic beverages for consumption off the premises after it has been determined pursuant to Liquor Control Commission hearings that the licensee sold or furnished alcoholic beverages, on at least three separate occasions in a single calendar year, to a person who is less than 21 years of age, provided such violations do not involve the use of falsified or fraudulent identification by the person who is less than 21 years of age.

(Ord. No. 505, § 15, 9-9-91)

Sec. 6-14. – Illegal Sale or Possession of Alcoholic Beverages or Spirituous Liquor.

It shall be unlawful for any person to:

1. Illegally sell, keep for sale, offer for sale or otherwise dispense alcoholic beverages, or spirituous liquor either by the bottle or glass;
Aid and abet in the illegal sale of alcoholic beverage or spirituous liquor;
3. Have in possession illegally an alcoholic beverage or spirituous liquor;
4. Be found loitering in or about a place where alcoholic beverages or spirituous liquor, either by bottle or glass, is illegally sold, offered for sale, or otherwise dispensed; or
5. Represent his age to be 21 years or over, when such person shall be under the age of 21 years, for the purpose of illegally obtaining any alcoholic beverage or spirituous liquor.

(Ord. No. 176, § 111, 10-10-73)

Sec. 6-15. – Nudity on Licensed Premises.

A. No person, while appearing in a state of nudity as defined by this section, shall frequent, loiter, work for or perform in any establishment licensed or subject to licensing by the Michigan Liquor Control Commission. No proprietor or operator of any such establishment shall allow the presence in such establishment of any person who violates the provisions of this section.

B. "Nudity" shall be defined to be the exposure by view of persons, of any of the following body parts, either directly or indirectly, including but not limited to exposure, see-through clothing articles or body stockings:

1. The whole or part of the pubic region;
The whole or part of the anus;
3. The whole or part of the buttocks
4. The whole or part of the genitals;
5. The breast area including the nipple, or more than one-half of the area of the breast.

(Ord. No. 729, § 1, 12-15-03)

Section Repealer.

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 3. Severability.

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 4. Savings.

The proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

Section 5. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect upon publication in the manner prescribed by the Charter of the City of Auburn Hills.

Section 6. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Auburn Hills at a meeting thereof duly called and held on the 4th day of June, 2012, and ordered to be given publication in a manner prescribed by the Charter of the City of Auburn Hills.

AYES: Mayor McDonald, Mayor Pro Tem Hammond, Council Members Kittle, Knight,
McDaniel, Verbeke

NAYES: None

ABSENT: Council Member Doyle

ABSTENTIONS: None

ORDINANCE 12-841 ADOPTED (6-0)

STATE OF MICHIGAN)

) ss.

COUNTY OF OAKLAND)

I, the undersigned, the duly qualified Clerk of the City of Auburn Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. 12-841 adopted by the Auburn Hills City Council on the 4th day of June, 2012, the original of which is in my office.

JAMES D. MCDONALD, Mayor

TERRI KOWAL, City Clerk