

CHAPTER 5: ALCOHOLIC BEVERAGES

ARTICLE I. IN GENERAL

5-1. PERSONS UNDER 21, UNLAWFUL PURPOSE, CONSUMPTION OR POSSESSION; ARREST BASED UPON REASONABLE CAUSE OR UPON RESULTS OF PRELIMINARY CHEMICAL BREATH ANALYSIS; PARTICIPATION IN UNDERCOVER PROGRAMS.

(A) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor or possess or attempt to possess alcoholic liquor, except as provided in this section. Notwithstanding § 1-9, a minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions and is not subject to the penalties prescribed in § 1-9:

(1) For the first violation of a fine of not more than \$100 and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in Section 6107 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 et seq., M.C.L. § 333.6107 and designated by the Administrator of Substance Abuse Services and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (C).

(2) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of this subsection or Public Act 8 of 1933 (Extra Session), § 33b(1), being M.C.L.A. §§ 436.1 et seq. a fine of not more than \$200 and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in Section 6107 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 et seq., M.C.L. § 333.6107 and designated by the Administrator of Substance Abuse Services to perform community service and to undergo substance abuse screening assessment at his or her own expense as described in subsection (C).

(3) For a violation of this subsection following two or more prior convictions or juvenile adjudications for a violation of this subsection or Public Act 8 of 1933 (Extra Session), § 33b(1), being M.C.L.A. §§ 436.1 et seq., a fine of not more than \$500 and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in Section 6107 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 et seq., M.C.L. § 333.6107 and designated by the Administrator of Substance Abuse Services to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (C).

Sterling Heights - Alcoholic Beverages

(B) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (A) of this section, a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both.

(C) The court may order the person convicted of violating subsection (A) of this section to undergo screening and assessment by a person or agency as designated by the Substance Abuse Coordinating Agency, as defined in Section 6103 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 et seq., M.C.L. § 333.6107, in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.

(D) The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of violating subsections (A) or (B) of this section as provided in Section 319 of the Michigan Vehicle Code, Public Act 300 of 1949, being M.C.L.A. §§ 257.1 through 257.923, M.C.L. § 257.319.

(E) A police officer who has reasonable cause to believe a minor has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis. A police officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a civil infraction and may be ordered to pay a civil fine of not more than \$100.

(F) The Police Department, upon determining that a person less than 18 years of age who is not emancipated under Public Act 293 of 1968, M.C.L. §§ 722.1 through 722.6, allegedly consumed, possessed, purchased or attempted to consume, possess or purchase alcoholic liquor in violation of subsection (A) of this section shall notify the parent or parents, custodian or guardian of the person as to the nature of the violation if the name of a parent, guardian or custodian is reasonably ascertainable by the Police Department. The notice required by this subsection shall be made not later than 48 hours after the Police Department determines that the person who allegedly violated subsection (A) of this section is less than 18 years of age and not emancipated under Public Act 293 of 1968, M.C.L. §§ 722.1 through 722.6. The notice may be made by any means reasonably calculated to give prompt actual notice, including but not limited to notice in person, by telephone or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (A) of this section, his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(G) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by the Liquor Control Code, by the Liquor Control Commission or by an agent of the Liquor Control Commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(H) This section does not limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent or employee for a violation of this chapter.

(I) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited post-secondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this chapter if the purpose of the consumption is solely educational and is a requirement of the course.

(J) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue or temple is not prohibited by this chapter.

(K) Subsection (A) of this section does not apply to a minor who participates in either or both of the following:

(1) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's or city attorney's office as part of an employer-sponsored internal enforcement action;

(2) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the State Police, the Liquor Control Commission or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the Liquor Control Commission or the local police agency and was not part of the undercover operation.

(L) The State Police, the Liquor Control Commission or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (A) of this section, Section 801(2) of the Liquor Control Code or Section 701(1) of the Liquor Control Code.

(M) As used in this section, **ALCOHOLIC LIQUOR** means that term as defined in Section 105 of the Liquor Control Code. **LIQUOR CONTROL CODE** means the Liquor Control Code of 1998, Public Act 58 of 1998, M.C.L. § 438.1105. (1978 Code, § 5-1; Ord. No. 179-B, § 1, 1-2-79; Ord. No. 209, § 1, 7-2-79; Ord. No. 209-B, § 1, 3-5-87; Ord. No. 179-K and 209-D, § 1, 6-18-96; Ord. No. 350, § 1, 10-17-00)

Statutory reference:

Similar provisions, see M.C.L. § 436.1703

5-2. SALES TO MINORS PROHIBITED; PENALTIES; DETENTION BY OFFICERS.

(A) Alcoholic liquor shall not be sold or furnished to a minor. A person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor. A person who is not a retail licensee or a retail licensee's clerk, agent or employee and who violates this subsection shall be fined \$500 and may be sentenced to imprisonment for up to 60 days for a first offense, shall be fined \$500 and shall be sentenced to imprisonment for up to 90 days for a second or subsequent offense and may be ordered to perform

Sterling Heights - Alcoholic Beverages

community service. A suitable sign describing the content of this section and the penalties for its violation shall be posted in a conspicuous place in each room where alcoholic liquor is sold. The signs shall be approved and furnished by the Liquor Control Commission.

(B) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.

(C) As used in this section, *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, an official Michigan personal identification card or any other bona fide picture identification which establishes the identity and age of the person.

(D) A police officer who witnesses a violation of § 5-1 may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor and issue an appearance ticket as prescribed in the Code of Criminal Procedure, Chapter IV, § 9b, Public Act 175 of 1927, being M.C.L.A. §§ 764.1 et seq., M.C.L. § 764.9b.

(1978 Code, § 5-2; Ord. No. 179, § 5.02, 2-24-76; Ord. No. 179-B, § 1, 1-2-79; Ord. No. 209, § 1, 7-29-79; Ord. No. 209-A, § 1, 9-20-83; Ord. No. 179-K and 209-D, § 2, 6-18-96; Ord. No. 350, § 2, 10-17-00)

Statutory reference:

Similar provisions, see M.C.L. § 436.1701 and M.C.L. § 436.1705

5-3. BRINGING ALCOHOLIC BEVERAGES INTO ESTABLISHMENT LICENSED TO SELL SAME.

No person shall bring any alcoholic beverage into any establishment licensed to sell alcoholic beverages.

(1978 Code, § 5-3; Ord. No. 179-B, § 1, 1-29-79; Ord. No. 209, § 1, 7-2-79)

5-4-5-15. RESERVED.

ARTICLE II. LIQUOR CONTROL

5-16. TITLE.

This article shall be known and cited as the "Liquor Control Ordinance."
(1978 Code, § 5-16)

Statutory reference:

Michigan Liquor Control Act, see M.S.A. §§ 18.971 et seq.; M.C.L. §§ 436.1 et seq.

5-17. TRAFFIC IN LIQUOR TO COMPLY WITH STATE LAW.

All alcoholic liquor traffic, including, among other things, the manufacture, sale, offer for sale, storage for sale, possession and/or transportation thereof within city shall comply with the provisions of the Michigan Liquor Control Act, being Public Act 8 of 1933 (Extra Session), being M.C.L.A. §§ 436.1 et seq., as amended, of the State of Michigan.
(1978 Code, § 5-17)

5-18. ENFORCEMENT OF STATE LAW.

It shall be the responsibility of the City Police Department to enforce the provisions of the Michigan Liquor Control Act within the city with full power, authority and duty to accomplish this purpose.
(1978 Code, § 5-18)

5-19. INSPECTIONS AND INVESTIGATIONS OF COMPLAINTS.

(A) The City Police Department shall cause all liquor licensees to be inspected and investigate all complaints received by it concerning violations of the Michigan Liquor Control Act and to investigate improper operations and practices concerning liquor traffic within the city.

(B) Any police officer of the city shall have the right to inspect any place in the city where alcoholic liquor is manufactured, sold, offered for sale, kept for sale, possessed or transported or where the police officer suspects the same is being thus manufactured, sold, offered for sale, kept for sale, possessed or transported.
(1978 Code, § 5-19)

5-20. VIOLATIONS.

(A) Any person, other than persons required to be licensed under the Michigan Liquor Control Act, who shall violate any of the provisions of this article, shall be guilty of a misdemeanor punishable as provided in § 1-9 of this Code.

(B) Any licensee who shall violate any of the provisions of the Michigan Liquor Control Act or any rule or regulation of the Michigan Liquor Control Commission promulgated thereunder or who shall violate any of the provisions of this article, and any person who shall prohibit or interfere with the authorized inspection of a member of the City Police Department, shall be guilty of a misdemeanor punishable as provided in § 1-9 of this Code.
(1978 Code, § 5-20)

5-21-5-29. RESERVED.

ARTICLE III. LIQUOR LICENSING

5-30. TITLE.

This article shall be known and may be cited as the "Sterling Heights Liquor License Ordinance."
(1978 Code, § 5-30; Ord. No. 243, § 1, 12-20-83)

5-31. PURPOSE.

This article is established to cause the greatest benefit to the City of Sterling Heights in its use of its powers with regard to the issuance, transfer, renewal or revocation of liquor licenses, entertainment permits and other alcohol-related permits within its jurisdiction. This article is established in order to provide an orderly and nondiscriminatory procedure for the review and approval by the City of Sterling Heights of any and all requests for liquor licenses, entertainment permits, other permits issued by the Michigan Liquor Control Commission or any matter relating thereto and for the sale or dispensation of alcoholic beverages within the City of Sterling Heights. Each person, firm or corporation who desires such license or permit, or approval or renewal of the same, shall comply with the provisions of this article.

(1978 Code, § 5-31; Ord. No. 243, § 2, 12-20-83; Ord. No. 243-C, § 1, 1-19-99)

5-32. APPLICABILITY.

This article shall apply only to applications for licenses to sell beer, wine or spirits for on-premises consumption, including but not limited to Class B licenses, Class C licenses, resort licenses, tavern licenses and hotel licenses, and it shall also apply to applications for entertainment permits and other permits issued by the Michigan Liquor Control Commission. This article shall not, in any event, apply to applications for SDM and SDD licenses, club licenses, special licenses granted by the Michigan Liquor Control Commission or one day permits as allowed by statute, with the exception that an applicant for such licenses shall be required to submit a nonrefundable fee to the City Clerk, in an

amount determined by the City Council, to cover the cost of investigation, review and inspection by the City of Sterling Heights.

(1978 Code, § 5-31; Ord. No. 243, § 2, 12-20-83; Ord. No. 243-C, § 2, 1-19-99)

5-33. DEFINITIONS.

The following definitions shall apply to this chapter.

ALCOHOLIC BEVERAGES. Any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented and by whatever name called, containing 1/2% or more of alcohol by volume which are fit for use for beverage purposes.

OTHER PERMIT. Any on-premises permit that may be issued by the Michigan Liquor Control Commission, with the exception of entertainment permits, including but not limited to food permits, dance permits, additional bar permits, dance-entertainment permits and other specialized permits.

PERSON, FIRM or CORPORATION. These terms, as used in this article, include any person or legal entity of whatsoever kind or nature, either charitable or profitable, that desires to have or is already possessed of any license or permit issued by the State of Michigan relating to the sale and dispensation of alcoholic beverages or the offering of entertainment at a licensed establishment, pursuant to a liquor license or permit of any variety within the City of Sterling Heights.

(1978 Code, § 5-33; Ord. No. 243, § 3, 12-20-83; Ord. No. 243-C, § 3, 1-19-99)

5-34. APPLICATIONS FOR NEW LICENSE OR PERMIT.

(A) *Procedure.* The applicant must submit an application for liquor license approval to the city for consideration by the city as set forth in this chapter. Upon reaching a decision regarding the request for approval, the city shall notify the Michigan Liquor Control Commission of the application and the city's recommendation. Liquor license holders that desire to apply for an entertainment or other permit must submit an application to the Michigan Liquor Control Commission before submitting an application for permit approval to the city. No application for an entertainment or other permit will be considered by the city until the city has been notified by the Michigan Liquor Control Commission that it has received such an application.

(B) *Submission to City Clerk.* The applicant shall submit a current and fully completed "City of Sterling Heights Liquor License Application," "City of Sterling Heights Entertainment Permit Application" or the appropriate application for any other permit, as prepared and furnished by the City Clerk, to:

City Clerk
City of Sterling Heights
40555 Utica Road
Sterling Heights, Michigan 48078

(C) *Required information and applicable fee.* The city application shall include at least the following information:

(1) Name and address of applicant. If a partnership or corporation, all persons with an ownership interest shall be listed;

(2) Type of license or permit desired;

(3) Address and legal description of the property where the license is to be located;

(4) A preliminary site plan showing the relationship of the proposed structure to the surrounding property and uses and photographs or drawings of each of the sides of the structure in which the license, entertainment permit or other permit shall be operated. This requirement shall be waived for applicants whose site plan remains on file with the city due to a prior application which was approved by the city and granted by the Michigan Liquor Control Commission;

(5) A written statement as to the applicant's character, experience and financial ability to meet the obligations and business undertakings for which the license or permit is to be issued;

(6) Any other information pertinent to the applicant and operation of the proposed facility as may be required by the City Council by prior notice to the applicant;

(7) The application shall be accompanied by a deposit of a nonrefundable fee, in an amount determined by the City Council, to cover the cost of investigation, review and inspection by the City of Sterling Heights of the application.

(D) *Recommendations from city departments.* Following the receipt of the fully completed application, fees and such other information as may be requested by the city, the City Clerk shall forward the application to such departments as required by the City Manager, which departments shall make their recommendations prior to consideration by the City Council. In making its review, the city may request from the applicant other pertinent information.

(E) *Placement upon City Council agenda.* Upon receipt by the City Clerk's office of the recommendations of the departments as required, the Clerk shall cause the application to be placed upon the agenda of the City Council within a reasonable time after the receipt of the recommendation by the City Clerk.

(F) *Initial action by City Council.* At the initial meeting before the City Council to consider the application for a liquor license, entertainment permit or other permit, the City Council shall generally take one of the following steps:

(1) Ask the applicant to proceed with the submitted plans so that a more detailed and complete proposal may be heard by the Council at a later date; provided, however, that this action by the Council shall not be interpreted to mean approval of the application or the general details of the proposal;

(2) Postpone action on the application for a period not to exceed 60 days. The 60 day limitation for postponement of action may be waived by the applicant if the postponement is for the purpose of supplying the City Council with additional information requested of the applicant by the City Council, when the applicant is unable to supply the requested information within that stated time period; or

(3) Reject the application stating the reasons for this denial.

(G) *Criteria for decision on application.* The City Council, in making its decision regarding a liquor license application, shall consider the following criteria:

(1) The applicant's management experience in the alcohol/liquor business;

(2) The applicant's general business management experience;

(3) The applicant's general business reputation;

(4) The applicant's moral character;

(5) The applicant's financial status and its ability to build and/or operate the proposed facility on which the proposed liquor license is to be located;

(6) Past criminal convictions of the applicant for crimes involving moral turpitude, violence or alcoholic liquors;

(7) The applicant's excessive use of alcoholic beverages;

(8) The effect that the issuance of a license would have upon the economic development of the surrounding area;

(9) The effects that the issuance of a license would have on the health, welfare and safety of the general public;

(10) The recommendations of the local law enforcement agency, Building Department, Zoning Department and Fire Department with regard to the proposed facility;

(11) Whether the applicant has demonstrated the public need or convenience for the issuance of the liquor license for the business facility at the location proposed;

(12) The uniqueness of the proposed facility when contrasted against other existing or proposed facilities;

(13) The number of liquor licenses issued and the number of liquor licenses available for issuance in the city;

Sterling Heights - Alcoholic Beverages

(14) Whether the facility to which the proposed liquor license is to be issued complies, or will comply, with the applicable building, plumbing, electrical and fire prevention codes and zoning statutes and ordinances applicable in the city;

(15) The effects of the business facility to which the proposed license is to be issued will have upon vehicular and pedestrian traffic in the area;

(16) The proximity of the proposed business facility to other similarly situated licensed liquor facilities;

(17) The effects that the business facility to which the proposed license is to be issued would have upon the surrounding neighborhood and/or business establishments;

(18) The permanence of the establishment in the community as evidenced by the proposed or actual commitments made by the applicant;

(19) Such other considerations as the Council may deem proper, provided such considerations are reasonable under all of the circumstances.

(H) *Criteria for decision on entertainment permit or other permit application.* The City Council, in making its decision regarding an application for an entertainment permit or other permit, shall consider the following criteria:

(1) Each of the applicable criteria listed in subsection (G) of this section;

(2) Each of the criteria listed in the resolution adopted pursuant to this article. Copies of the resolution may be obtained from the City Clerk's office;

(3) The number of years preceding the application during which the applicant was in the business of the sale of alcoholic beverages in the same location in the city;

(4) The applicant's prior citations and convictions for violations of any fire, building, health, or liquor statute, ordinance or regulation;

(5) Whether 50% or more of the total gross receipts for an accounting year of the establishment come from the sale, at retail, of food, goods and services;

(6) Whether the location has ample parking, as determined by the city administration, and whether the entertainment permit will contribute to or create any traffic problem;

(7) The elevation plans regarding the size and seating capacity of the business, the size of the dressing rooms (if any) and locations of the stage (if any);

(8) The reports generated by the heads of the Building, Fire, Zoning and Police Department regarding recent inspections or reinspection of the establishment. Where a previous inspection report has been generated for another purpose, such as on an application for a motel license, the City Council may waive reinspection and request a sworn affidavit by the applicant stating that no changes have been made to the business establishment since the issuance of the previous permit or license;

(9) No permit shall be issued to an establishment located within 500 feet of: (1) a church, (2) a public or private elementary or secondary school or (3) a public park. The distance shall be measured along the center line of the street or streets of address between two fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the church, school or park nearest to the contemplated location and from the part of the contemplated location nearest to the church, school or park;

(10) No permit shall be issued where the proposed use will injure or adversely affect the adjacent area or property values. In making a determination of injury or adverse effect, the City Council must find that the proposed use will not cause a significant hazard, annoyance or inconvenience to the owners or occupants of nearby property or significantly change the character of the neighborhood or reduce the value of nearby property;

(11) No permit shall be issued where the proposed use will impose a significant cost burden upon the city or will create a significant obstacle to the implementation of the zoning ordinance or the master plan of the city;

(12) No permit shall be issued where the applicant fails to file a sworn affidavit concerning the type, kind, character and quality of entertainment proposed and to be presented;

(13) No permit shall be issued where the applicant fails to execute a contract with the city, in the form drafted by the city, to assure compliance with any and all regulations, codes or conditions that apply to the applicant or the establishment or which may be imposed upon the applicant or the establishment by City Council in exchange for approval of the permit request;

(14) No permit shall be issued where the applicant is not the owner of the establishment to be offering the proposed entertainment;

(15) No permit shall be issued where the applicant has failed to secure an amusement device license pursuant to Chapter 7 of the code of ordinances, if applicable, before evaluation of the application for an entertainment permit.

(I) *Restrictions on licenses and permits.* No license, entertainment permit or other permit shall be issued to or for, nor shall any transfer of a license or permit be approved to or for:

(1) An applicant whose liquor license and/or entertainment or other permit has been revoked or not renewed for cause under this article, under a comparable city or township ordinance or under state law, whether in Michigan or otherwise;

(2) A copartnership or partnership, unless all the members of such copartnership or partnership shall qualify to obtain such license or permit;

(3) A corporation, if any officer, manager or director thereof, or stockholder owning in the aggregate more than 10% of the stock of the corporation would not be eligible to receive a license and/or permit hereunder for any reason;

(4) A person who has been convicted of a crime punishable by death or imprisonment in excess of one year under the law under which he or she was convicted; a crime involving theft, dishonesty or false statement (including tax evasion) regardless of punishment; or a crime or administrative violation of a federal or state law concerning the manufacture, possession or sale of alcoholic beverages or controlled substances;

(5) For premises where there exists a violation of the applicable building, electrical, mechanical, plumbing or fire codes, applicable zoning regulations, applicable public health regulations or any other applicable city ordinance;

(6) An application by a person, firm or corporation for a license at a particular site, location, or geographic area within the city which has been denied by the City Council within the six month period preceding the submission date of the most recent application. The City Clerk shall forward a letter to the applicant advising that the application has been denied pursuant to this chapter;

(7) The waiting period provision of this subsection may be waived where the City Clerk finds that the applicant has demonstrated or alleged in substantial detail a material change of circumstances, such that the original reason(s) for denial of the application are no longer applicable. In such instance, the City Clerk shall, after receiving the appropriate fee from the applicant, forward the application for investigation by the appropriate department(s) to confirm the change in circumstances. If the investigating department(s) confirms the change in circumstances, the City Clerk shall set the application for hearing by the City Council in the usual manner, with the qualification that the application was denied within the previous six months but has been re-submitted due to a material change of circumstances;

(8) For purposes of this section, the phrase ***DENIED BY THE CITY COUNCIL*** shall be construed to mean a vote or resolution of the City Council passed or ratified at an official meeting of the City Council. The term ***SUBMISSION DATE*** shall be construed as the date on which the City Clerk received the new or renewed application. The term ***MATERIAL CHANGE IN CIRCUMSTANCES*** shall be construed to mean new or different facts which tend to eliminate or substantially mitigate the reason(s) for the prior denial of the application;

(9) This subsection shall not be construed to create any rights of appeal or re-application in any applicant or for any property within the six month waiting period.

(J) *Request for consideration of approval.* Once an applicant who has been asked to proceed by presenting a more detailed and complete proposal has sufficiently completed its plans and obtained site plan, engineering, zoning, planning and other necessary approvals by the city, the applicant may then

request consideration by the Council of approval. Upon the receipt of a written notice by an applicant for consideration of approval, the City Clerk shall cause the application to be placed on the agenda of the City Council for the Council's action within a reasonable time of the receipt of the same by the Clerk. At that meeting, the applicant shall be prepared to discuss the following:

- (1) Cost estimates for the building, furnishing and fixtures as part of the proposal;
- (2) Site plan information, including landscaping and other aesthetic features of the proposal;
- (3) Estimate of the number of employees who would be required for the operation;
- (4) Information on the individual or individuals expected to manage the operation, as well as information as to how the facility would actually be managed;
- (5) Information about any entertainment or dancing that might be involved;
- (6) Answers to any related questions about the proposed improvements and/or general operation of the facility.

(K) *Action by Council, contingencies of approval.* Following this presentation by the applicant, the City Council may approve, above all others, the application, postpone consideration for a reasonable period or reject the application. Approval will be contingent upon the obtaining of building permits and any other necessary permits, licenses or approval from the city within six months from the date of the approval. Approval will also be contingent upon fulfillment of all other conditions imposed by this article.

(L) *Changes in plans, drawings and the like.* After receipt of approval by the City Council, no floor plan, building elevation, site plan, seating arrangement, kitchen lay-out or other pertinent facts, drawings or documents submitted to the City Council may be changed without the applicant first receiving necessary departmental approvals as well as approval from the City Council.

(M) *Recommendation for approval of liquor license, entertainment permit or other permit.* Upon completion of the building and in accordance with the prior approval of the Council, the City Council shall then recommend the applicant for issuance of the liquor license, entertainment permit or other permit by the Liquor Control Commission of the State of Michigan.

(N) *Reservation of authority.* No applicant has a right to the issuance of a license, entertainment permit or other permit to him, her or it, and the City Council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such licenses and permits. (1978 Code, § 5-34; Ord. No. 243, § 4, 12-20-83; Ord. No. 243-A, §§ 2 through 5, 8-8-84; Ord. No. 243B, § 1, 10-7-97; Ord. No. 243-C, § 4, 1-19-99)

5-35. TRANSFER OF EXISTING LICENSES AND PERMITS.

The transfer of any existing liquor license, entertainment permit or other permit covered hereunder shall be subject to each of the requirements, criteria and procedures, including fees, set forth in this article for the granting of a new liquor license or permit. In addition, the transferee applicant shall furnish a copy of any and all files which may be in the Michigan Liquor Control Commission's possession regarding that Commission's investigation of the transferee as a present or previous licensee or permit holder.

(1978 Code, § 5-35; Ord. No. 243, § 5, 12-20-83; Ord. No. 243-C, § 5, 1-19-99; Ord. No. 243-D, § 1, 8-17-99)

5-36. OBJECTIONS TO RENEWAL AND REQUESTS FOR REVOCATION.

(A) *Generally.* The City Council may object to a renewal of a liquor license, entertainment permit or other permit to the Michigan Liquor Control Commission or request the revocation of a liquor license, entertainment permit or other permit by the Michigan Liquor Control Commission.

(B) *Procedure.* Before filing an objection to the renewal or request for revocation of a license or permit with the Michigan Liquor Control Commission, the City Council shall serve the license holder or permit holder, by first class mail, mailed not less than ten days prior to the hearing, a notice of such hearing, which notice shall contain the following information:

- (1) Notice of the proposed action;
- (2) Reasons for the proposed action;
- (3) Date, time and place of the hearing;
- (4) A statement that the licensee or permit holder may present evidence and testimony and may confront witnesses and may be represented by a licensed attorney.

(C) *Hearing and final decision.* The hearing may be conducted by Council as a whole or by a hearing officer appointed by the Council for such purposes. If a hearing officer is appointed, it shall be that officer's duty to undertake the hearing and hear and take evidence and testimony of the licensee or permit holder, or witnesses on its behalf, in opposition to the objection to renewal or request for revocation. After the hearing, the hearing officer shall make a recommendation to the City Council for the latter's ultimate final review and decision. The City Council shall submit to the license or permit holder and the Michigan Liquor Control Commission a written statement of its ultimate findings and determination.

(D) *Criteria for nonrenewal or revocation.* At any time during the year, the City Council may recommend nonrenewal or revocation of a license or permit upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exist:

- (1) A violation of any of the provisions regarding licenses and permits set forth in this article;
- (2) Maintenance of a nuisance upon the premises;
- (3) Any of the bases for objecting to renewal and/or for a request to revoke a liquor license, entertainment permit and/or other permit, as adopted by the City Council in the resolution adopted pursuant to this ordinance. Copies of the resolution may be obtained from the City Clerk's office.

(E) *Objection to application for club license.* Although local approval is not required for club licenses issued by the Michigan Liquor Control Commission, the city may object, within 15 working days after receiving notice from the Commission of the application for a new club license, to the application based upon the Commission's licensing qualification rules or based upon violations of building codes, health codes or zoning ordinances.

(1978 Code, § 5-36; Ord. No. 243, § 6, 12-20-83; Ord. No. 243-C, § 6, 1-19-99)

5-37-5-49. RESERVED.

ARTICLE IV. PRIVATE PARTIES

5-50. DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC BEVERAGE. An alcoholic liquor as defined in Section 2 of the Michigan Liquor Control Act, Public Act. 8 of 1933 (Extra Session), being M.C.L.A. § 436.2.

ALLOW. To give permission for, or approval of, possession or consumption of an alcoholic beverage or a controlled substance, by any of the following means:

- (a) In writing;
- (b) By one or more oral statements;
- (c) By any form of conduct, including a failure to take corrective action, that would cause a reasonable person to believe that permission or approval has been given.

CONTROL OVER ANY PREMISES, RESIDENCE OR OTHER REAL PROPERTY. The authority to regulate, direct, restrain, superintend, control or govern the conduct of other individuals on or within that premises, residence or other real property and includes but is not limited to a possessory right.

CONTROLLED SUBSTANCE. As that term is defined in § 7104 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.1101 et seq., M.C.L. § 333.7104.

CORRECTIVE ACTION. Any of the following:

(a) Making a prompt demand that the minor or other individual depart from the premises, residence or other real property or refrain from the unlawful possession or consumption of the alcoholic beverage or controlled substance on or within that premises, residence or other real property and taking additional action described in subparagraph (b) and (c) if the minor other individual does not comply with the request;

(b) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to a law enforcement agency having jurisdiction over the violation;

(c) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to another person having a greater degree of authority or control over the conduct of persons on or within the premises, residence or other real property.

MINOR. An individual less than 21 years of age.

PREMISES. A permanent or temporary place of assembly, other than a residence, including but not limited to any of the following:

(a) A meeting hall, meeting room or conference room;

(b) A public or private park.

RESIDENCE. A permanent or temporary place of dwelling, including but not limited to any of the following:

(a) A house, apartment, condominium or mobile home;

(b) A cottage, cabin, trailer or tent;

(c) A motel unit, hotel unit or bed and breakfast unit.

SOCIAL GATHERING. An assembly of two or more individuals for any purpose, unless all of the individuals attending the assembly are members of the same household or immediate family.
(Ord. No. 209-C, § 1, 9-20-94)

5-51. SERVICE TO MINORS PROHIBITED.

Except as otherwise provided in § 5-54, an owner, tenant or other person having control over any premises, residence or other real property shall not do either of the following: