



CITY of NOVI CITY COUNCIL

**Agenda Item 6
December 7, 2009**

SUBJECT: Consideration of Text Amendment 09-149.09 to amend Chapter 3, Alcoholic Liquor, of the Novi Code in order to add a section relating to licensing policy, revise the application process, clarify review criteria, and make other changes relating to application review and revocations/non-renewal. First reading.

SUBMITTING DEPARTMENT: City Manager 

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

City Council referred the existing alcoholic liquor ordinance provisions of the City Code to the Ordinance Review Committee (ORC) for general review. The ORC has recommended a number of changes, including:

- Adding a section regarding licensing policy that removes some of the existing limiting language for when a license can be granted, replacing it with a policy statement that puts the burden on the applicant to demonstrate a benefit to the City—e.g., a unique service or product, fostering economic development, or increased investment by an existing business/resident—while reserving to the City Council the right to evaluate the extent of that benefit.
- Consolidating the current review process.
- Consolidating/rearranging/restating the review criteria for granting a license into three general categories: (1) general background information on the application; (2) information regarding the proposed facility/building; and (3) the benefits to the community.
- Expanding/clarifying the grounds on which the City Council may request revocation or non-renewal of a license by the Liquor Control Commission.

The attached ordinance is proposed for first reading.

RECOMMENDED ACTION: Approve first reading of proposed text amendment 09-149.09, relating to changes to Chapter 3, Alcoholic Liquor.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				



November 30, 2009

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Mayor Landry and City Council
City of Novi
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Thomas R. Schultz,
Direct: 248-539-2847
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Re: ***Proposed Amendments—Alcoholic Liquor Ordinance***
Our File No. 55142 NOV

Dear Mayor Landry and Councilmembers:

City Council referred the existing alcoholic liquor ordinance provisions of the City Code to the Ordinance Review Committee (ORC) for general review. The ORC has met on several occasions to discuss a number of changes, which are shown in the attached redlined draft ordinance amendment.

The proposed amendments:


- Add a section regarding licensing policy that removes some of the existing limiting language for when a license can be granted, replacing it with a policy statement that puts the burden on the applicant to demonstrate a benefit to the City—e.g., a unique service or product, fostering economic development, or increased investment by an existing business/resident—while reserving to the City Council the right to evaluate the extent of that benefit.
- Consolidate the current review process.
- Consolidate/rearrange/restate the review criteria for granting a license into three general categories: (1) general background information on the application; (2) information regarding the proposed facility/building; and (3) the benefits to the community.
- Expand/clarify the grounds on which the City Council may request revocation or non-renewal of a license by the Liquor Control Commission.

With regard to the last item (revocation) a question was raised at the ORC regarding whether placing into escrow could constitute a basis for seeking revocation of the license. We found no ordinances from other communities establishing that as a basis for revocation. The state liquor control statute specifically provides for placement of a license into escrow for a period of five years, after which it is revoked. We are reluctant to recommend an ordinance provision that would directly contradict the escrow provisions of the state statute.

Mayor Landry and City Council
November 30, 2009
Page 2

If you have any questions regarding the proposed amendments, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Thomas R. Schultz

TRS/jes

cc: Clay Pearson, City Manager
David Molloy, Police Chief
Pamela Antil, Assistant City Manager
Maryanne Cornelius, City Clerk

1316316

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 09-149.09

AN ORDINANCE TO AMEND CHAPTER 3, "ALCOHOL" OF THE CITY OF NOVI CODE OF ORDINANCES, TO ADD A SECTION RELATING TO LICENSING POLICY, TO REVISE THE APPLICATION PROCESS, TO CLARIFY REVIEW CRITERIA FOR ISSUANCE OF A LICENSE, AND TO MAKE OTHER MINOR CHANGES RELATING TO RESPONSIBILITIES FOR REVIEW OF THE APPLICATION AND REQUESTS FOR REVOCATION OR NON-RENEWAL.

THE CITY OF NOVI ORDAINS:

PART I

That Chapter 3, "Alcohol," Article II, "Licenses," shall be amended to read as follows in its entirety:

ARTICLE II. LICENSES

Sec. 3-12. Applicability Scope and Intent.

This article shall apply only to governs applications for licenses to sell beer, wine, or spirits for on-premises consumption within the City, including, but not limited to, Class B licenses, Class C licenses, resort licenses, tavern licenses, club licenses, and hotel licenses. This shall article does not, in any event, apply to applications for SDM and SDD licenses, special licenses granted by the Michigan Liquor Control Commission, or one-day permits as allowed by statute.

Sec. 3-13. Licensing Policy

This article establishes an application and review process for the issuance of new licenses and the transfer of existing licenses into the City or between or among applicants. The process is intended to ensure that the individuals and entities seeking licenses from, or charged with operating licensed establishments within, the City meet certain minimum requirements as to criminal history, past conduct, and ongoing business operation standards. It requires City Council review of application information in light of certain criteria that is established for purposes of identifying the kinds of facilities that qualify for a license. It reserves to the City any and all discretion afforded it under applicable law relating to the issuance of licenses.

As a general matter of policy, applicants for a license will need to demonstrate an identifiable benefit to the City and its inhabitants resulting from the granting of the license. While all of the criteria set forth in this article are relevant to the decision whether to grant a license, an applicant must demonstrate in particular that the proposed facility:

- (a) will provide a service, product, or function that is not presently available within the City or that would be unique to the City or to an identifiable area within the City;
- (b) is of a character that will foster or generate economic development or growth within the City, or an identifiable area of the City, in a manner consistent with the City's policies; or,
- (c) represents an added financial investment on the part of a long-term business or resident with recognized ties to the City and the local community.

The weight to be given to each item of the criteria identified in this article, and the determination whether a particular applicant meets or satisfies those criteria is intended to be within the sole discretion of the City Council.

Sec. 3-14. Definitions.

The following definitions shall apply to this chapter:

- (a) *Applicant* shall mean and include all persons and entities proposed to be owners of the license and/or of the licensed premises, all key personnel involved in the management of the licensed business, and all persons and entities proposed to be involved in the finance of the license and/or licensed premises. In the case of a partnership, "applicant" shall include all partners in the partnership. In the case of a corporation other than a corporation with publicly-traded stock, "applicant" shall include all shareholders. In the case of a limited liability company, "applicant" shall include all members.
- (b) *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 issued by the State of Michigan for the sale and dispensation of alcoholic beverages pursuant to a liquor license of any variety within the City of Novi.
- (c) *Alcoholic beverages.* This terms shall mean any spirituous, vinous, malt, or fermented liquor, liquids ~~and~~ or compounds, whether or not medicated, proprietary, or patented, and by whatever name called, containing one-half of one (1/2 of 1) percent or more of alcohol by volume which are fit use for beverage purposes.

Sec. 3-1415. Applications for new license.

- ~~(a) *Facilities for which new license may be granted.* New licenses may be granted to the following facilities because they represent the city's needs in the terms of promoting service, development and social-economic benefits:~~

- ~~(1) Hotel or motor hotels with a minimum of two hundred fifty (250) rooms. Facilities shall have a full-service restaurant capable of seating a minimum of one hundred fifty (150) diners of a walk-in nature. Facilities shall also have banquet and meeting rooms capable of handling four (4) multiple conferences or gatherings of three hundred (300) persons each or five hundred (500) persons as part of a common gathering. Facilities shall have recreation amenities consisting of an indoor pool and game rooms.~~
- ~~(2) Assembly or convention centers that provide a demonstrated public purpose. Facilities shall have availability to public functions of a recreational, convention, conference or celebratory nature. Facilities shall be equipped with food service and seating capability to accommodate eight hundred (800) persons at a single serving (banquet).~~
- ~~(3) Supper clubs of unique conceptual design or modification. The physical structure of such a supper club will have to be of a nature uncommon to existing establishments within the City of Novi. The supper club shall be no closer than one half (1/2) mile to any existing supper club within the city limits. Seating capacity shall be a minimum of two hundred fifty (250).~~
- ~~(4) Facilities which conform to the purpose and intent of this subsection but which are deficient in meeting the criteria herein above established. Such facilities will be given consideration upon a showing of substantial compliance with the criteria established herein where evidence presented by such applicant tends to establish the overriding benefit to the citizens of the city in allowing the facility. Such determination shall be based upon due consideration of the following elements:

 - a. Whether there is a need for the facility at the location proposed.
 - b. Whether the facility tends to provide a service, product, or function not presently available to the general public residing in the community.
 - c. The uniqueness of the proposed facility when contrasted against existing facilities.
 - d. The length of time the applicant has conducted business within the community.~~

~~(b) Reserved.~~

~~(ea) Submission to *planning department*City Clerk's office. The applicant shall submit to the ~~planning and community development department~~City Clerk's office a current and fully completed "City of Novi Liquor License Application"; ~~as prepared and on a form furnished by the department~~City Clerk's office, along with all additional documents and materials referred to in the application form or otherwise required under this ordinance.~~

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

- ~~(1) Name and address of applicant. If the applicant is a partnership, the name and address of each partner shall be provided, and a copy of any partnership agreement attached. If the applicant is a privately-held corporation, the names and addresses of each all corporate officers, members of the board of directors, and stockholders shall be provided, and a copy of the articles of incorporation attached. If the applicant is a publicly-held corporation, the names and addresses~~

of each ~~all~~ corporate officers, each ~~members~~ of the board of directors, and each stockholders who owns ten (10) percent or more of the corporate stock shall be provided. If the applicant is a limited liability company, the names and addresses of each ~~all~~ members, managers and assignees of membership interests shall be provided, and a copy of the articles of organization attached.

- (2) Type of license desired.
- (3) The Address and legal description of the property where the license is to be located.
- (4) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, and conceptual plan showing the relationship of the building to the surrounding ~~property~~ properties and uses, and proposed building elevations.
- (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 is to be issued.
- (6) Any other information pertinent to the applicant and operation of the proposed facility as may be required by this chapter, including information regarding each of the criteria listed in subsection 3-1415(~~hg~~).

(c) Nonrefundable application fee(~~7~~).— The application shall be accompanied by a deposit of a nonrefundable fee, in an amount determined by the city~~City council~~Council, to be sufficient to cover the costs of investigation, review, and inspection by the City of Novi of said application.

(ed) Recommendations from city~~City~~ departments. Following the receipt of the fully completed application, fees and other such information as may be requested by the ~~city~~City, the ~~planning and community development department~~City Clerk shall forward the application to the ~~police department~~Community Development Department, Police Department, fire department~~Fire Department~~, ~~building department~~ and such other departments as required by the ~~city~~City manager~~Manager~~, which departments shall make their recommendations prior to consideration by the ~~city~~City council~~Council~~. In making its review, the ~~city~~City may request from the application other pertinent information.

(fe) Placement upon city~~City~~ council~~Council~~ agenda. Upon receipt by the ~~planning and community development department~~Clerk's office of the recommendations of the recommendations of the police department, building department, fire department and other departments as required, the department~~departments identified above, the City Clerk shall submit the application and recommendations to the city clerk for placement upon the agenda of the city~~City council~~Council~~. Such submission shall be made no later than, within sixty (60) days after the receipt of the application by the planning and community development department~~Clerk's office~~. All applications are subject to the final approval of the city council.

(gf) City Council action required. All applications are subject to the final approval of the City Council. The Council may conditionally grant the requested license, postpone consideration for a reasonable period, or deny the license. If the license is either approved or denied, the Council shall cause its decision to be transmitted to the state

Liquor Control Commission and promptly give notice of the decision to the applicant, in writing. Unless otherwise indicated by the Council, all approvals are contingent upon the applicant obtaining any required building permits and any other necessary permits, licenses, or approvals from the City or other regulatory agencies within 60 day from the date of such conditional approval. The construction of new buildings and alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than one year after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the City Council for good cause. Failure to comply with such contingency shall render the license subject to revocation.

~~*Initial action by city council.* At the initial meeting before the city council to consider the application for a liquor license, 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. If the applicant has additionally provided all information required pursuant to subsection 3-14(j), the city council may proceed directly to that action permitted pursuant to subsection 3-14(k).~~
- ~~(2) Where the applicant has not submitted all information required for initial action, postpone action on the application for a period not to exceed sixty (60) days. The sixty-day limitation for postponement of action may be waived by the applicant 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.~~
- ~~(3) Reject the application stating the reasons for this denial.~~

(hg) Review criteria. In making its determination pursuant to subsection 3-14-15(gf), the ~~city~~ City council ~~Council~~ shall consider whether the applicant's proposal is reasonable when measured against the criteria listed below. For purposes of this review, an "applicant" shall be considered to include all officers, partners, members, and managers of an entity applying for a license. ~~Where the applicant is a closely held corporation, items (1), (2), (3), (4), (6), and (7) shall be evaluated with reference to any and all officers, directors and shareholders. Where the applicant is a public corporation, items (4), (6) and (7) shall be evaluated with reference to any individual or individuals expected to manage the operation. Where the applicant is a partnership, items (1), (2), (3), (4), (6) and (7) shall be evaluated with reference to any and all partners. Where the applicant is a limited liability company, items (1), (2), (3), (4), (6) and (7) shall be evaluated with reference to any and all members, managers and assignees of membership interest.~~

(1) General information regarding applicant:

- ~~(a)~~ (a1) The applicant's management experience in the alcohol/liquor business.
- ~~(b)~~ (b2) The applicant's general business management experience.
- ~~(c)~~ (c3) The applicant's general business reputation.

- (d4) The applicant's moral character.
- (e5) 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.
- (f6) Past criminal convictions of the applicant for crimes involving moral turpitude, violence or alcoholic liquors.
- (7g) The applicant's excessive use of alcoholic beverages.

(2) Information related to the facility/building to which the license would apply

- (a) The recommendations of the Police Department, Building Department, and/or Fire Department with regard to the proposed facility.
- (b) 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, zoning ordinance, or other ordinances applicable in the City.
- (c) The effects that the business facility to which the proposed license is to be issued would have upon vehicular and pedestrian traffic in the area.
- (d) 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, including impacts upon residential areas and church and school districts or uses.
- (e) The availability of utilities to serve the facility.
- (f) The proximity of the proposed business facility to other similarly situated licensed liquor facilities.
- (g) The proximity to complementary uses, such as office and commercial development.
- (h) Availability of adequate parking, taking all circumstances of the location into consideration;

(3) Benefits to community

- (8a) The effects that the issuance of a license would have upon the economic development of the City or the surrounding area.
- (9b) 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 and/or fire department with regard to the proposed facility.~~
- (11c) Whether the applicant has demonstrated ~~the~~ a public need or convenience for the issuance of the liquor license for the business facility at the location proposed, which shall ~~take~~ taking into consideration the following, together with other factors deemed relevant by the ~~council~~ Council:
 - aj. The total number of licenses for similar establishments and/or operations in the ~~city~~ City, considered both in terms of whether such number of similar establishments is needed and whether there may be a need for other types of establishments that could go unmet if the requested license were granted;

- bii. The proximity of the establishment to other licensed liquor establishments, the type of such establishments, whether such other establishments are similar to that proposed, and the anticipated impact of all such determinations;
- eii. Whether the proposed location is in an area characterized as: developed, redeveloping, or undeveloped, and the anticipated impact of approving the newly proposed establishment in light of such light character, taking into consideration the need for any type of additional licensed establishment in the area, and the need the particular type of establishment proposed;
- dii. The impact of the establishment on cityCity policing and code enforcement activities;
- ev. The Overall benefits of the proposed establishment to the cityCity;
- fvi. The Overall detriments of the proposed establishment to the cityCity; and
- gvii. Any other factors that may affect the health, safety, and welfare relative to the need for and/or the convenience of the proposed establishment in the cityCity.

(12d) The uniqueness of the proposed facility when contrasted against other existing or proposed facilities, and the compatibility of the proposed facility to surrounding architecture and land use.

~~(13) 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 code, and zoning statutes and ordinances applicable in the city.~~

~~(14) 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.~~

~~(15) The proximity of the proposed business facility to other similarly situated licensed liquor facilities.~~

~~(16) The proximity to complimentary uses such as office and commercial development.~~

~~(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, including impacts upon residential areas, church and school districts.~~

(18e) The permanence of the establishment in the community, as evidenced by the proposed or actual commitments made by the applicant prior or proposed contributions to the City or community by the applicant or business, and the extent to which the issuance of the license will assist in the further investment of the applicant or business in the City or the community.

~~(19) The availability of utilities to serve the facility.~~

(f) The character and extent of investment in improvements to the building, premises, and general area.

(20g) Such other considerations as the councilCouncil may deem proper, provided such considerations are reasonable under all of the circumstances.

(ih) *Restrictions on licenses.* No license shall be issued to:

- (1) A person whose liquor license has been revoked or not renewed for cause under this article, or a comparable city or township ordinance or state law, whether in Michigan or otherwise.
- (2) A co-partnership or partnership, unless all the members of such co-partnership or partnership shall qualify to obtain a license.
- (3) A corporation, other than a public corporation, if any officer, manager, or director thereof, or stockholder owning in the aggregate more than ten (10) percent of the stock of such corporation would not be eligible to receive a license hereunder for any reason.
- (4) A limited liability company, if any member, manager or assignee owning a ten (10) percent membership interest or more would not be eligible to receive a license hereunder for any reason.
- (5) A person who has been convicted of a crime punishable by death or imprisonment in excess of one (1) year under the law under which he 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.
- (6) 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.

~~(j) — Request for consideration of conditional approval. An applicant may seek initial council action pursuant to subsection 3-14(g). An applicant who has been asked to proceed further pursuant to subpart 3-14(g)(1) may request consideration by the council of a conditional approval, by providing the further information required by this subsection. An applicant that does not seek initial council action pursuant to subsection 3-14(g) may request consideration by the council of a conditional approval, by providing the information required by this subsection with the information required pursuant to subsection 3-14(d). An applicant seeking conditional approval shall provide the following information in writing to the planning and community development department:~~

- ~~(1) — When a new building is proposed, or when renovations are to be made to the building in which the operations are to be conducted, cost estimates for the building, furnishings and fixtures as part of the proposal.~~
 - ~~(2) — When a new site is to be developed, or when changes are to be made to an existing site, copies of the approved preliminary site plan, including elevations and facade treatment, floor plans and seating arrangements.~~
 - ~~(3) — Proposed food menus.~~
 - ~~(4) — Estimate of the number of employees who would be required for the operation.~~
 - ~~(5) — Information on the individual or individuals expected to manage the operation, as well as information as to how the facility would actually be managed.~~
 - ~~(6) — Information about any entertainment or dancing that might be involved.~~
- ~~The applicant shall be prepared to discuss with the council the above matters and any questions pertaining to proposed improvements or general operation of the facility.~~

~~Upon receipt of the above information, the planning and community development department shall provide all materials to the city clerk for placement on a council agenda.~~

~~(k) *Action by council; contingencies of conditional approval.* Following this presentation by the applicant, the city council may conditionally approve, above all others, the application, postpone consideration for a reasonable period, or reject said approval. Conditional approval will be contingent upon the obtaining of building permits and any other necessary permits, licenses or building permits and any other necessary permits, licenses or approval from the city within six (6) months from the date of such conditional approval. The construction of new buildings and alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than one year after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the city council for good cause.~~

(l) *Changes in plans, drawings, etc.* After receipt of a conditional approval by the ~~city~~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~~City Council may be changed without the applicant first receiving approval from the engineering department, building department and ~~city~~City Council.

(m) *Recommendation for approval of liquor license.* Upon completion of the building and in accordance with the prior conditional approval of the ~~city~~City Council, the ~~city~~City Council shall then thereupon recommend, above all others, the applicant for approval of the liquor license to the Liquor Control Commission of the State of Michigan.

(n) *Reservation of authority.* No applicant for a liquor license has a right to the issuance of such license to him, her or it, and the ~~city~~City Council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such licenses.

Sec. 3-1516. Transfer of existing licenses.

~~The transfer of any existing liquor license covered hereunder shall be subject to each of the requirement, criteria and application procedure procedure, including payment of application fees, set forth in this article for the granting of a new liquor license. Notwithstanding the above, were the requested transfer is for the purpose of transferring the ownership of an existing facility, and no changes or renovations are proposed for the site or to the building, the applicant is not required to provide building and site information which would otherwise be required pursuant to subparts 3-14(j)(1) and (2). In addition, the transferee or applicant shall furnish any necessary authorization to permit the ~~city~~City access to 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 licensee, or as a previous licensee, or in which transferee has or has had a partial interest in. In approving the transfer of any existing liquor license, the ~~city~~City~~

~~Council~~ Council may direct the ~~police department~~ Police Department to include within the department recommendation to the liquor control commission the condition that the construction of the building within which the applicant is to utilize the license, or any renovations to said building, be completed and approved in accordance with all applicable statutes, regulations, codes and ordinances.

Sec. 3-~~15.117~~. Prohibition on profiteering by class C liquor license holders.

The ~~city~~ City ~~council~~ Council has determined that profiteering by class C liquor license holders is contrary to the best interests of the ~~city~~ City. Accordingly, in order to prevent profiteering, to the full extent authorized by law, the ~~city~~ City ~~council~~ Council shall not approve the transfer of a class C liquor license within three (3) years of the date of the original issuance of the license. An agreement between the applicant and the ~~city~~ City, following recommendation by the ~~city~~ City attorney shall be prepared and agreed upon to give effect to this provision prior to final action being taken by the ~~city~~ City ~~council~~ Council on an application. The ~~city~~ City ~~council~~ Council may, but is not required to, excuse the above anti-profiteering limitation for any of the following reasons:

- (1) If the license holder is a natural person, he or she dies or becomes incapacitated.
- (2) If the license holder is a corporation, the majority shareholder dies or becomes incapacitated, or the corporation dissolves for reasons other than to transfer the license.
- (3) If the license holder is a limited liability company, the company dissolves for reasons other than to transfer the license.
- (4) The license holder and the proposed license transferee establish that the transfer of the class C liquor license shall not result in profiteering.
- (5) The application of this anti-profiteering limitation will subject the applicant to financial hardship due to no fault of the applicant, such as a change in the business climate, illness or death, labor or supply problems, and/or other factors outside the applicant's control.

The agreement shall provide that, unless excused by the ~~city~~ City ~~council~~ Council as provided above, in the event a license is proposed for transfer within three (3) years from the date of issuance, the applicant agrees that the Michigan Liquor Control Commission shall terminate the license and the ~~city~~ City ~~council~~ Council may approve the issuance of a new license to a new applicant without any compensation to the licensee who placed the license into escrow, and that a licensee waives any property interest in such license upon placement of the license into escrow within such three-year period; provided, however, prior to the approval of such issuance to a new applicant, the person or entity who placed the license into escrow shall be afforded written notice and an opportunity to be heard, and all objections raised at the hearing shall be resolved (at the Michigan Liquor Control Commission or in the circuit court if necessary) prior to issuance of the license to a new applicant.

Sec. 3-1618. Objections to renewal and requests for revocation.

- (a) *Generally.* The ~~city~~City ~~council~~Council may object to a renewal of a liquor license or request the revocation of a liquor license with the Michigan Liquor Control Commission.
- (b) *Procedure.* Before filing an objection to the renewal or request for revocation of a license with the Michigan Liquor Control Commission, the ~~city~~City ~~council~~Council shall serve the licenseholder, by first class mail, mailed not less than ten (10) 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 such hearing.
 - (4) A statement that the licensee may present evidence and testimony, and may confront witnesses and may be represented by a licensed attorney.
- (c) *Hearing and final decision.* Such hearing may be conducted by ~~council~~Council as a whole, or by a hearing officer appointed by the ~~council~~Council for such purposes. If a hearing officer is appointed, it shall be that officer's duty to undertake such hearing, and hear and take evidence and testimony of the licensee, or witnesses on its behalf, in opposition thereto. After such hearing, the hearing officer shall make a recommendation to the ~~city~~City ~~council~~Council for the latter's ultimate final review and decision. The ~~city~~City ~~council~~Council shall submit to the licenseholder, and the Michigan Liquor Control Commission, a written statement of its ultimate findings and determination.
- (d) *Criteria for non-renewal or revocation.* The ~~city~~City ~~council~~Council may recommend non-renewal or request revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exists:
- ~~(1) A violation of any of the restriction on licenses set forth in section 3-14(i) of this article.~~
 - ~~(2) Maintenance of a nuisance upon the premises.~~
 - (1) A violation of any applicable building, electrical, mechanical, plumbing or fire code; applicable zoning regulations; applicable public health regulations; applicable rules and regulations of the county health department; or any other applicable city Code provision.
 - (2) Maintenance of a nuisance upon the premises.
 - (3) A material change in those conditions, statements or representations contained in the written application by the licensee, upon which the City Council based its recommendation for approval, when that change is found to be contrary to the best interest of the City residents, in the judgment of the City Council.
 - (4) A holder of a license or permit has been convicted of any federal or state law concerning the manufacture, possession or sale of alcoholic liquor or a controlled substance.
 - (5) The premises do not or will not reasonably soon have adequate off-street parking, lighting, refuse disposal facilities, screening, noise or nuisance control where a nuisance does or will exist.
 - (6) A violation of any section of this chapter or of the rules and regulations of the Liquor Control Commission.
 - (7) For a dance, entertainment or dance-entertainment permit, any breach of the entertainment agreement entered into between the licensee and the city as required in this article.

PART II

Savings Clause. That the amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART III

Severability. That should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V

Effective Date: Publication. That the provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

CERTIFICATION

It is hereby certified that the foregoing Ordinance was adopted by the Novi City Council, Oakland County, Michigan, at a meeting of the Council duly called and held on the _____ day of November, 2009.

CITY OF NOVI

By: _____
Maryanne Cornelius, City Clerk

**ADOPTED:
EFFECTIVE:
PUBLISHED:**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 09-149.09

AN ORDINANCE TO AMEND CHAPTER 3, "ALCOHOL" OF THE CITY OF NOVI CODE OF ORDINANCES, TO ADD A SECTION RELATING TO LICENSING POLICY, TO REVISE THE APPLICATION PROCESS, TO CLARIFY REVIEW CRITERIA FOR ISSUANCE OF A LICENSE, AND TO MAKE OTHER MINOR CHANGES RELATING TO RESPONSIBILITIES FOR REVIEW OF THE APPLICATION AND REQUESTS FOR REVOCATION OR NON-RENEWAL.

THE CITY OF NOVI ORDAINS:

PART I

That Chapter 3, "Alcohol," Article II, "Licenses," shall be amended to read as follows in its entirety:

ARTICLE II. LICENSES

Sec. 3-12. Scope and Intent.

This article governs applications for licenses to sell beer, wine, or spirits for on-premises consumption within the City, including, but not limited to, Class B licenses, Class C licenses, resort licenses, tavern licenses, club licenses, and hotel licenses. This article does not apply to applications for SDM and SDD licenses, special licenses granted by the Michigan Liquor Control Commission, or one-day permits as allowed by statute.

Sec. 3-13. Licensing Policy

This article establishes an application and review process for the issuance of new licenses and the transfer of existing licenses into the City or between or among applicants. The process is intended to ensure that the individuals and entities seeking licenses from, or charged with operating licensed establishments within, the City meet certain minimum requirements as to criminal history, past conduct, and ongoing business operation standards. It requires City Council review of application information in light of certain criteria that is established for purposes of identifying the kinds of facilities that qualify for a license. It reserves to the City any and all discretion afforded it under applicable law relating to the issuance of licenses.

As a general matter of policy, applicants for a license will need to demonstrate an identifiable benefit to the City and its inhabitants resulting from the granting of the license. While all of the criteria set forth in this article are relevant to the decision whether to grant a license, an applicant must demonstrate in particular that the proposed facility:

- (a) will provide a service, product, or function that is not presently available within the City or that would be unique to the City or to an identifiable area within the City;
- (b) is of a character that will foster or generate economic development or growth within the City, or an identifiable area of the City, in a manner consistent with the City's policies; or,
- (c) represents an added financial investment on the part of a long-term business or resident with recognized ties to the City and the local community.

The weight to be given to each item of the criteria identified in this article, and the determination whether a particular applicant meets or satisfies those criteria is intended to be within the sole discretion of the City Council.

Sec. 3-14. Definitions.

The following definitions shall apply to this chapter:

- (a) *Applicant* shall mean and include all persons and entities proposed to be owners of the license and/or of the licensed premises, all key personnel involved in the management of the licensed business, and all persons and entities proposed to be involved in the finance of the license and/or licensed premises. In the case of a partnership, "applicant" shall include all partners in the partnership. In the case of a corporation other than a corporation with publicly-traded stock, "applicant" shall include all shareholders. In the case of a limited liability company, "applicant" shall include all members.
- (b) *Person, firm, or corporation.* These terms 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 issued by the State of Michigan for the sale and dispensation of alcoholic beverages pursuant to a liquor license of any variety within the City of Novi.
- (c) *Alcoholic beverages.* This terms shall mean any spirituous, vinous, malt, or fermented liquor, liquid or compound, whether or not medicated, proprietary, or patented, and by whatever name called, containing one-half of one (1/2 of 1) percent or more of alcohol by volume which are fit use for beverage purposes.

Sec. 3-15. Applications for new license.

- (a) *Submission to City Clerk's office.* The applicant shall submit to the City Clerk's office a fully completed "City of Novi Liquor License Application" on a form furnished by the Clerk's office, along with all additional documents and materials referred to in the application form or otherwise required under this ordinance.

- (b) *Required information.* The application shall include at least the following information:
- (1) Name and address of applicant. If the applicant is a partnership, the name and address of each partner shall be provided, and a copy of any partnership agreement attached. If the applicant is a privately-held corporation, the names and addresses of all corporate officers, members of the board of directors, and stockholders shall be provided, and a copy of the articles of incorporation attached. If the applicant is a publicly-held corporation, the names and addresses of all corporate officers, members of the board of directors, and stockholders who own ten (10) percent or more of the corporate stock shall be provided. If the applicant is a limited liability company, the names and addresses of all members, managers and assignees of membership interests shall be provided, and a copy of the articles of organization attached.
 - (2) Type of license desired.
 - (3) The address and legal description of the property where the license is to be located.
 - (4) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, and conceptual plan showing the relationship of the building to the surrounding properties and uses, and proposed building elevations.
 - (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 is to be issued.
 - (6) Any other information pertinent to the applicant and operation of the proposed facility as may be required by this chapter, including information regarding each of the criteria listed in subsection 3-15(g).
- (c) *Nonrefundable application fee...*The application shall be accompanied by a deposit of a nonrefundable fee, in an amount determined by the City Council, to be sufficient to cover the costs of investigation, review, and inspection.
- (d) *Recommendations from City departments.* Following the receipt of the fully completed application, fees and other such information as may be requested by the City, the City Clerk shall forward the application to the Community Development Department, Police Department, Fire Department, and such other 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 application other pertinent information.
- (e) *Placement upon City Council agenda.* Upon receipt by the Clerk's office of the recommendations of the departments identified above, the City Clerk shall submit the application and recommendations for placement upon the agenda of the City Council. Such submission shall be made no later than sixty (60) days after the receipt of the application by Clerk's office.

- (f) *City Council action required.* All applications are subject to the final approval of the City Council. The Council may conditionally grant the requested license, postpone consideration for a reasonable period, or deny the license. If the license is either approved or denied, the Council shall cause its decision to be transmitted to the state Liquor Control Commission and promptly give notice of the decision to the applicant, in writing. Unless otherwise indicated by the Council, all approvals are contingent upon the applicant obtaining any required building permits and any other necessary permits, licenses, or approvals from the City or other regulatory agencies within 60 day from the date of such conditional approval. The construction of new buildings and alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than one year after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the City Council for good cause. Failure to comply with such contingency shall render the license subject to revocation.
- (g) *Review criteria.* In making its determination pursuant to subsection 3-15(f), the City Council shall consider whether the applicant's proposal is reasonable when measured against the criteria listed below. For purposes of this review, an "applicant" shall be considered to include all officers, partners, members, and managers of an entity applying for a license.
- (1) General information regarding applicant:
- (a) The applicant's management experience in the alcohol/liquor business.
 - (b) The applicant's general business management experience.
 - (c) The applicant's general business reputation.
 - (d) The applicant's moral character.
 - (e) 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.
 - (f) Past criminal convictions of the applicant for crimes involving moral turpitude, violence or alcoholic liquors.
 - (g) The applicant's excessive use of alcoholic beverages.
- (2) Information related to the facility/building to which the license would apply
- (a) The recommendations of the Police Department, Building Department, and/or Fire Department with regard to the proposed facility.
 - (b) 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, zoning ordinance, or other ordinances applicable in the City.
 - (c) The effects that the business facility to which the proposed license is to be issued would have upon vehicular and pedestrian traffic in the area.
 - (d) 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, including impacts upon residential areas and church and school districts or uses.

(e) The availability of utilities to serve the facility.

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

(g) The proximity to complementary uses, such as office and commercial development.

(h) Availability of adequate parking, taking all circumstances of the location into consideration;

(3) Benefits to community

(a) The effects that the issuance of a license would have upon the economic development of the City or the surrounding area.

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

(c) Whether the applicant has demonstrated a public need or convenience for the issuance of the liquor license for the business facility at the location proposed, taking into consideration the following, together with other factors deemed relevant by the Council:

- i. The total number of licenses for similar establishments and/or operations in the City, considered both in terms of whether such number of similar establishments is needed and whether there may be a need for other types of establishments that could go unmet if the requested license were granted;
- ii. The proximity of the establishment to other licensed liquor establishments, the type of such establishments, whether such other establishments are similar to that proposed, and the anticipated impact of all such determinations;
- ii. Whether the proposed location is in an area characterized as developed, redeveloping, or undeveloped, and the anticipated impact of approving the newly proposed establishment in light of such character, taking into consideration the need for any type of additional licensed establishment in the area, and the need the particular type of establishment proposed;
- iv. The impact of the establishment on City policing and code enforcement activities;
- v. The overall benefits of the proposed establishment to the City;
- vi. The overall detriments of the proposed establishment to the City; and
- vii. Any other factors that may affect the health, safety, and welfare relative to the need for and/or the convenience of the proposed establishment in the City.

(d) The uniqueness of the proposed facility when contrasted against other existing or proposed facilities, and the compatibility of the proposed facility to surrounding architecture and land use.

(e) The permanence of the establishment in the community, as evidenced by the prior or proposed contributions to the City or community by the applicant or business, and the extent to which the issuance of the license will assist in the further investment of the applicant or business in the City or the community.

(f) The character and extent of investment in improvements to the building, premises, and general area.

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

(h) *Restrictions on licenses.* No license shall be issued to:

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

(2) A co-partnership or partnership, unless all the members of such co-partnership or partnership shall qualify to obtain a license.

(3) A corporation, other than a public corporation, if any officer, manager, or director thereof, or stockholder owning in the aggregate more than ten (10) percent of the stock of such corporation would not be eligible to receive a license hereunder for any reason.

(4) A limited liability company, if any member, manager or assignee owing a ten (10) percent membership interest or more would not be eligible to receive a license hereunder for any reason.

(5) A person who has been convicted of a crime punishable by death or imprisonment in excess of one (1) year under the law under which he 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.

(6) 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.

(i) *Changes in plans, drawings, etc.* After receipt of a conditional 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 approval from the engineering department, building department and City Council.

(j) *Recommendation for approval of liquor license.* Upon completion of the building and in accordance with the prior conditional approval of the Council, the City Council shall then thereupon recommend, above all others, the applicant for approval of the liquor license to the Liquor Control Commission of the State of Michigan.

(k) *Reservation of authority.* No applicant for a liquor license has a right to the issuance of such license 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.

Sec. 3-16. Transfer of existing licenses.

The transfer of any existing liquor license covered hereunder shall be subject to application procedure, including payment of application fees, set forth in this article for the granting of a new liquor license. In addition, the transferee or applicant shall furnish any necessary authorization to permit the City access to 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 licensee, or as a previous licensee, or in which transferee has or has had a partial interest in. In approving the transfer of any existing liquor license, the City Council may direct the Police Department to include within the department recommendation to the liquor control commission the condition that the construction of the building within which the applicant is to utilize the license, or any renovations to said building, be completed and approved in accordance with all applicable statutes, regulations, codes and ordinances.

Sec. 3-17. Prohibition on profiteering by class C liquor license holders.

The City Council has determined that profiteering by class C liquor license holders is contrary to the best interests of the City. Accordingly, in order to prevent profiteering, to the full extent authorized by law, the City Council shall not approve the transfer of a class C liquor license within three (3) years of the date of the original issuance of the license. An agreement between the applicant and the City, following recommendation by the City attorney shall be prepared and agreed upon to give effect to this provision prior to final action being taken by the City Council on an application. The City Council may, but is not required to, excuse the above anti-profiteering limitation for any of the following reasons:

- (1) If the license holder is a natural person, he or she dies or becomes incapacitated.
- (2) If the license holder is a corporation, the majority shareholder dies or becomes incapacitated, or the corporation dissolves for reasons other than to transfer the license.
- (3) If the license holder is a limited liability company, the company dissolves for reasons other than to transfer the license.
- (4) The license holder and the proposed license transferee establish that the transfer of the class C liquor license shall not result in profiteering.
- (5) The application of this anti-profiteering limitation will subject the applicant to financial hardship due to no fault of the applicant, such as a change in the business climate, illness or death, labor or supply problems, and/or other factors outside the applicant's control.

The agreement shall provide that, unless excused by the City Council as provided above, in the event a license is proposed for transfer within three (3) years from the date of issuance, the applicant agrees that the Michigan Liquor Control Commission shall terminate the license and the City Council may approve the issuance of a new license to a new applicant without any

compensation to the licensee who placed the license into escrow, and that a licensee waives any property interest in such license upon placement of the license into escrow within such three-year period; provided, however, prior to the approval of such issuance to a new applicant, the person or entity who placed the license into escrow shall be afforded written notice and an opportunity to be heard, and all objections raised at the hearing shall be resolved (at the Michigan Liquor Control Commission or in the circuit court if necessary) prior to issuance of the license to a new applicant.

Sec. 3-18. Objections to renewal and requests for revocation.

- (a) *Generally.* The City Council may object to a renewal of a liquor license or request the revocation of a liquor license with the Michigan Liquor Control Commission.
- (b) *Procedure.* Before filing an objection to the renewal or request for revocation of a license with the Michigan Liquor Control Commission, the City Council shall serve the licenseholder, by first class mail, mailed not less than ten (10) 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 such hearing.
 - (4) A statement that the licensee may present evidence and testimony, and may confront witnesses and may be represented by a licensed attorney.
- (c) *Hearing and final decision.* Such 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 such hearing, and hear and take evidence and testimony of the licensee, or witnesses on its behalf, in opposition thereto. After such 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 licenseholder, and the Michigan Liquor Control Commission, a written statement of its ultimate findings and determination.
- (d) *Criteria for non-renewal or revocation.* The City Council may recommend non-renewal or request revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exists:
 - (1) A violation of any applicable building, electrical, mechanical, plumbing or fire code; applicable zoning regulations; applicable public health regulations; applicable rules and regulations of the county health department; or any other applicable city Code provision.
 - (2) Maintenance of a nuisance upon the premises.
 - (3) A material change in those conditions, statements or representations contained in the written application by the licensee, upon which the City Council based its recommendation for approval, when that change is found to be contrary to the best interest of the City residents, in the judgment of the City Council.
 - (4) A holder of a license or permit has been convicted of any federal or state law concerning the manufacture, possession or sale of alcoholic liquor or a controlled substance.

(5) The premises do not or will not reasonably soon have adequate off-street parking, lighting, refuse disposal facilities, screening, noise or nuisance control where a nuisance does or will exist.

(6) A violation of any section of this chapter or of the rules and regulations of the Liquor Control Commission.

(7) For a dance, entertainment or dance-entertainment permit, any breach of the entertainment agreement entered into between the licensee and the city as required in this article.

PART II

Savings Clause. That the amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

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CERTIFICATION

It is hereby certified that the foregoing Ordinance was adopted by the Novi City Council, Oakland County, Michigan, at a meeting of the Council duly called and held on the ____ day of December, 2009.

CITY OF NOVI

By: _____
Maryanne Cornelius, City Clerk

**ADOPTED:
EFFECTIVE:
PUBLISHED:**

1312012.2