



Legislation Details (With Text)

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Title: An Ordinance to Repeal Chapter 109, Liquor, of Title IX of the Code of the City of Ann Arbor in its Entirety and Add a New Chapter 109, Liquor, Title IX of said Code (Ordinance No. ORD-09-18)

Sponsors: Council Liquor License Review Committee

Indexes:

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Attachments: 1. ORDINANCE No. ORD-09-18 Approved, 2. Chapter 109 Liquor Ordinance, 3. Ordinance No. ORD-09-18 Briefed

Date	Ver.	Action By	Action	Result
5/18/2009	1	City Council	Held and Closed	
5/18/2009	1	City Council	Adopted on Second Reading	Pass
5/4/2009	1	City Council	Approved on First Reading	Pass

An Ordinance to Repeal Chapter 109, Liquor, of Title IX of the Code of the City of Ann Arbor in its Entirety and Add a New Chapter 109, Liquor, Title IX of said Code (Ordinance No. ORD-09-18)
The attached Ordinance repeals the existing City Code Chapter 109, Liquor, and adopts a new Chapter 109, Liquor.

The new Chapter 109 has been updated and restructured to reflect changes in several major areas:

- A new purpose section has been added
- The definition section has been amended to add to or update existing code terms for both clarity and quick reference
- Existing provisions have been revised to comply with current statutory requirements, including changes in the law related to consumption of alcoholic liquor on school property, fraudulent identification, and additional penalties allowed under Michigan law for violation of local ordinances.
- A new section has been added outlining City administrative policies and procedures related to applications for new licenses, including standards for review and fees.
- A new section has been added to instituting an annual renewal process, including standards for revocation, an appeal process and fees.
- Transfer of Location and Ownership provisions have been amended to include grounds for denial
- A new section has been added clarifying the authority of Council

The Council Liquor License Review Committee met with and discussed the amendments with City staff prior to finalization of the provisions.

It is anticipated that the new Chapter will provide clear procedural guidance to new applicants and

existing license holders on liquor licensing as well as continuing enforcement standards for businesses and the public.

Sponsored by: Council Liquor License Review Committee

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

Sponsor: Council Liquor License Review Committee

ORDINANCE NO. ORD-09-18

First Reading : May 4, 2009

Approved: May 18, 2009

Public Hearing : May 18, 2009

Published: May 24, 2009

Effective: June 3, 2009

Chapter 109

LIQUOR

An Ordinance To Repeal Chapter 109, Liquor, of Title IX of The Code of The City of Ann Arbor In Its Entirety and Add A New Chapter 109, Liquor, Title IX of Said Code.

The City of Ann Arbor Ordains:

Section 1. That Chapter 109 of Title IX of the Code of the City of Ann Arbor be repealed in its entirety and a new Chapter 109 of Title IX of the Code be added to read as follows:

9:71. Purpose; Licensing Policy

(1) Statement of Purpose. The purpose of this Ordinance is to allow the City to establish and administer a policy for the issuance and transfer of liquor licenses and permits in accordance with, and to provide for the enforcement of liquor laws, regulations and ordinances.

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

- (a) On-Premises. No person shall sell alcoholic liquor for consumption on the premises within the city without applying for approval to the city council and obtaining the express approval of the city council for such license in accordance with this Chapter, and applying for approval to the state liquor control commission and obtaining the express approval of the state liquor control commission for such license in accordance with state law. This provision shall not, in any event, apply to applications for special licenses granted by the Michigan Liquor Control Commission or one-day permits as allowed by statute.
- (b) Off- Premises. No person shall engage in the business of selling alcoholic liquor for consumption off premises except in accordance with the terms of a license issued by the state liquor control commission in accordance with state law.

9:72. Definitions.

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

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

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

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

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

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

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

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

(7) "PID" means personal identification card.

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

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

9:73. Selling or furnishing to minors.

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

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

9:74. RESERVED.

9:75. Consumption in public.

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

9:76. Application for Approval of a New License or Transfer of Location Review Procedures; Grounds for Denial

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

(1) Application. Each applicant must submit to the City Clerk an application on a form provided by the City, and all supplemental reports or data required by the application, which may include a plan of operation, design plans showing the entire structure, premises and grounds and in particular the specific areas where the license is to be utilized, parking, lighting, refuse disposal facilities and, where appropriate, plans for screening and noise control, a written statement explaining in detail how their proposal meets the factors as listed in the Application and Section 9:79 of this Chapter and any other information deemed relevant by the Liquor Control Commission in evaluation of the applicant or the premises.

(2) Administrative Review. Upon receipt of an application the City Clerk will refer same to the City's Liquor License Review Committee who shall cause a thorough review and investigation of the applicant by appropriate City officers or employees, including but not limited to a complete history of past business experience and liquor law violations, if any, to be made of the persons and/or premises which must meet or exceed codes. The applicant shall provide all requested information to and fully cooperate with all City officers and employees requesting any and all additional information. The findings resulting from such review and investigation shall be reported to the City Council with a recommendation for the approval or denial of the application by the Liquor License Review Committee.

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

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

(a) Any person, for any location, which the City Council determines, by majority

vote, is unsuitable for on-premises consumption of alcoholic liquor, considering:

- ii. The proximity of other premises licensed to sell alcoholic liquor for on-premises consumption.
- iii. The lack of any other facilities or use on the premises to be licensed which are compatible with a license for on-premises consumption of alcoholic liquor (e.g. restaurant, hotel).
- iv. The distance from public or private schools for minors.
- v. The proximity of an inconsistent zoning classification or land use.
- vi. Any other relevant factors as the City Council may deem appropriate.

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

(c) Any person, corporation, or copartnership which, at the time of application for such approval or transfer is delinquent in the payment of any taxes, fees, or other charges owed to or collected by the City of Ann Arbor.

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

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

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

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

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

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

(b) The experience of the applicant;

(c) The other uses proposed to be included on the premises or in the development

(e.g. restaurant, hotel);

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

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

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

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

(5) Conditional approval. Approval of a license shall be for the period of one year with renewal subject to the provisions of Section 9:79 of this Chapter. Approval of a license shall be upon the condition that any necessary re remodeling or new construction for the use of the license required by the City Council or indicated on the design diagram submitted with the application shall be completed within six months of the approval of the license by the City Council or prior to the commencement of business, whichever occurs first, unless a timely request for extension for good cause shown is received and approved by City Council. Approval of a license shall also be upon the condition that any work on the premises necessary to comply with the applicable codes and regulation in subsection 4(b) above be completed within sixty (60) days of the City Council approval of the license.

9:77. Permits; Transfers of Ownership.

(1) Permits. Requests for permits for dance, entertainment, or dance and entertainment shall be reviewed by the City's Liquor License Review Committee and approved in the sole discretion of the City Council after an evaluation of the factors listed in Section 9:76 of this Chapter.

(2) Transfers of Ownership; Grounds for Denial. Requests for transfer of ownership of existing licensed establishments shall be reviewed by the City's Liquor License Review Committee and approved or disapproved by City Council. The Liquor License Review Committee may hold a public hearing. If the continuation of an existing operation is contemplated, the applicant must present a plan relating to how it will deal with any existing problems created by the business. The city council shall not approve the transfer of a license for sale of alcoholic liquor for on-premises consumption if the owner is delinquent in the payment of any taxes, fees, or other charges owed to or collected by the City of Ann Arbor. A transfer shall not be approved unless provision is made to secure the payment of the delinquent obligation.

9:78. Reservation of Authority.

No applicant for a liquor license has the right to the issuance of such license to him/her, and the City Council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such license. Additionally no applicant for a liquor license has the right to have such application processed and the City Council further reserves the right to take no

action with respect to any application filed with the City. The City Council further reserves the right to maintain a list of all applicants and to review same when, in its discretion, it determines that the issuance of an additional liquor license is in

the best interest of the City at large and for the needs and convenience of its citizens.

9:79. Annual Renewal; License Revocation, Appeal and Fees.

(1) The City's Liquor License Review Committee shall annually review before March 30 each licensee's on-premises liquor license to determine whether or not to object to the state liquor control commission's renewal of the license, and investigations and recommendations as to each renewal request shall be undertaken and provided by the police, fire, building and any other service units as the City's Liquor License Review Committee deems appropriate, which service units shall make written recommendations as to the liquor license renewal. On receipt of the written recommendations, the City's Liquor License Review Committee shall make review the recommendations, and forward to City Council a recommendation for approval of or revocation and nonrenewal of the on-premises liquor license. City Council may object to renewal of the liquor license for any of the following reasons:

- (h) Failure to comply with all standards plans and conditions established and approved at the time of the issuance of the license or at a time of later city approval.
- (i) Failure to timely pay all personal property taxes and all real property taxes and all other obligations due and payable to the City or have outstanding any personal property tax or real property tax or obligation due and payable to the City as of the date of the annual review.
- (j) Repeated violation of the state liquor law.
- (k) Violations of this chapter or other city ordinance.
- (l) Maintenance of a nuisance upon or in connection with the licensed premises, including but not limited, to any of the following:
 - i. Existing violations of the building code, electrical code, fire prevention code, mechanical code, plumbing code, health code or other applicable code.
 - ii. Violation of the zoning ordinance.
 - iii. A pattern of patron conduct in the neighborhood of the licensed premises which is in violation of the law and/or disturbs the peace, order and tranquility of the neighborhood.
 - iv. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining properties.
 - v. Entertainment on the licensed premises without a permit and/or entertainment which disturbs the peace, order and tranquility of the neighborhood of the licensed premises.
 - vi. Any advertising, promotion, or activity in connection with the licensed premises which by its nature causes, creates or contributes to disorder, disobedience of rules, ordinances or laws, or contributes to the disruption of normal activity of

those in the neighborhood of the licensed premises.

- vii. Numerous police contact with the licensed premises or the patrons of the premises.
- viii. Repeated reports that the licensee is serving minors or intoxicated persons.
- ix. Failure by the licensee to permit the inspection of the licensed premises by the city's employees, agents and/or representatives in connection with the enforcement of this chapter.

(2) Prior to filing an objection with the liquor control commission to renew a liquor license, the City Council shall do the following:

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

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

9:80. Possession on public street.

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

9:81. Possession or consumption by minors.

Except as permitted by state law, a minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content.

9:82. Penalties for liquor violations.

(1) Licensees shall comply with all applicable state and City regulations, this Chapter, and the Plan of Operation approved by the City's Liquor License Review Committee. Any change to the Plan of Operation shall be approved by the City's Liquor License Review Committee prior to

implementation of the change by the Licensee. Failure of such compliance or variance from an approved plan is a violation of this Chapter and may result in the City Council recommending to the state liquor control commission that the license be revoked and not renewed.

(2) Any person who violates Sections 9:73, 9:75, or 9:80 of this chapter shall be guilty of a misdemeanor punishable by a fine and costs not to exceed \$500.00 or imprisonment not to exceed 90 days or by both such fine and imprisonment.

(3) Any minor who violates section 9:81 shall be punishable as follows:

(a) For the first violation a fine of not more than \$100.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in state law.

(b) For a violation following a prior conviction or juvenile adjudication for a violation of section 9:81 or a substantially corresponding state law, by imprisonment for not more than 30 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$200.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in state law.

(c) For a violation following 2 or more prior convictions or juvenile adjudications for a violation of section 9:81 or a substantially corresponding state law, by imprisonment for not more than 60 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$500.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in state law.

(d) In accordance with and as provided in state law, when an individual who has not previously been convicted of or received a juvenile adjudication for a violation of section 9:81 or a substantially corresponding state law pleads guilty to a violation of section 9:81, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions as provided in state law. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings, which shall have the same effect as provided in state law.

(4) Any person who violates section 9:83 shall be guilty of a misdemeanor punishable as follows:

- (a) If a person has no prior convictions, by imprisonment for not more than 93 days or a fine of not more than \$250.00 or both.
- (b) If the person has 1 prior conviction, by imprisonment for not more than 93 days or a fine of not more than \$500.00 or both.
- (c) For purposes of this section, “prior conviction” means a conviction for violation of section 9.83 or substantially corresponding State law.
- (d) Conviction under section 9.83 does not prohibit a person from being convicted of or found responsible for any other violation of law arising out of the same transaction as the violation of section 9.83.

(5) Any minor who violates section 9:84 shall be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00 or both.

9:83. Consumption on school property.

(1) No person shall consume alcoholic liquor on school property or possess alcoholic liquor on school property with the intent to consume it on school property, except:

- a. As part of a generally recognized religious service or religious ceremony.
- b. At a nonschool function or event on school property if the superintendent of the school district or if the public school is not operated by a school district, the administrator of the school, or his or her designee, has approved consuming alcoholic liquor on the school property or possessing alcoholic liquor on the school property during that function or event.

(2) This section does not apply to a minor who could be subject to prosecution under section 9:81 or substantially corresponding State law.

9:84. Furnishing or using false identification.

(1) No person shall furnish fraudulent identification to a minor. Notwithstanding sections 9:81 a minor who uses fraudulent identification to purchase or attempt to purchase alcoholic liquor, is guilty of a misdemeanor.

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

(3) No person shall:

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

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

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

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

Section 2. In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3: This Ordinance shall take effect on the tenth day following legal publication.