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ARTICLE 2. - LICENSE APPROVAL AND REVOCATION RECOMMENDATIONS

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Sec. 6-31. - Purpose of article.

This article is established to cause the greatest benefit to the city in its use of powers with regard to the issuance, transfer, renewal or revocation of liquor licenses 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 any and all requests for liquor licenses or any matter relating thereto, for the sale or dispensation of alcoholic beverages for on-premises consumption within the city, and each person who desires such a license, or the approval or renewal of such a license, shall comply with this article.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-32. - Applicability of article.

This article shall apply only to applications for licenses to sell beer, wine or spirits for on-premises consumption as required by the act. This article shall not apply to applications for SDM or SDD licenses, special licenses granted by the state liquor control commission, or one-day permits as allowed by statute.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-33. - Definitions.

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

Alcoholic beverages or alcoholic liquor means 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 percent or more of alcohol by volume which are fit for use for beverage purposes.

Person means any individual, firm, partnership, limited partnership, association, limited liability company, or corporation, either charitable or profitable, that desires to have or is already in possession of any license issued by the state for the sale and dispensation of alcoholic beverages in the city pursuant to a liquor license of any kind.

Act means the Michigan Liquor Control Code of 1998, as amended, which contains one-half of one percent or more of alcohol by volume and which is fit for use for beverage purposes.

Commission means the liquor control commission.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-34. - Submission of applications for new licenses; information required.

- (a) *Application to state required.* An applicant for a liquor license under this article shall first submit an application for a liquor license to the state liquor control commission before submitting an application for liquor license approval to the city. No application for a liquor license will be considered by the city until the city has been notified by the state liquor control commission that it has received such an application.
- (b) *Submission to city.* The applicant for a liquor license under this article shall submit a current and fully completed "City of Portage Liquor License Application," as prepared and furnished by the city clerk, to:

City Clerk
 City of Portage
 7900 S. Westnedge Avenue
 Portage, Michigan 49002

- (c) *Required information.* The city application shall be signed by the applicant, if an individual, or by a duly authorized agent thereof, if a partnership, corporation, or limited liability company, and shall include at least the following information:
- (1) The name, age and address of the applicant, in the case of an individual; in the case of a copartnership, the name, age, and address of all persons entitled to share in the profits thereof; in the case of a corporation, the names, ages and addresses of all officers and directors thereof and, if an aggregate of more than ten percent of the stock of such corporation is owned by any one person or his or her nominee, the name, age and address of such person; in the case of a limited liability company, the name, age and address of all the members.
 - (2) If the applicant is a corporation, it shall supply the following:
 - a. If incorporated outside of the state, a copy of its current articles of incorporation and a current certificate of good standing from the state of incorporation.
 - b. If a Michigan corporation, a copy of the current articles of incorporation as approved by the department of consumer and industry services.
 - c. A certified copy of the minutes of a meeting of its board of directors or an affidavit signed by an officer of the corporation naming the persons authorized by corporate resolution to sign the application.
 - d. An affidavit stating the identify of its current corporate officers and the members of the board of directors.
 - (3) If the applicant is a partnership, the general partner of a partnership shall sign the application and other documents required in connection with the application.
 - (4) A limited liability company making application for a license shall file all of the following items with the city:
 - a. If a foreign limited liability company, a copy of the certificate of authority issued by the Michigan Department of Consumer and Industry Services.
 - b. If a domestic limited liability company, a copy of the articles of organization filed with the Michigan Department of Consumer and Industry Services.
 - c. An affidavit stating the full name and address of its current members, managers, and assignees of membership interest.
 - d. An affidavit signed by a manager of the limited liability company or by at least one member if management is reserved to the members naming the person authorized to sign the application. If a foreign limited liability company, a person who has the authority to sign under the laws of the jurisdiction of its organization shall sign the affidavit and shall indicate the capacity in which the person signs the affidavit.
 - (5) The type of license desired.
 - (6) The nature of the business of the applicant and, in the case of a corporation, partnership, or limited liability company, the object for which it was formed.
 - (7) 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, including the period of time such applicant has been in the business of that nature or, in the case of a corporation, partnership, or limited liability company, the date in which the entity came into existence.
 - (8) The location and description of the premises which is to be operated under such license.
 - (9) If the business of the applicant is to be operated or conducted by a local manager or agent, the name and address of such manager or agent.
 - (10) A statement as to whether or not the applicant has, prior to the application, applied for a license to sell beer and wine or spirits and, if so, the date, place and disposition of such application.
 - (11) A statement that the applicant has never been convicted of a felony and is not disqualified from receiving approval for a license by reason of any matter or thing contained in this article or the laws of the state.
 - (12) A statement that the applicant will not violate any of the ordinances of the city or laws of the state or of the United States in the conduct of his business.
 - (13) A statement that the applicant, should any of the information provided in his application or any attachment thereto change during the term of the license or any renewal thereof, will notify the city clerk, in writing, within 30 days of such change.
 - (14) An 8-½ by 11-inch building and grounds layout diagram showing the entire structure, premises and grounds, specific areas where the license is to be utilized and the relationship of the proposed structure to the surrounding property and land use, and demonstrating adequate off-street parking, lighting and refuse disposal facilities and, where appropriate, adequate plans for screening and noise control.
 - (15) Any other information pertinent to the applicant and to the operation of the proposed facility as may be required by the council by prior notice to the applicant.
- (d) *Fee.* The application shall be accompanied by a nonrefundable fee, in the amount determined by resolution of council, to cover the cost of the investigation, review and inspection by the city.
- (e) *Administrative recommendation.* Following receipt of the fully completed application, the fee and such other information as may be requested by the city, the city clerk shall forward the application to the police department,

the fire department, the department of community development and such other departments as required by the city manager, which departments shall make their recommendations prior to consideration of the application by the council. In making its review, the city may request from the applicant other pertinent information.

- (f) *Placement on council agenda.* Upon receipt by the city clerk of the recommendations of the police department, the fire department, the department of community development and other departments as required, the clerk shall forward same to the city manager so that the application can be placed upon the city council agenda.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-35. - Consideration of application for new licenses.

- (a) *Council action.* After review of the recommendation of the city manager concerning the application, council shall take one of the following actions:
- (1) Recommend to the state liquor control commission approval of the applicant above all others for the issuance of a liquor license if the requirements of this article have been satisfied, including subsection 6-35(b), Conditional approval.
 - (2) Reject the application, stating the reasons for such rejection.
 - (3) 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 and increased if the postponement is for the purpose of supplying the council with additional information requested of the applicant by the council, when the applicant is unable to supply the requested information within the stated time period.
 - (4) If requested by the applicant, council may authorize the applicant to proceed with the submitted plan so that a more detailed and complete proposal may be heard by the council at a later date as provided in subsection 6-35(e), 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.
- (b) *Conditional approval.* Once an applicant who has been authorized to proceed under subsection 6-35(a) to present a more detailed and complete proposal and has sufficiently completed plans and obtained site plan, engineering, zoning, planning and other necessary approvals from the city, a request for consideration by the council of a conditional approval may be made. Upon the receipt of a written notice by an applicant requesting consideration of a conditional approval, the city manager shall cause the application to be placed on the agenda of the council for action. At that meeting, the applicant shall be prepared to discuss the following:
- (1) Cost estimates for the buildings, furnishings and fixtures as part of the proposal;
 - (2) Site plan information, including landscaping and other aesthetic features of the proposal;
 - (3) Estimates of the number of employees required for the operation;
 - (4) Information on the 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; and
 - (6) Answers to any related questions about the proposed improvements and/or general operation of the facility.
- (c) *Decision criteria.* The council, in making its decision, shall consider the following criteria on the application:
- (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 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 beverages;
 - (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 effect 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, the department of community development and/or the fire department with respect 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) Whether the facility to which the proposed liquor license is to be issued complies, or will comply, with the building, plumbing, electrical, fire prevention and zoning codes of the city and any other building, plumbing, electrical, fire prevention and zoning statutes and ordinances applicable to the city.
 - (14) The effect that 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 effect that the business facility to which the proposed license is to be issued will have upon the surrounding neighborhood and/or business establishments.
 - (17) The permanence of the establishment in the community as evidenced by the proposed or actual

- commitments made by the applicant.
- (18) Such other considerations as the council may deem proper.
- (d) *Grounds for denial.* Notwithstanding any criteria or preferences in this article, no license shall be approved for:
- (1) A person, for any location which the council determines, by a majority vote, is unsuitable for on-premises consumption of beer and wine or spirits, considering:
 - a. The proximity of other premises licensed to sell beer and wine or spirits for on-premises consumption.
 - b. The lack of any other facilities or uses on the premises to be licensed which are compatible with a license for on-premises consumption of beer and wine or spirits (e.g., a restaurant or hotel).
 - c. The proximity of an inconsistent zoning classification or land use.
 - d. Traffic safety, the accessibility to the site from abutting roads, and the capability of abutting roads to accommodate the commercial activity.
 - e. Such other relevant factors as the council may deem appropriate.
 - (2) A person, for any premises which the council determines, by a majority vote, does not or will not, within six months of the approval of the license by the council, or prior to the commencement of business, whichever occurs first, have adequate off-street parking, lighting, refuse disposal facilities, screening or noise or nuisance control, provided, however, that upon timely request and for good cause shown, the council may extend any deadline established by this subsection.
 - (3) A person, for any premises which does not comply with applicable building, electrical, mechanical, plumbing, fire prevention, zoning or public health codes and regulations, provided, however, that the council may approve an application subject to compliance with the applicable codes and regulations within 60 days.
 - (4) A person who does not own the premises for which the license approval is sought or does not have a lease therefor for the full period for which the license is to be issued.
 - (5) A law enforcing public official or a member of the council, and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic beverages.
 - (6) A person who, at the time of application for such approval, transfer or renewal, is delinquent in the payment of any taxes, fees or other charges owed to or collected by the city.
 - (7) 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.
 - (8) A copartnership, unless all of the members of such copartnership qualify for approval of a license.
 - (9) A corporation, if any officer, manager or director thereof, or a stock owner or stockholders owning in the aggregate more than ten percent of the stock of such corporation, would not be eligible to receive approval for a license under this article for any reason.
 - (10) A person whose place of business is operated or conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee.
 - (11) A person who has been convicted of a crime punishable by imprisonment in excess of one year under the law which he was convicted, or of a crime involving theft, dishonesty or false statement (including tax evasion) regardless of punishment, or of crime or administrative violation of a federal or state law concerning the manufacture, possession or sale of alcoholic beverages or controlled substances.
 - (12) A person based upon such other relevant factors as the council may deem appropriate.
- (e) *Disposition of request for conditional approval; time limit for completion of construction.* Following the presentation by the applicant pursuant to subsection 6-35(b), the council may conditionally approve, above all others, the application, postpone consideration for a reasonable period or reject the application. Conditional approval will be contingent upon obtaining building permits and any other necessary permits, licenses, or approvals from the city within six months from the date of such conditional approval, including the correction of any existing noncompliance with codes and regulations referred to in subsection 6-35(d)(3) of this section. The construction of new buildings and alterations of existing buildings shall commence within six months after the date of the conditional approval, with a completion date of not more than one year after the issuance of the relevant building permit. Extensions for completion of construction or alterations may be granted by the council for good cause.
- (f) *Approval of changes in plans.* After receipt of a conditional approval by the council, no floor plan, building elevation, site plan, seating arrangement, kitchen layout or other pertinent fact, drawing or document submitted to the council shall be changed without the applicant first receiving approval from the city manager and council.
- (g) *Recommendation of conditionally approved applicant to state liquor control commission.* Upon completion of the building and in accordance with the prior conditional approval of the council, the council shall recommend the applicant, above all others, to the state liquor control commission for approval of the liquor license.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-36. - Reservation of authority.

No applicant for a liquor license has a right to the issuance of such license. The council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such a license. In reviewing the criteria set forth in this article for council's determination with regard to an application, council's determination as to the weight or emphasis it gives to any one item is within its discretion.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-37. - Preference for new applicants.

When any such license(s) is 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, council shall give preference to the following:

- (1) Hotel or motor hotels with a minimum of 100 rooms. Facilities shall have a full service restaurant capable of seating a minimum of 300 diners of a walk-in nature. Facilities shall also have banquet and meeting rooms capable of handling multiple conferences or gatherings of 500 persons. Facilities shall have recreation amenities consisting of an indoor pool, game rooms, fitness center, and similar activities.
- (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.
- (3) Restaurants of unique and singular conceptual design or modification. The physical structure of such a restaurant will have to be of a nature uncommon to existing establishments within the city. Seating capacity shall be a minimum of 250 persons.
- (4) Council may give consideration to an application which conforms to the purpose and intent of this subsection but which are deficient in meeting the criteria herein above established upon a showing of substantial compliance with the criteria established herein where the evidence presented by such applicant tends to establish an 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.
 - e. The facility or establishment will be located in one of the following areas:
 - i. South Westnedge between Kilgore Avenue and Centre Avenue;
 - ii. Portage Road between Centre Avenue and South Shore Drive;
 - iii. In a PD Planned Development zoning district which includes a commercial land use element;
 - iv. In an OS-1 hitech/research zoning district.
 - f. The location of the proposed new business and its desirability in light of its location, the surrounding land uses and its proximity to other premises licensed for on-premises consumption;
 - g. The experience of the applicant;
 - h. The other uses proposed to be included on the premises or in the development (e.g., a restaurant or motel);
 - i. The cost and size of the overall project and the number of new jobs to be created or current jobs retained;
 - j. The relative suitability of the design and size of the 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;
 - k. The overall development or redevelopment of the city; and
 - l. Such other relevant factors as the council may deem appropriate.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-38. - Transfer of existing licenses.

- (a) The transfer of any existing liquor license covered under this article 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, except for section 6-37, Preference for new applicants.
- (b) In addition, the transferee-applicant shall furnish a copy of any and all files which may be in the possession of the liquor control commission regarding the commission's investigation of the transferee as a present licensee or as a previous licensee, or of a business or other legal entity in which the transferee has or has had a partial interest.

(Ord. No. 02-03, 3-19-2002)

Sec. 6-39. - Objections to renewal and requests for revocation.

- (a) *Council action.* The council may object to a renewal of a liquor license or request the revocation of a liquor license by the state liquor control commission.
- (b) *Notice to license holder.* Before filing an objection to a renewal or a request for revocation of a license with the state liquor control commission, the council shall serve the license 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) The reasons for the proposed action.
 - (3) The date, time and place of such hearing.
 - (4) A statement that the licensee may present evidence and testimony, may confront witnesses and may be

represented by a licensed attorney.

- (c) *Hearing.* Such hearing may be conducted by the council as a whole or by a hearing officer appointed by the council for such purpose. If a hearing officer is appointed, it shall be that officer's duty to undertake such hearing and to hear and take evidence and testimony of the licensee or of witnesses on his behalf or in opposition to such licensee. The licensee may, at his expense, employ a reporter to transcribe the testimony given at the hearing and make a transcript of the testimony. After such hearing, the hearing officer shall make a recommendation to the council for the latter's ultimate final review and decision. The council shall submit to the license holder and the state liquor control commission a written statement of its ultimate findings and determination.
- (d) *Criteria for recommendation of nonrenewal or revocation.* The council may recommend nonrenewal or revocation of a license upon a determination by it that, based upon the evidence presented at the hearing, any of the following exists:
- (1) A violation of any of the restrictions on licenses set forth in section 6-35(d).
 - (2) Maintenance of a nuisance upon the premises.
 - (3) Failure to comply with the requirements of the Michigan Liquor Control Act of 1998 (MCL 436.1101 et seq., MSA 18.1175(101) et seq.) or the administrative rules of the liquor control commission.
 - (4) Failure to comply with any of the requirements of this article.
 - (5) A violation of any law or ordinance in the conduct of the licensee's business.
 - (6) Failure to comply with any promise or representation made by the applicant to the council or with any condition imposed upon the applicant as a basis for the approval.

(Ord. No. 02-03, 3-19-2002)

FOOTNOTE(S):

⁽²²⁾ **Editor's note**— Ord. No. 02-03, adopted Mar. 19, 2002, amended Art. 2, in its entirety to read as set out in §§ 6-31—6-39. Formerly, such article pertained to similar subject matter, contained §§ 6-31—6-36, derived from the 1983 Code, §§ 870.02—870.07; and Min. Bk. 1985, p. 323, Vol. 10, Mar. 5, 1985. [\(Back\)](#)

⁽²²⁾ **State Law reference**— License approval and revocation recommendations, MCL 436.1501, MSA 18.1175(501). [\(Back\)](#)