

02/17/2015

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 6, ALCOHOLIC LIQUOR, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO MODIFY LIQUOR LICENSING REQUIREMENTS, AND TO REPEAL CONFLICTING OR INCONSISTENT ORDINANCES, AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Chapter 6 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

ARTICLE I. – IN GENERAL

Sec. 6-1. Annual inspections.

- (a) *Generally.* Each year the city clerk shall cause investigations to be made, following which the clerk shall make a report to the city council relating to each ~~class~~ on-premises liquor license operating within the city.
- (b) *Inspections.* By February ~~first~~1 of each year, the city clerk shall cause the following inspections to be made:
 - (1) An inspection of the premises ~~housing a class~~ Having an on-premises liquor license to determine whether all applicable provisions of the Code, particularly the provisions of the fire code and building code, are being complied with. Any report generated by an inspection performed within the prior year by the county health department shall also be submitted to the city council.
 - (2) An inspection of the premises to determine that all provisions of the license itself, as well as any conditions imposed by the city council at the time of license issuance, are being complied with.
 - (3) An inspection to determine the general condition of the licensed premises, both interior and exterior.
 - (4) An inspection of a written statement provided by the licensee, or any other source of such information, setting forth the percentage of the licensee's gross income received annually from the following:
 - a. The sale of food; and
 - b. The sale of alcoholic beverages.
- (c) *Inspection procedures.*

- (1) *Written notice.* The building department shall serve on the licensee, by regular mail, written notice requesting the licensee to pay the annual inspection fee, which shall be in accordance with the fee schedule in section 54-91, and schedule an inspection with the building department within 14 days. A second notice, if necessary, will be served within seven days by certified mail. If the licensee fails to schedule the annual inspection within 14 days after the second notice, the building department shall report the failure to schedule an inspection to the city clerk and the city council.
- (2) *Inspection.* The building and fire departments shall inspect the licensed premises, at the scheduled time, and provide a written report to the licensee. If violations are found, the licensee shall schedule a re-inspection. Any corrections and re-inspection must be completed and approved within 30 days. If the licensee fails to satisfactorily correct violations, the building department shall notify the city clerk of the violations. Any unsafe conditions or safety violations, as defined by the current edition of the building code and/or fire prevention code, may be subject to prosecution or other ordinance enforcement action.
- (3) *Report to council.* As soon as possible after February 1 each year, the city clerk shall submit a report to the city council containing information requested by the city council, inspection results, and other pertinent information related to the licensed premises.
- (4) *Violations.*
 - a. Meeting with licensee. If, upon receipt of the inspection report, the city clerk determines that the licensee's business appears to be in violation of the city's ordinances or policies, state law, or any conditions attached to the approval of the license, the city clerk shall notify the licensee of any violation and request the licensee to meet with the city clerk and building and/or fire department representatives to discuss the violation and possible non-compliance with such laws, ordinance code provisions, and conditions. The city clerk shall report the results of such informal meeting to the city council.
 - b. Action. If the alleged violation has not been resolved in a manner satisfactory to the city council, the city council may determine, by resolution, to commence proceedings to terminate the license, or objecting to its renewal by the liquor control commission.
 - c. Reservation of authority. Nothing in this section shall waive the right of the city to prosecute city ordinance violations against a licensee, regardless of whether such violation may be a basis for revocation or nonrenewal proceedings against the licensee.

ARTICLE II. – LICENSES AND PERMITS

Sec. 6-31. Purpose.

- (a) ~~New~~ License application review. The city council, having found that the best interest of the city residents is served if the number, location, character and physical facilities of

establishments selling alcoholic liquors for consumption on the premises are controlled and regulated, establishes a procedure for review of applications for new licenses, or transfer into the city of a license, to sell alcoholic liquors for consumption on the premises and the approval or disapproval thereof.

- (b) *Dance and/or entertainment permit requests.* The city council hereby establishes a procedure for the review of applications for new dance, entertainment or dance-entertainment permits and the approval or disapproval thereof, having further found that:
 - (1) The best interest of the city residents is served if the number, location, character and physical facilities of licensed establishments holding dance, entertainment or dance-entertainment permits are controlled and regulated; and
 - (2) Such interest is harmed if the premises are the site of disorderly conduct, are a public nuisance, or are in violation of the city's health and safety ordinances, building and fire codes, or the rules and regulations of the county health department.
- (c) *Renewal objections; revocation requests.* The city council, having further found that the best interest of the city residents is harmed if establishments dispensing alcoholic liquors for consumption on the premises and/or if such establishments holding dance, entertainment or dance-entertainment permits are in violation of the city's health or safety ordinances, are the site of disorderly conduct, or are a public nuisance, hereby establishes a procedure and criteria for objections to renewal of such licenses and requests for revocation of such licenses and permits thereof based on such conditions and a procedure for notice and opportunity for hearing for the license and/or permit holder prior to any objection or request being filed with the state liquor control commission.

Sec. 6-32. Reservation of authority by council.

- (a) *Determination of licensee or permittee.* No applicant for a liquor license or for a dance, entertainment or dance-entertainment permit has the right to the issuance of such license or permit, and the city council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of a license or permit.
- (b) *Taking no action.* No applicant for a liquor license or for a dance, entertainment or dance-entertainment permit 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 council.
- (c) *Issuance of additional licenses.* The council reserves the right to maintain a list of all applicants and to review the list 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.

Sec. 6-33. Liquor license required.

No person shall operate an establishment that sells alcoholic beverages for consumption on the premises, nor transfer a liquor license into the city, unless the person has been approved

for a liquor license, [or transfer of a license](#), by the city as set forth in this article and granted a liquor license by the state.

Sec. 6-34. Permits required.

- (a) *Entertainment or dance-entertainment.* An on-premises liquor licensee shall not allow dancing, monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises, unless the on-premises licensee has been approved for an entertainment or dance-entertainment permit by the city as set forth in this article and granted an entertainment or dance-entertainment permit by the state.
- (b) *Dance or dance-entertainment.* An on-premises licensee shall not allow dancing by customers or by customers and employees on the licensed premises, unless the on-premises licensee has been approved for a dance or dance-entertainment permit by the city as set forth in this article and granted a dance or dance-entertainment permit by the state.
- (c) *Activities not prohibited.* This section shall not prohibit orchestra playing, piano playing, the playing of other types of musical instruments or singing. This does not apply to any publicly broadcast television transmission from a federally licensed station.

Sec. 6-35. Application for new license or transfer of license.

Application for approval of a new liquor license or a transfer of a license to sell beer and wine or spirits shall be made to the city clerk in writing, signed by the applicant if an individual or by a duly authorized agent thereof if a partnership or corporation, and shall contain the following statements and information:

- (1) The name, age and address of the applicant if an individual; if a partnership, the persons entitled to share in the profits thereof; or, if a corporation, the objects for which organized, the names and addresses of its officers and directors, names and addresses of its stockholders, and the name of the manager or agent who will be conducting the business on behalf of the applicant, if such is the case.
- (2) The citizenship and place of residency of those persons identified in subsection (1) of this section.
- (3) A statement of any other business in which the applicant is engaged.
- (4) A financial statement of the applicant.
- (5) The location and description of the premises or place of business which is to be operated under such license.
- (6) A statement of whether the applicant or any person identified in subsection (1) of this section ever has made application for a license to sell beer and wine or spirits other than described in this application, and if so, the year in which the application was made, the location of the business and the disposition of the application.

- (7) A statement of whether the applicant or any of those persons listed in subsection (1) of this section has ever been convicted of a violation of any federal or state law concerning the manufacture, possession or sale of alcoholic beverages or has ever had a license revoked by the state liquor control commission.
- (8) A statement that the applicant will not violate any of the laws of the state or of the United States or any city ordinances in the conduct of its business.
- (9) The name and address of the fee owner of the premises and, if the applicant is not the fee owner, the nature and term of the applicant's right to occupy the premises.
- (10) A statement of the nature of other activities to be carried on at the premises, including but not limited to food sales, hotel/motel operations, recreational activities, contests involving patrons, and entertainment of any nature. If a dance, entertainment or dance-entertainment permit is required for any of the activities to be carried on at the premises, a separate application for the issuance of a dance, entertainment or dance-entertainment permit shall be made in accordance with this article.
- (11) A statement of whether any remodeling or new construction on the premises is intended for the use of the license and if so, its description, when work is to be started and when work is to be completed.
- (12) The application shall be accompanied by building and site plans showing the entire structure and premises and, in particular, the specific areas where the license is to be utilized. The plans shall be sufficient to inform the council of facilities for off-street parking, lighting, refuse disposal facilities and, where appropriate, adequate plans for screening and noise control.
- (13) A copy of the applicant's conditional land use application required under the zoning ordinance and supporting documents.
- (14) An applicant for a new license shall attach to the application, in a form to be provided by the city, a completed and signed contract concerning transfer or escrow of a license within three (3) years from date of issuance. The contract may be executed by the city if the requested license is approved.

Sec. 6-36. Applications for dance and/or entertainment permits.

- (a) *Contents.* Application for approval of a dance, entertainment or dance-entertainment permit required by this article shall be made to the city clerk in writing, signed by the applicant if an individual or by a duly authorized agent thereof if a partnership or corporation, and shall contain the following statements and information:
 - (1) The location and description of the premises or place of business which is to be operated under such permit.
 - (2) A statement that there has been no material change in the facts represented in the licensee's application for a liquor license. If there has been a material change in the facts, the licensee shall provide the city with a revised application for a liquor license form, stating the type and date of such change.

- (3) A statement of the type of permit being applied for—dance, entertainment or dance-entertainment—and a description of the type of activity to be carried on at the premises, including but not limited to monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing and/or dancing by employees, customers or by customers and employees.
- (4) A statement of whether any remodeling or new construction on the premises is intended for the use of the permit, and if so its description, when work is to be started and when work is to be completed.
- (5) If any remodeling or construction on the premises is intended, the application shall be accompanied by building and site plans showing the entire structure and premises and, in particular, the specific areas where the permit is to be utilized. The plans shall be sufficient to inform the council of facilities for off-street parking, lighting, refuse disposal facilities and, where appropriate, adequate plans for screening and noise control.
- (6) The hours and days during which entertainment and/or dancing shall occur.
- (b) *Entertainment agreement.* The applicant shall attach to such application, on a form to be provided by the city, a completed and signed entertainment agreement that will be executed by the city if the requested permit is duly approved. Such completed entertainment agreement shall be filed with the city clerk, and no application shall be processed unless accompanied by such entertainment agreement.
- (c) *Change in type of activity.* If, at any time after the grant of a dance, entertainment or dance-entertainment permit, the type of activity as described in the application is changed, a new permit must be applied for as provided under subsection (a) of this section and a new entertainment agreement shall be filed with the clerk.

Sec. 6-37. Fees.

At the time of filing an application for a license or permit as required in this article, the applicant shall pay the fees as provided in section 54-91, which shall be nonrefundable.

Sec. 6-38. Processing of applications.

- (a) *City department review.* A copy of any application submitted under this article shall be referred by the city clerk to any city department for an investigation relating to its areas of responsibility and a report back to the city council if, in the discretion of the city council, such investigation is in the interest of the city residents or would assist the council in its review.
- (b) *Determination.* After receiving the reports of the city clerk and any department from which the city council has requested a report, the city council shall make a decision on the application. It shall determine whether to approve or disapprove the issuance or transfer of a license or the issuance of a dance, entertainment or dance-entertainment permit ~~to the state liquor control commission~~ and shall transmit its decision to the state liquor control commission and give notice of its decision promptly to the applicant, in writing.

(c) *Council decision.* Such decision of the city council to approve or disapprove of an application shall be wholly within its discretion and its determination as to what action will best promote the best interest of the city and its inhabitants. In reaching its decision, the council should consider all pertinent factors, including those listed in this subsection. By listing some of the factors to be considered, this subsection shall not be deemed to accord applicants (For purposes of the review factors listed below, "applicant" shall be considered to include all officers, partners, members and managers of the proposed business or the entity applying for the license.) for liquor licenses any more or greater due process rights than those existing under the laws of the state. The factors considered by the council shall include the following:

- (1) The possibility of a consequent significant cost burden on the city;
- (2) The council's perception of the attitude of city residents generally, as well as those in the immediate neighborhood of the premises;
- (3) Whether the property values or character of the adjoining neighborhood will be adversely affected;
- (4) Consistency with the building code, zoning ordinance, zoning map, land use plan, master plan and the anticipated impact on nearby businesses and residences;
- (5) Proximity to residences, schools and churches, with consideration of any adverse effect the proposed establishment may have on such land uses;
- (6) Whether or not the location of the proposed licensed premises is, when considering the location of licensed locations already in existence, in the best interest of the city;
- (7) Whether it is in the best interest of the city to approve of the issuance of another liquor license at the time an application is before it for consideration;
- (8) Whether or not an applicant's business, whether existing or proposed, will generate at least 50 percent of its gross revenues from the sale of food for on-site consumption and whether the applicant's premises are or will be, prior to commencing liquor sales, equipped to serve the required volume of food sales;
- (9) Whether traffic and parking requirements generated by the proposed licensed premises will cause unnecessary congestion or inconvenience on the public highways;
- (10) The applicant's experience, if any, in conducting a business holding a license from the state liquor control commission;
- (11) The applicant's management experience and reputation in connection with the operation of other businesses or facilities;
- (12) The applicant's moral character, with special consideration given to any convictions for crimes involving moral turpitude, violence or alcoholic liquor violations by the applicant or those who are intended to manage the facility;
- (13) Crowd control;
- (14) Pedestrian and vehicle movement;

- (15) Input from residents and other business owners;
- (16) Number of similar licensed premises in the city;
- (17) Concentration and capacity of similar establishments;
- (18) The adequacy of the applicant's financial resources to establish and operate the proposed establishment;
- (19) Association or integration with multi-use development;
- (20) Substantial renovation of existing building or preservation or restoration of historic resources;
- (21) Public safety and policing requirements;
- (22) Business history and experience;
- (23) Proportion of floor area devoted to dining compared with bar area;
- (24) Size of kitchen;
- (25) Size of dance floor, if any;
- (26) Character of the establishment (e.g., night club, hotel, restaurant, dance club); and
- (27) Non-payment of taxes [or other obligations due and payable to the city](#).

Sec. 6-39. Changes in application facts.

If there is any material change in the facts represented in the application for a license or permit required by this article, the applicant shall promptly notify the city clerk of the change, in writing signed by the applicant. Any material change of the facts represented in the application shall be reviewed by the city council, which may withdraw its [recommendation](#)~~decision~~ forwarded to the state liquor control commission, if it deems it appropriate, in its discretion.

Sec. 6-40. Changes in ownership.

Prior to change in ownership of the premises or the license required by this article, a copy of the application as approved shall be given to the new owner or license holder.

Sec. 6-41. Revocation or nonrenewal.

(a) *Notice of public hearing.* Under this article, before filing an objection to renewal or request for revocation of a license or request for revocation of a dance, entertainment or dance-entertainment permit with the state liquor control commission, the city council shall serve the licensee, by first class mail, mailed not less than ten days prior to hearing, with notice of a public hearing, which notice shall contain the following:

- (1) The nature of the action being considered by the council.
- (2) Reasons for the action being considered.
- (3) The date, time and place of the hearing.

- (4) A statement that the licensee may present evidence and testimony and confront adverse witnesses.
- (b) *Criteria.* The city council shall recommend nonrenewal or revocation of a license or revocation of a dance, entertainment, or dance-entertainment permit upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exist:
 - (1) A violation of any 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 chapter.
 - (8) [Nonpayment of taxes or other obligations due and payable to the city.](#)
- (c) *Findings and determination.* Following the hearing, the city council shall submit a written statement of its findings and determination to the licensee and the state liquor control commission.

ARTICLE III. – OPERATING REQUIREMENTS

Sec. 6-71. Nude activity.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Exposed to view means a person has exposed such portions of the anatomy if such portions are naked, uncovered, less than opaquely covered or, though opaquely covered, are physically discernible due to the application of liquid to the opaque material, such as a wet T-shirt contest.

Nude or nearly nude activity means that a person appears on the licensed premises in such a manner as to expose to view any portion of the pubic area, anus, vulva, or genitals or any simulation thereof or that a female appears on the licensed premises in such manner or attire as to expose to view the portion of the breast referred to as the areola, nipple, or simulation thereof.

- (b) *Prohibited.* No person shall perform nude or nearly nude activity on the licensed premises.
- (c) *Permitting nude activity on premises.* No licensee or any agent or employee of a licensee shall sponsor or knowingly permit any person to perform nude or nearly nude activity on the licensed premises, as defined in subsection (a) of this section.

Sec. 6-72. Visual or video representations of specified sexual activities or specified anatomical areas.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Specified anatomical areas means:

- (1) Less than completely and opaquely covered:
 - a. Human genitals;
 - b. Buttocks; and
 - c. Female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

- (1) Human genitals in a state of sexual stimulation or arousal;
 - (2) Acts of human masturbation, sexual intercourse or sodomy; or
 - (3) Fondling or other erotic touching of human genitals, the pubic region, the buttocks or the female breast.
- (b) *Prohibited.* No person shall display or show any videotape recording, video motion pictures, still slides, or closed circuit television, which is characterized by an emphasis on matter or scenes depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in subsection (a) of this section, for observation by patrons.

Section 3. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 4. Penalty. All violations of this ordinance shall be misdemeanors and upon conviction thereof shall be punishable by a sentence of not more than ninety (90) days of confinement to jail or by a fine of not more than \$500, or both, in the court's discretion.

Section 5. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, following its publication in the *Oakland Press* on _____, 2015.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2015.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF ON _____, 2015.

Tina Barton, Clerk
City of Rochester Hills