

01/26/2009

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND SECTIONS 6-1 AND 6-38 OF CHAPTER 6, ALCOHOLIC LIQUOR, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO DELETE AND REPLACE REFERENCES TO THE LIQUOR TECHNICAL REVIEW COMMITTEE, REPEAL INCONSISTENT PROVISIONS, AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Section 6-1 of Chapter 6, Alcoholic Liquor, shall be amended as follows:

**Sec. 6-1. Annual inspections**

(a) *Generally.* Each year the ~~liquor technical review committee of the city council~~ clerk shall cause investigations to be made, following which ~~the clerk~~ shall make a report to the city council relating to each class C license operating within the city.

(b) *Inspections.* By February first of each year the ~~liquor technical review committee~~ city clerk shall cause the following inspections to be made:

- (1) An inspection of the premises housing a class C 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 ~~either the city council or the liquor technical review committee~~ 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 ~~liquor technical review committee~~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 ~~liquor technical review committee~~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 ~~liquor technical review committee~~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 ~~liquor technical review committee~~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 ~~liquor technical review committee~~city clerk shall notify the licensee of any violation and request the licensee to meet with the ~~liquor technical review committee~~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 ~~liquor technical review committee~~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.

Section 2. Section 6-38 of Chapter 6, Alcoholic Liquor, shall be amended as follows:

**Sec. 6-38. Processing of applications.**

(a) ~~Liquor technical review committee/e~~City department review. A copy of any application submitted under this article shall be referred by the city clerk to ~~the liquor technical review committee and may be referred 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 ~~liquor technical review committee~~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.

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 \_\_\_\_\_, 2009, following its publication in the *Rochester Eccentric* on \_\_\_\_\_, 2009.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on \_\_\_\_\_, 2009.

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Bryan K. Barnett, Mayor  
City of Rochester Hills

CERTIFICATE

I hereby certify the foregoing ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof on \_\_\_\_\_, 2009.

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Jane Leslie, Clerk  
City of Rochester Hills