



## MEMORANDUM

TO: Members of the Troy City Council  
FROM: Lori Grigg Bluhm, City Attorney  
DATE: July 16, 2008  
SUBJECT: Proposed New Liquor License Ordinance

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City Administration has been working on revisions to Troy's Liquor License Ordinance for some time. When City Council rescinded several of its earlier resolutions, in connection with the new Buffalo Wild Wings, this became a high priority item.

The Liquor Advisory Committee was provided with the draft, and made a few revisions at their July 14, 2008 meeting. These draft proposed revisions are highlighted in the attached red line version of the proposed Liquor License ordinance. Your input on these suggested revisions is greatly appreciated.

The proposed ordinance is provided as a green item for your review and consideration. Absent objections from City Council, this item will be brought back as an action item for the August 11, 2008 City Council meeting.

In the meantime, if Council has any questions or concerns about the proposed language, please feel free to contact me.

## **DRAFT with LAC Recommendations**

Chapter \_\_\_\_\_: Liquor Licenses

1. **Definitions.** The following definitions shall apply in this Chapter.
  - a. “Alcoholic Liquor” shall mean any beverages or compounds containing one-half of one percent or more of alcohol by volume, which is used for human consumption. For purposes of this chapter, the term includes beer, wine, and spirits.
  - b. “Assembly or convention center” shall mean a facility that provides a demonstrated public purpose which is equipped with a bona fide restaurant or food service and seating capacity that accommodates more than 1,000 persons in banquet style.
  - c. “License” shall mean a license issued by the Michigan Liquor Control Commission to sell alcoholic liquor for consumption on or off the premises.
  - d. “Licensee” shall mean all persons, including their agents, servants and employees, holding a license to sell alcoholic liquor for consumption on or off the premises;
  - e. “Licensed Premises” shall mean the location where the licensee is authorized to sell alcoholic liquor on or off the premises;
  - f. “Persons” shall mean an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.
  - g. “Premises” shall mean the location for which a license has been issued by the Michigan Liquor Control Commission.
  - h. “Quota license” shall mean one of a specific number of licenses available to the City of Troy based on population which may be issued by the Michigan Liquor Control Commission to sell alcoholic liquor.
  - i. “Related Permit” shall mean any permit issued by the Michigan Liquor Control Commission to a licensee for entertainment or other activities at the licensed premises, which legally require such a permit.
  - j. “SDD” shall mean Specially Designated Distributor which is a person to whom the Michigan Liquor Control Commission grants a license to sell beer or wine, or both, at retail for consumption off the premises.



2.) The applicant must establish that one or both of the following conditions exist and will continue to exist:

- (i) The applicant or licensee is located in a neighborhood shopping center composed of 1 or more commercial establishments organized or operated as a unit which is related in location, size, and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space; and/or
- (ii) At all times, the applicant or licensee maintains a minimum inventory on the premises of not less than \$250,000.00 (at cost) of those goods and merchandise customarily marketed by approved types of businesses, excluding alcoholic liquor and motor vehicle fuel.
  - A.) Services, prizes, offers, contests, coupons, and other items which require purchase before a cash value attaches shall not be considered inventory.
  - B.) The applicant or licensee shall allow inspection of the inventory at the licensed premises during regular business hours by the Director of Building and Zoning or his/her designee, the Treasurer or Finance Director or his/her designee, or the Troy Police Department.
  - C.) Upon a verbal or written request of the City, the applicant or licensee shall produce documents and/or records of the cost of inventory on the premises on a specific date. If the applicant or licensee fails to produce such documents or records, or if the documentation presented does not contain enough information to determine if the inventory is based on cost, within 3 days of the

request, then there shall be a rebuttable presumption that the inventory on that specific date was below the \$250,000 minimum requirement of this Chapter, which can be raised in any legal proceeding.

- b. Failure to satisfy the requirements of sub-section 1.) and sub-section 2.), as set forth above, will result in a denial recommendation from the Troy City Council. In the event that a gas station or business with gas pumps is granted a liquor license by the State of Michigan, the failure to continuously satisfy the requirements of sub-section 1.) and sub-section 2.), as set forth above, will result in a recommendation for revocation or other adverse action against the liquor license.

5. City Council approval; Related permits.

No person shall engage in entertainment, dancing or other activities at the licensed premises within the City of Troy without first having obtained the approval of City Council of the application for the related permit, and obtaining any necessary permits from the Michigan Liquor Control Commission. City Council shall take action on all requests for entertainment, dance, topless activity, or banquet facility permits, and shall forward their resolution to the Michigan Liquor Control Commission.

6. Application; Application Requirements; Administrative Review.

- a. Subsequent to filing an application for a liquor license with the Michigan Liquor Control Commission and upon being notified by the Troy Police Department that such documentation has been received by the City, the applicant shall submit to the Police Department a fully completed "City of Troy Liquor License Application" on the form that is prepared and furnished by the Department.
- b. The application shall include at least the following information:
  - i. Name and address of applicant. If the applicant is a partnership, the name and address of each partner shall be provided, and a copy of any partnership agreement attached. If the applicant is a privately held corporation, the name and address of each corporate officer, member of board of directors, and stockholder shall be provided, and a copy of the articles of incorporation attached. If the applicant is a publicly held corporation, the name and address of each corporate officer, each member of the board of directors and each

stockholder who owns five percent or more of the corporate stock shall be provided. If the applicant is a limited liability company, the name and address of each member, manager and assignee of membership interest shall be provided, and the articles of organization attached.

- ii. Type of license or related permit(s) desired.
  - iii. Address of the property where the license or permit activities will occur.
  - iv. Three (3) written references 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.
  - v. Any other information pertinent to the applicant and operation of the proposed facility.
  - vi. The application shall be accompanied by a non-refundable application and investigation fee, in the amount that is set forth in Chapter 60 of the City of Troy Ordinances.
- c. By submitting an application to the City of Troy, the applicant is agreeing to a complete background investigation, including, but not limited to: fingerprinting of applicant and any individual listed in Section 6. b.; an investigation of any criminal activities; civil actions; actions or investigations by other governmental bodies; moral character; business reputation; or any other background areas deemed necessary by the Troy Police Department investigators.
- d. City Council shall not take any action on a liquor license or related permit application until the application for said license or related permit has been timely reviewed by the following:
- i. Police Department
  - ii. Fire Department
  - iii. Treasurer
  - iv. Building Inspection Department
  - v. Planning Department
- e. The Chief of Police or his/her designee shall coordinate the administrative review process, and shall submit the documentation to the

Liquor Advisory Committee for a recommendation, pursuant to Section 13 of this Chapter. Within 60 days of the Liquor Advisory Committee recommendation, the application and supporting documentation shall be forwarded to the Troy City Council for action.

7. Criteria for Approving Liquor Licenses and Related Permits.

City Council shall consider all of the following factors in determining whether to approve a new or transferred liquor license or related permit:

- a. The applicant's experience in operating other similarly licensed businesses.
- b. The applicant's general business management experience.
- c. The applicant's general business reputation.
- d. The applicant's moral character.
- e. Past convictions of the applicant for any of the following:
  - i) A felony.
  - ii) A crime involving the excessive use of alcoholic liquor.
  - iii) A crime involving any of the following:
    - a) Gambling.
    - b) Prostitution.
    - c) Weapons.
    - d) Violence.
    - e) Tax evasion.
    - f) Fraudulent activity.
    - g) Controlled substances.
    - h) Serious moral turpitude.
  - iv) A misdemeanor of such a nature that it may impair the ability of the applicant to operate a licensed business in a safe and competent manner.
  - v) Sentencing for any of the offenses specified in this section after a plea of nolo contendere.
- f. The applicant's excessive use of alcoholic liquor.
- g. The history of non-payment or late payment of taxes by the applicant.
- ~~h. The type of service, menu, or entertainment offered.~~
- ~~i. The overall theme, atmosphere, or ambience of the proposed business.~~

h. The proposed hours and days of operation.

~~i. The need for proposed business in the particular area.~~

The proximity of the proposed business to other similarly licensed businesses.

~~The proximity of the proposed business to a residentially zoned or used zoning district.~~

~~The diversification or uniqueness of the proposed business in the City.~~

~~The overall fit and compatibility with the Master Plan of the City.~~

~~The compatibility of the proposed business with surrounding uses.~~

The impact of the business on police and code enforcement.

The effect that the issuance of a license would have upon the economic development of the area.

The effect the establishment will have upon vehicular and pedestrian traffic.

~~The effect that the proposed business would have upon the surrounding neighborhood and/or business establishments, including impacts upon residential areas, churches, schools, and public parks. (Note: See 8.c. below)~~

Whether the proposed activities on the premises will have a deleterious effect on the surrounding neighborhood.

Any other factors that may affect the health, welfare, and/or safety of the general public.

Any other factors that City Council may deem proper provided such considerations are reasonable under all of the circumstances.

8. Restrictions on Licenses and Related Permits.

a. No license or related permit shall be issued to:

i. A person whose previous liquor license and/or related permit(s) were revoked for cause.

- ii. A person who does not meet the ordinance requirements, even if previously granted a liquor license and/or related permit(s).
  - iii. A co-partnership, unless all of the members of such co-partnership qualify to obtain a license.
  - iv. A corporation if any officer, manager or director or a stock owner or stockholders owning more than 5 percent of the stock of such corporation would not be eligible to receive a license or related permit.
  - v. A person whose place of business is operated by a manager or agent, unless such manager or agent possesses qualifications similar to those required of the licensee.
  - vi. A person who has been convicted or found responsible for a violation of any federal, state, or local law involving moral turpitude, fraud, violence, controlled substances, or alcoholic liquors.
  - vii. A person who does not own the premises for which a license is sought or does not have a lease therefore for the full period for which the license is issued.
- b. No license or related permit shall be issued when there exists a violation of the applicable building, electrical, mechanical, plumbing, or fire prevention codes, applicable zoning regulations, or applicable public health regulations.
- c. No on-premises license shall be issued to sell alcoholic beverages at retail, or a request to transfer location of an existing license shall be denied, if the contemplated location is within 500 feet of a church or a school building. The distance between the church or school building and the contemplated location shall be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the church or school building nearest to the contemplated location and from the part of the contemplated location nearest to the church or school building.
- d. Prior to the issuance or transfer of any liquor license and/or related permit by the State of Michigan Liquor Control Commission, the applicant or transferee shall sign a contract with the City of Troy agreeing to assure compliance with any and all restrictions and/or conditions placed on the licenses and/or related permit and compliance

with statutes and regulations of the State of Michigan and the City of Troy Code of Ordinances, regulations and conditions. The licensee or holder of any permits shall post the restrictions and/or conditions with the license and/or permits issued by the Michigan Liquor Control Commission in a conspicuous place within the facility.

9. Required Restaurant Operation Affiliation. On premises license or related permit applications must be in connection with and incidental to a bona fide restaurant operation, which shall be determined by the Troy City Council in its sole discretion, or an assembly or a convention center use.
10. Annual License Review. City Council may undertake an annual review of any license for purposes of making recommendations to the Michigan Liquor Control Commission regarding renewal or revocation of any license. City Council may also review a license more frequently if warranted by the circumstances.
11. License Revocation. Each licensed premises within the City shall be operated and maintained in accordance with all applicable laws, ordinances and regulations. Upon any violation of any federal or state law or regulation, or any city ordinance, the City Council may, after a notice and hearing, request the Michigan Liquor Control Commission revoke such license or refuse to renew such license, as set forth below.
12. Procedure for License Review.
  - a. Before filing any objection to renewal or request for revocation of a license or related permit with the Michigan Liquor Control Commission, City Council shall serve the licensee with a notice of hearing, sent by first class mail at least seven days prior to hearing, which notice shall contain the following:
    - i. Notice of proposed action.
    - ii. Reasons for the proposed action.
    - iii. Date, time and place of hearings.
    - iv. A statement that the licensee may present evidence, testimony, and/or confront adverse witnesses.
  - b. This hearing shall be open to the public and notice of said public hearing shall be mailed to each residence and business within 500 feet of the boundary line of the property of the licensed establishment, and shall be published in a newspaper of general circulation in the City of Troy.

- c. Following the hearing, City Council shall submit to the licensee and the Michigan Liquor Control Commission a written statement of its findings and determination.
13. Criteria for Review. After a public hearing, City Council may recommend non-renewal or revocation of a license or related permit to the Michigan Liquor Control Commission upon a determination, based upon a preponderance of the evidence, that any of the following exist:
- a. Violation of any of the restrictions on licenses set forth in any law or ordinance or statute and the administrative rules or provision of the Michigan Liquor Control Act.
  - b. Maintenance of a nuisance upon the licensed premises, including, but not limited to, any of the following:
    - i. Existing violations of building, zoning, plumbing, mechanical, electrical, health, fire prevention or regulatory codes.
    - ii. A pattern of patron conduct in the neighborhood of the licensed establishment which is in violation of the law or disturbs the peace, order and tranquility of the neighborhood.
    - iii. The failure to maintain the grounds and exterior of the licensed establishment by allowing litter, debris, and/or refuse to be deposited on the property or adjoining properties.
    - iv. Providing entertainment without the required permit or entertainment which disturbs the peace, order and tranquility of the neighborhood.
    - v. Any advertising, promotion or activity which by its nature causes, creates or contributes to disorder, disobedience to rules, ordinances or laws, or contributes to the disruption of normal activity of those in the neighborhood of the licensed establishment.
  - c. An off- premises licensee has sold alcoholic liquor on at least 3 separate occasions in a single calendar year to a person who is less than 21 years of age.
  - d. An on- premises licensee has sold alcoholic liquor to a person who is less than 21 years of age.
14. Liquor Advisory Committee.
- a. It is the responsibility of the City of Troy Liquor Advisory Committee to make a recommendation to City Council as to whether it should

approve a liquor license or related permit. In making its recommendation, the Liquor Advisory Committee shall follow the rules, guidelines, and procedures set forth in this ordinance.

- b. City Council may grant the Liquor Advisory Committee authority to conduct review or revocation hearings by a resolution. If such authority is granted, the Liquor Advisory Committee shall follow the procedures as set forth in sections 10 thru 13 of this Chapter.
    - i. Upon completion of the hearing, the Liquor Advisory Committee shall make a written statement of its findings and submit to City Council a recommendation as to renewal or revocation within 14 days after the hearing.
    - ii. Upon receiving the Liquor Advisory Committee's recommendation, and reviewing its written statement of findings, City Council shall pass a resolution, which shall either:
      - a. Accept the recommendation of the Liquor Advisory Committee.
      - b. Reject the recommendation of the Liquor Advisory Committee.
      - c. Hold another hearing at a later date to be determined by City Council. If another hearing is held, City Council shall follow all rules set forth in Sections 11 and 12 of this chapter, and the decision made by City Council shall be final.
15. Violation and Penalty. In addition to any other sanction set forth in this Chapter, any person, whether acting as an individual, owner, manager, employee of the owner, or whether acting as an agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who operates a business without first obtaining a license as set out above or who violates any of the provisions of this Chapter is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a period not to exceed ninety (90) days and/or a fine not to exceed five hundred dollars (\$500.00), plus costs as within the discretion of the Court. Each day that a violation is permitted to exist shall constitute a separate offense.