



CITY of NOVI CITY COUNCIL

Agenda Item C
May 20, 2013

SUBJECT: Approval of an ordinance to amend the City of Novi Code of Ordinances, at Chapter 3, "Alcoholic Liquor," to clarify the time frame for City Council decision, to revise requirements for license transfers, and to add a prohibition on nudity. **SECOND READING.**

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

At its March 11, 2013, City Council meeting, the Council considered drafts of two ordinances relating to alcohol. The first was a proposal to add a special land use requirement to the City's Zoning Ordinance for licensed premises. That was referred to the Planning Commission for consideration. The Planning Commission held a public hearing on April 24, 2013, and recommended the adoption of the ordinance, with some minor changes. That was the subject of a separate action item on the Council's May 6, 2013 agenda.

The second ordinance reviewed by Council proposed amendments to Chapter 3, Alcoholic Liquor, and, among other things, proposed the addition of a "plan of operation," clarified the timeframe for City Council decisions," revised and strengthened requirements for license transfers, and added a general prohibition on nudity on licensed premises.

The City Council approved a motion that directed the ordinance to be brought back first reading, but asked that there be changes at second reading, including removing the proposed requirement for a plan of operation.

Attached is a revised/redlined version of the ordinance that removes the plan of operation concept and makes some other minor clarifications to a transfer requirement as well as:

- Adds the definition of on-premises license.
- Clarifies the language in Section 3-15 that an application must be filed for both a new and transfer license.
- Adds a couple of items to the existing requirement for a conceptual plan (floor plans, seating arrangements, site dimensions, parking areas).
- Adds the requirement in the application of a statement explaining how the operation will not detrimentally or unreasonably impact nearby property owners, businesses, residents.

- Adds to subsection (h) of 3-15, which deals with restriction on the issuance of licenses, the following additional restrictions:
 - A license will not be issued to or approved for a person who does not intend to use it within six (6) months or intends to hold it for investment.
 - A license will not be issued to or approved for a person where the Council determines the proposed location to be inappropriate.
 - A license will not be issued to or approved for any person for any premises where taxes are due and payable.
 - A license will not be issued to or approved for an applicant who falsifies information on an application.

This revised version also adds some additional clarifying language to Section 3-16 relating to license transfers. Staff believes that these changes are consistent with the Council’s direction at the March 11, 2013, meeting. This amendment was approved as First Reading at the City Council meeting on May 6, 2013.

RECOMMENDED ACTION: APPROVAL OF SECOND READING of an ordinance to amend the City of Novi Code of Ordinances, at Chapter 3, “Alcoholic Liquor,” to clarify the time frame for City Council decision, to revise requirements for license transfers, and to add a prohibition on nudity.

	1	2	Y	N
Mayor Gatt				
Council Member Casey				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13-_____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 3, "ALCOHOLIC LIQUOR," TO CLARIFY THE TIME FRAME FOR CITY COUNCIL DECISION, TO REVISE REQUIREMENTS FOR LICENSE TRANSFERS, AND TO ADD A PROHIBITION ON NUILITY.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 3, "Alcoholic Liquor," Article II, "Licenses," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Sec. 3-12. - Scope and intent.

This article governs applications for all licenses to sell beer, wine, or spirits for on-premises consumption within the city, including, but not limited to, Class B licenses, Class C licenses, resort licenses, tavern licenses, club licenses, and hotel licenses. This article does not apply to applications for SDM and SDD licenses, special licenses granted by the Michigan Liquor Control Commission, or one-day permits as allowed by statute.

Sec. 3-13. - Licensing policy.

This article establishes an application and review process for the issuance of both new licenses and the transfer of existing licenses into the city or between or among applicants. The process is intended to ensure that the individuals and entities seeking licenses from, or charged with operating licensed establishments within, the city meet certain minimum requirements as to criminal history, past conduct, and ongoing business operation standards. It requires city council review of application information in light of certain criteria that is established for purposes of identifying the kinds of facilities that qualify for a license. It reserves to the city any and all discretion afforded it under applicable law relating to the issuance of licenses.

As a general matter of policy, applicants for a license will need to demonstrate an identifiable benefit to the city and its inhabitants resulting from the granting of the license. While all of the criteria set forth in this article are relevant to the decision whether to grant a license, an applicant must demonstrate in particular that the proposed facility:

- (a) Will provide a service, product, or function that is not presently available within the city or that would be unique to the city or to an identifiable area within the city;

- (b) Is of a character that will foster or generate economic development or growth within the city, or an identifiable area of the city, in a manner consistent with the city's policies; or,
- (c) Represents an added financial investment on the part of a long-term business or resident with recognized ties to the city and the local community.

The weight to be given to each item of the criteria identified in this article, and the determination whether a particular applicant meets or satisfies those criteria is intended to be within the sole discretion of the city council.

Sec. 3-14. - Definitions.

The following definitions shall apply to this chapter:

- (a) *Applicant* shall mean and include all persons and entities proposed to be owners of the license and/or of the licensed premises, all key personnel involved in the management of the licensed business, and all persons and entities proposed to be involved in the finance of the license and/or licensed premises. In the case of a partnership, "applicant" shall include all partners in the partnership. In the case of a corporation other than a corporation with publicly-traded stock, "applicant" shall include all shareholders. In the case of a limited liability company, "applicant" shall include all members.
- (b) *Person, firm, or corporation.* These terms include any person or legal entity of whatsoever kind or nature, either charitable or profitable, that desires to have or is already possessed of any license issued by the State of Michigan for the sale and dispensation of alcoholic beverages pursuant to a liquor license of any variety within the City of Novi.
- (c) *Alcoholic beverages.* This terms shall mean 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 (½) of one (1) percent or more of alcohol by volume which are fit use for beverage purposes.
- (d) *On-premises license* means a liquor license to sell alcoholic liquor at retail for consumption on the licensed premises, including class C, tavern, resort, club, hotel, brewpub and micro brewer licenses.

Sec. 3-15. - Applications for on-premises license.

- (a) *Application required.* Every applicant for a new on-premises liquor license, or for the transfer into the city of an on-premises liquor license, shall submit to the city clerk's office a fully completed "City of Novi Liquor License Application" on a form furnished by the clerk's office, along with all additional documents and materials referred to in the application form or otherwise required under this article.
- (b) *Required information.* The application shall include at least the following information:
 - (1) *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 names and addresses of all

corporate officers, members of the board of directors, and stockholders shall be provided, and a copy of the articles of incorporation attached. If the applicant is a publicly-held corporation, the names and addresses of all corporate officers, members of the board of directors, and stockholders who own ten (10) percent or more of the corporate stock shall be provided. If the applicant is a limited liability company, the names and addresses of all members, managers and assignees of membership interests shall be provided, and a copy of the articles of organization attached.

- (2) Type of license desired.
 - (3) The address and legal description of the property where the license is to be located.
 - (4) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, and conceptual plan showing the relationship of the building to the surrounding properties and uses; proposed building elevations; floor plans; seating arrangements; site dimensions, including parking areas. (5) 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.
 - (6) A written statement demonstrating that the location proposed and the methods of operation will not detrimentally and unreasonably impact nearby property owners, businesses, and residents.(7) Any other information pertinent to the applicant and operation of the proposed facility as may be required by this chapter, including information regarding each of the criteria listed in subsection (g).
- (c) *Nonrefundable application fee.* The application shall be accompanied by a deposit of a nonrefundable fee, in an amount determined by the city council, to be sufficient to cover the costs of investigation, review, and inspection.
 - (d) *Recommendations from city departments.* Following the receipt of the fully completed application, fees and other such information as may be requested by the city, the city clerk shall forward the application to the community development department, police department, fire department, and such other departments as required by the city manager, which departments shall make their recommendations prior to consideration by the city council. In making its review, the city may request from the application other pertinent information.
 - (e) *Placement upon city council agenda.* Upon receipt by the clerk's office of the recommendations of the departments identified above, the city clerk shall submit the application and recommendations for placement upon the agenda of the city council, which shall occur no later than sixty (60) days after the receipt of the application by clerk's office.
 - (f) *City council action required.* All applications are subject to the final approval of the city council. The council may conditionally grant the requested license, postpone consideration for a reasonable period, or deny the license; provided, however, that a final decision shall be made by the city council within thirty (30) days after initial placement on the city council's agenda. If the license is either approved or denied, the council shall cause its decision to be transmitted to the Michigan Liquor Control Commission and promptly give notice of the decision to the applicant, in writing. Unless otherwise indicated by the council, all approvals are contingent upon the applicant obtaining any required building permits and any other necessary permits, licenses, or approvals from the city or other regulatory agencies within sixty (60) days from the date of such conditional approval. The

construction of new buildings and alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than one (1) year after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the city council for good cause. Failure to comply with such contingency shall render the license subject to revocation.

- (g) *Review criteria.* In making its determination pursuant to subsection (f), the city council shall consider whether the applicant's proposal is reasonable when measured against the criteria listed below. For purposes of this review, an "applicant" shall be considered to include all officers, partners, members, and managers of an entity applying for a license.

(1) *General information regarding applicant:*

- a. The applicant's management experience in the alcohol/liquor business.
- b. The applicant's general business management experience.
- c. The applicant's general business reputation.
- d. The applicant's financial status and its ability to build and/or operate the proposed facility on which the proposed liquor license is to be located.
- e. Past criminal convictions of the applicant for crimes involving moral turpitude, violence or alcoholic liquors.

(2) *Information related to the facility/building to which the license would apply:*

- a. The recommendations of the police department, building department, and/or fire department with regard to the proposed facility.
- b. Whether the facility to which the proposed liquor license is to be issued complies, or will comply, with the applicable building, plumbing, electrical and fire prevention codes, zoning ordinance, or other ordinances applicable in the city.
- c. The effects that the business facility to which the proposed license is to be issued would have upon vehicular and pedestrian traffic in the area.
- d. The effects that the business facility to which the proposed license is to be issued would have upon the surrounding neighborhood and/or business establishments, including impacts upon residential areas and church and school districts or uses.
- e. The availability of utilities to serve the facility.
- f. The proximity of the proposed business facility to other similarly situated licensed liquor facilities.
- g. The proximity to complementary uses, such as office and commercial development.
- h. Availability of adequate parking, taking all circumstances of the location into consideration.

(3) *Benefits to community:*

- a. The effects that the issuance of a license would have upon the economic development of the city or the surrounding area.
- b. The effects that the issuance of a license would have on the health, welfare, and safety of the general public.

- c. Whether the applicant has demonstrated a public need or convenience for the issuance of the liquor license for the business facility at the location proposed, taking into consideration the following, together with other factors deemed relevant by the council:
 1. The total number of licenses for similar establishments and/or operations in the city, considered both in terms of whether such number of similar establishments is needed and whether there may be a need for other types of establishments that could go unmet if the requested license were granted;
 2. The proximity of the establishment to other licensed liquor establishments, the type of such establishments, whether such other establishments are similar to that proposed, and the anticipated impact of all such determinations;
 3. Whether the proposed location is in an area characterized as developed, redeveloping, or undeveloped, and the anticipated impact of approving the newly proposed establishment in light of such character, taking into consideration the need for any type of additional licensed establishment in the area, and the need the particular type of establishment proposed;
 4. The impact of the establishment on city policing and code enforcement activities;
 5. The overall benefits of the proposed establishment to the city;
 6. The overall detriments of the proposed establishment to the city; and
 7. Any other factors that may affect the health, safety, and welfare relative to the need for and/or the convenience of the proposed establishment in the city.
 - d. The uniqueness of the proposed facility when contrasted against other existing or proposed facilities, and the compatibility of the proposed facility to surrounding architecture and land use.
 - e. The permanence of the establishment in the community, as evidenced by the prior or proposed contributions to the city or community by the applicant or business, and the extent to which the issuance of the license will assist in the further investment of the applicant or business in the city or the community.
 - f. The character and extent of investment in improvements to the building, premises, and general area.
 - g. Such other considerations as the council may deem proper, provided such considerations are reasonable under all of the circumstances.
- (h) *Restrictions on issuance of licenses.* No license shall be issued to or approved for:
1. 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.
 2. A co-partnership or partnership, unless all the members of such co-partnership or partnership shall qualify to obtain a license.

3. A corporation, other than a public corporation, if any officer, manager, or director thereof, or stockholder owning in the aggregate more than ten (10) percent of the stock of such corporation would not be eligible to receive a license hereunder for any reason.
4. A limited liability company, if any member, manager or assignee owing a ten (10) percent membership interest or more would not be eligible to receive a license hereunder for any reason.
5. A person who has been convicted of a crime punishable by death or imprisonment in excess of one (1) year under the law under which he was convicted; a crime involving theft, dishonesty or false statement (including tax evasion) regardless of punishment; or a crime or administrative violation of a federal or state law concerning the manufacture, possession or sale of alcoholic beverages or controlled substances.
6. For premises where there exists a violation of the applicable building, electrical, mechanical, plumbing or fire codes, applicable zoning regulations, applicable public health regulations or any other applicable city ordinance.
7. A person who cannot establish that the license will be used by the licensee within six months of city approval and will not be held for investment.
8. Any person for any premises where the city council determines that the proposed location is inappropriate because of the compatibility with adjacent uses of the land; traffic safety; accessibility to the site from abutting roads; capability of abutting roads to accommodate the commercial activity; distance from schools; proximity of an inconsistent zoning classification; or accessibility from primary roads or state highways.
9. Any person for any premises where any personal property taxes, real property taxes, or any other obligations are due and payable to the city.
10. Any applicant who omits or falsifies any information required by this article
 - (i) *Changes in plans, drawings, etc.* After receipt of a conditional approval by the city council, no floor plan, building elevation, site plan, seating arrangement, kitchen lay-out, or other pertinent facts, drawings or documents submitted to the city council may be changed without the applicant first receiving approval from the engineering department, building department and city council.
 - (j) *Recommendation for approval of liquor license.* Upon completion of the building and in accordance with the prior conditional approval of the council, the city council shall then thereupon recommend, above all others, the applicant for approval of the liquor license to the Liquor Control Commission of the State of Michigan.
 - (k) *Reservation of authority.* No applicant for a liquor license has a right to the issuance of such license to him, her or it, and the city council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such licenses.

Sec. 3-16 - Transfer of existing licenses.

(a) The transfer of any existing liquor license to another individual or entity, from a location in the city to another location in the city, or from a location outside the city into the city, shall require approval of the city council before any use and occupancy of the facility to which the license is being transferred is permitted. An applicant for approval of a license transfer and the use and occupancy of such a facility shall:

- (1) Submit an application with all of the information required under Section 3-15 above for an on-premises liquor license;
- (2) Pay the application fees set forth in this article for the granting of a new liquor license
- (3) Furnish any necessary authorization to permit the city access to any and all files which may be in the Michigan Liquor Control Commission's possession regarding that commission's investigation of the transferee as a present licensee, or as a previous licensee, or in which transferee has or has had a partial interest in.

(c) Transfers that involve the following circumstances may be placed on a city council agenda for consideration without payment of a fee and without the necessity of furnishing the information required for new licenses:

- (1) The exchange of the assets of a licensed sole proprietorship, licensed general partnership, or licensed limited partnership for all outstanding shares of stock in a corporation in which the sole proprietor, all members of the general partnership, or all members of the limited partnership are the only stockholders of that corporation.
- (2) The removal of a member of a firm, a stockholder, a member of a general partnership or limited partnership, or association of licensees from a license.
- (3) The occurrence of any of the following events:
 - (a) A corporate stock split of a licensed corporation.
 - (b) The issuance to an existing stockholder of a licensed corporation of previously unissued stock as compensation for services performed.
 - (c) The redemption by a licensed corporation of its own stock.
 - (d) A corporate public offering.

(d) Existing permits ancillary to liquor licenses are transferred with the liquor license unless cancelled in writing. Transferees must present plans regarding the operation they intend to conduct using the particular permit.

Sec. 3-17. - Prohibition on profiteering by class C liquor license holders.

The city council has determined that profiteering by class C liquor license holders is contrary to the best interests of the city. Accordingly, in order to prevent profiteering, to the full extent authorized by law, the city council shall not approve the transfer of a class C liquor license issued as a new license under this Chapter within three (3) years of the date of the original issuance of the license. An agreement between the applicant and the city, following

recommendation by the city attorney shall be prepared and agreed upon to give effect to this provision prior to final action being taken by the city council on an application. The city council may, but is not required to, excuse the above anti-profiteering limitation for any of the following reasons:

- (1) If the license holder is a natural person, he or she dies or becomes incapacitated.
- (2) If the license holder is a corporation, the majority shareholder dies or becomes incapacitated, or the corporation dissolves for reasons other than to transfer the license.
- (3) If the license holder is a limited liability company, the company dissolves for reasons other than to transfer the license.
- (4) The license holder and the proposed license transferee establish that the transfer of the class C liquor license shall not result in profiteering.
- (5) The application of this anti-profiteering limitation will subject the applicant to financial hardship due to no fault of the applicant, such as a change in the business climate, illness or death, labor or supply problems, and/or other factors outside the applicant's control.

The agreement shall provide that, unless excused by the city council as provided above, in the event a license is proposed for transfer within three (3) years from the date of issuance, the applicant agrees that the Michigan Liquor Control Commission shall terminate the license and the city council may approve the issuance of a new license to a new applicant without any compensation to the licensee who placed the license into escrow, and that a licensee waives any property interest in such license upon placement of the license into escrow within such three-year period; provided, however, prior to the approval of such issuance to a new applicant, the person or entity who placed the license into escrow shall be afforded written notice and an opportunity to be heard, and all objections raised at the hearing shall be resolved (at the Michigan Liquor Control Commission or in the circuit court if necessary) prior to issuance of the license to a new applicant.

Sec. 3-19. - Objections to renewal and requests for revocation.

- (a) *Generally.* The city council may object to a renewal of a liquor license or request the revocation of a liquor license with the Michigan Liquor Control Commission.
- (b) *Procedure.* Before filing an objection to the renewal or request for revocation of a license with the Michigan Liquor Control Commission, the city council shall serve the licenseholder, by first class mail, mailed not less than ten (10) days prior to the hearing, a notice of such hearing, which notice shall contain the following information:
 - (1) Notice of the proposed action.
 - (2) Reasons for the proposed action.
 - (3) Date, time and place of such hearing.
 - (4) A statement that the licensee may present evidence and testimony, and may confront witnesses and may be represented by a licensed attorney.
- (c) *Hearing and final decision.* Such hearing may be conducted by council as a whole, or by a hearing officer appointed by the council for such purposes. If a hearing officer is appointed,

it shall be that officer's duty to undertake such hearing, and hear and take evidence and testimony of the licensee, or witnesses on its behalf, in opposition thereto. After such hearing, the hearing officer shall make a recommendation to the city council for the latter's ultimate final review and decision. The city council shall submit to the licenseholder, and the Michigan Liquor Control Commission, a written statement of its ultimate findings and determination.

- (d) *Criteria for non-renewal or revocation.* The city council may recommend non-renewal or request revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exists:
- (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 article.

Sec. 3-20. - Nudity.

No person, while appearing in a state of public nudity as defined in Section 5h of Act 279 of 1909, being MCL 117.5h, shall frequent, loiter, work for or perform in any establishment licensed or subject to licensing by the state liquor control commission. No proprietor or operator of any such establishment shall allow the presence in such establishment of any person who violates the provisions of this section.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2013.

Maryanne Cornelius, City Clerk