

ORDINANCE NO. 375

LIQUOR LICENSE ORDINANCE

AN ORDINANCE TO ADD CHAPTER 5.24 TO TITLE 5 OF THE CITY OF LINDEN MUNICIPAL CODE ESTABLISHING PROCEDURES FOR THE APPROVAL OF NEW LIQUOR LICENSES IN THE CITY OF LINDEN; APPLICATION; REVIEW COMMITTEE; REPORT TO COUNCIL; DECISION OF TERM OF LICENSE; OBJECTIONS TO RENEWAL OF EXISTING LICENSES FOR CAUSE; HEARING; SEVERABILITY; REPEAL; EFFECTIVE DATE.

THE CITY OF LINDEN ORDAINS:

5.24.010. Title. This ordinance shall be known and may be cited as the City of Linden Liquor License Ordinance.

5.24.020 Application for a new license.

A. Application: Applications for license to sell beer, wine or spirits on-premises shall be made to the City Council in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof, if a partnership, corporation, or LLC (Limited Liability Company) , verified by oath or affidavit, and shall contain the following statements and information:

1. The applicant's name, age, date of birth, and address in the case of an individual; or, in the case of a co-partnership, the name, age and address of all persons entitled to share in the profits; in the case of a corporation or LLC, the purposes for which the corporation or LLC is organized, along with the names and addresses of the officers and directors, and, if a majority interest in the stock of the corporation is owned by one person, the name and address of such person. If the business to be licensed will be conducted or overseen by one or more managers (or agents), then in addition to the above information concerning the applicant, the application shall also include the name, age and address of each manager (or each agent).

2. The applicant's citizenship, place of birth, and, if a naturalized citizen, the time and place of naturalization.

3. The criminal history of the applicant or the owners of any stock, shares, partnership or ownership in the applicant entity including any felonies and/or any misdemeanors that the person has been convicted of, the date of conviction and the sentence received from the Court.

4. The type of business of the applicant, and in the case of a corporation, the purpose for which it was formed, along with a business plan which includes a financial plan of the business to be licensed.

5. The length of time the applicant has been in business of that type, or, in the case of a corporation, the date when its charter was issued.

6. The location and description of the premises or place of business which is to be operated under the license.

7. A statement whether applicant has ever made an application for a similar or other license on any other premises than the premises described in the current application, and the disposition of any such other application(s).

8. A statement that applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this ordinance or the laws of the State of Michigan.

9. A statement that the applicant will not knowingly violate any of the laws of the State of Michigan or of the United States or any ordinances of the City in the conduct of its business.

10. The application shall be accompanied by the 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 submitted shall demonstrate adequate off-street parking, lighting, refuse disposal facilities and where appropriate, adequate plans for screening and noise control, as required by the City of Linden Zoning Ordinance, and any other applicable local ordinances, rules and regulations.

B. Term of new license: Approval of a new license shall be for a period of one (1) year subject to annual renewal by the City Council upon continued compliance with the regulations of this ordinance. Approval of a new license shall be with the understanding that any necessary remodeling or new construction for the use of the license shall be commenced within six (6) months of the action of the City Council or the Michigan Liquor Control Commission approving such new license, whichever last occurs. Any unusual delay in the completion of such remodeling or construction may subject the license to revocation, or a discrepancy in the number of jobs created or retained shall be a reason for revocation. Commencement of business shall be as set forth in the license.

C. Reservation of authority: No such applicant for a liquor license has the 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 license. Additionally, no applicant for a liquor license 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. The City Council further reserves the right to maintain a list of all applicants and to review the same 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.

D. License hearing: The City Council shall grant a public hearing upon the new license application when, in its discretion, the City Council determines that the issuance of an additional liquor license is in the best interests of the City at large and for the needs and convenience of its citizens. Following such hearing, the City Council shall submit to the applicant a written statement of its findings and determination. The City Council's determination shall be based

upon satisfactory compliance within the restrictions set forth in the following section, 5.24.030, Paragraphs B1 through 12.

5.24.030: Liquor License Committee.

A. An application for a new liquor license shall be submitted to a committee consisting of at least two (2) City Council members, the City Manager and the Chief of Police. It shall be the charge of the committee to review the application and to consider the following criteria in order to make a recommendation:

1. The character and fitness of the applicant, including the past criminal record of the applicant.
2. The applicant's business history, LCC violation record, etc.
3. The location of the proposed business.
4. The type and nature of the proposed business.
5. The number of new jobs created by the business; the number of jobs reserved by the business and the economic impact of the business in the community.
6. The percentage of sales that will be tied to alcohol sales.
7. The type and nature of the neighborhood within which the business would be conducted.
8. The impact of the proposed business on the neighborhood.
9. The number and proximity of other licensed establishments.
10. Economic development plans for the City.
11. The costs to the City related to the day to day operation of the proposed business.
12. Any issues related to the number of patrons, parking, traffic, noise, other infrastructure.
13. Any information provided by the police department.

B. The Committee shall not recommend a new license be granted to or for:

1. An applicant whose license, under this Ordinance, has been revoked for cause.
2. A person who, at the time of application or renewal of any license issued pursuant to this Ordinance, would not be eligible for such license upon a first application.

3. A co-partnership, unless all of the members of such co-partnership shall qualify to obtain a license.

4. A corporation or LLC, if any officer, manager or director of the corporation, or a stock owner or stockholders owning in the aggregate more than five percent (5%) of the stock of the corporation or LLC, would not be eligible to receive a license pursuant to this Ordinance for any reason.

5. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required of the license recipient.

6. A person who has been convicted or found responsible by any administrative tribunal such as the Michigan Liquor Control Commission or a local governing authority tribunal, of three (3) or more liquor license violations at any one licensed establishment.

7. 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, or to a person, corporation, LLC, or co-partnership that does not have sufficient financial assets to carry on or maintain the business.

8. A 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.

9. A premises unless the sale of beer, wine or spirits is shown to be incidental and subordinate to other permitted business uses upon the site, such as, but not limited to, food sales, motel operations or recreational activities.

10. A premises where it is determined by a majority of the City Council that the premises does not or will not reasonably soon after commencement of operations, have adequate off-street parking, lighting, refuse disposal facilities, screening, noise, or nuisance control, as required by the City of Linden Zoning Ordinance, and any other applicable local ordinances, rules and regulations, or where it is determined by a majority of the City Council that a nuisance does or will exist.

11. A premises where it is determined by a majority of the City Council the proposed location is inappropriate considering the desirability of establishing a location in developed, commercial areas, in preference to isolated, undeveloped areas; the attitude of adjacent residents and property owners; traffic safety; accessibility to the site from abutting streets; capability of abutting streets to accommodate the commercial activity; distance from public or private schools for minors; and adequate public utilities including public sewer and water.

12. To an individual applicant that is delinquent on any obligation to the City of Linden or who has real estate taxes past due to the City of Linden on the day that the application is filed, or to an entity where the entity or any person owning 5% or more of the stock or interest in and to the entity is delinquent on any obligation to the City of Linden or has real estate taxes past due

to the City of Linden on the day that the application is filed. It shall not be an excuse that the County of Genesee has purchased the tax obligation and paid the taxes to the City.

5.24.040: Report to Council. The committee shall submit a written report to the City Council for consideration.

5.24.050: Objections to renewal and request for revocation. Upon receipt of a written complaint to the City of Linden regarding a licensed establishment, or upon being notified of a police or Michigan Liquor Control Commission action alleging criminal activity at the establishment or violations of the liquor laws of the State, or upon the request of a City Council member or a member of the Liquor License Committee of the City, the Liquor License Committee shall conduct a hearing to determine whether the City of Linden should object to the renewal of a liquor license by the Michigan Liquor Control Commission or to seek revocation of a license by the Commission.

A. Procedure: Before filing an objection to a renewal or filing a request for revocation of a license with the Michigan Liquor Control Commission, the Liquor License Committee shall conduct a hearing. The City Clerk shall serve the license holder, by first class mail, mailed not less than ten (10) calendar days prior to the hearing with notice of a hearing, which notice shall contain the following:

1. Notice of proposed action
2. Reasons for the proposed action
3. Date, time and place of the hearing
4. A statement that the license holder may present evidence and testimony and examine adverse witnesses.

Within 10 calendar days after the hearing the Liquor License Committee shall report its findings to the City Council with a copy to the license holder. The City Council shall decide whether to take the action recommended.

B. Criteria for a nonrenewal or revocation: The City Council shall recommend nonrenewal or revocation of a license upon a determination by the City Council that based upon a preponderance of the evidence presented at the hearing either of the following exist:

1. Violation of any of the restrictions on licenses set forth in Section 5.24.030, Paragraphs B 1 through 12 above, or,
2. Maintenance of a nuisance upon the premises.

5.24.060: Decision of City Council. Upon reviewing the report of the committee the City Council shall consider the application in light of the report and the considerations set forth in 5.24.030 A and B. The City Council shall decide whether to approve or deny the license upon application. When considering a renewal of a license, the City Council shall decide whether to object to the renewal. When considering a license revocation, the City Council shall decide

whether to recommend revocation to the LLC. A motion to recommend revocation shall set forth the specific reasons for the recommendation.

5.24.070: Repeal. Any ordinance or section thereof inconsistent with this ordinance is hereby repealed.

5.24.080: Severability. Should any section or part of this Ordinance be declared unconstitutional, null or void by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining sections or parts of this Ordinance.

5.24.090: Effective date. This Ordinance shall become effective ten (10) days after its publication.

Enacted at a regular meeting of the Linden City Council held on the _____ day of _____, A.D., 2015

THE CITY OF LINDEN:

By _____
David E. Lossing, Mayor

By _____
Lynn M. Henry, City Clerk

PREPARED BY:
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