

LIQUOR CONTROL AND LIQUOR LICENSING ORDINANCE FOR THE COUNTY OF MCHENRY, ILLINOIS



BE IT ORDAINED by the County Board of the County of McHenry, Illinois:

SECTION 1. LEGISLATIVE PURPOSE

To the end that the health, safety and welfare of the People of the County of McHenry shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted, the following has been adopted by the Board of the County of McHenry. This Ordinance shall be liberally construed to effect the above goals.

SECTION 2. DEFINITIONS

- (1) Act: The Illinois Liquor Control Act of 1934, as amended (235 ILCS 5/1-1 *et seq.*).
- (2) Alcoholic Liquor: Any spirits, wine, beer, ale or other liquor, containing more than one-half of one per cent of alcohol by volume, which is capable of being consumed as a beverage by a human being.
- (3) Assistant Commissioner: An assistant Liquor Control Commissioner for McHenry County, Illinois.
- (4) Banquet Hall Facilities: A business conducted on premises at which an activity is catering of private parties, either exclusively or in conjunction with a "restaurant" business; and, whereat there is service for consumption at tables of a full multiple course meal at a prearranged fixed unit price, or hors d'oeuvres, buffet or smorgasbord, and at which alcoholic liquor may be served or sold as incidental to such food services. Each of such private parties must be prearranged and under sponsorship of a particular person or organization.
- (5) Bowling Alley: Every establishment or building, or part of an establishment or building, wherein the game of bowling, played with composition balls and ten pins, is played.
- (6) Club: A corporation organized under the laws of this State, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, kept, used and maintained by its members through the payment of annual dues, and owning, hiring or leasing a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servers and employees for cooking, preparing and servicing food and meals for its members and their guests; provided, that such a club files with the Commissioner at the time of its application for a license under this Ordinance that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the directors, executive committee, or similar body chosen by the members at their annual meeting and that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other government body out of the general revenue of the club.
- (7) Commission: The McHenry County Liquor Control Commission.
- (8) Commissioner: The McHenry County Liquor Control Commissioner.
- (9) Convenience Store: Any public place kept, used, maintained, advertised and held out to the public as a place at which the primary purpose is to offer gasoline and/or limited groceries and sundries for sale, the

retail sale of alcoholic liquors being incidental thereto. The area for display of alcoholic liquors shall be limited to ten percent (10%) of the retail floor display area in such an establishment.

- (10) Hotel and Motel: Every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which ten (10) or more rooms are used for sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or building in connection therewith and such building or buildings, structure or structures, being provided with adequate and sanitary kitchen and dining room equipment and capacity.
- (11) Person: Any natural person, firm, partnership, association or corporation.
- (12) Premises: Any permanent physical structure or building from which alcoholic liquors are sold.
- (13) Restaurant: Any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests.
- (14) Retailer: A person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form.
- (15) Retail Sale: A sale for use of consumption and not for resale in any form.
- (16) Sale: Any transfer, exchange, delivery or barter in any manner, or by any means whatsoever, including a transfer of alcoholic liquors by and through a transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. The term "sale" includes any license to an importing distributor's license even if both licenses are held by the same person.
- (17) State Commission: The Illinois Liquor Control Commission as created in 235 ILCS 5/3-1.

SECTION 3. MCHENRY COUNTY LIQUOR CONTROL COMMISSIONER, ASSISTANT LIQUOR CONTROL COMMISSIONERS

The Chairman of the County Board for the County of McHenry, Illinois shall be the McHenry County Liquor Control Commissioner in and for all areas outside corporate limits of any city, town or village and lying within the corporate limits of the County of McHenry, and he/she shall be assisted by five (5) members of the County Board and shall be designated as Assistant Liquor Control Commissioners for McHenry County. The Assistant Liquor Control Commissioners shall assist the McHenry County Liquor Control Commissioner in an exercise of powers and performance of his/her duties as such Commissioner. The Commissioner and his/her Assistant Commissioners shall constitute the McHenry County Liquor Control Commission.

SECTION 4: COMPENSATION OF COMMISSIONER AND ASSISTANTS

There shall be no additional annual salary as the Commissioner or Assistant Commissioners other than mileage and compensation of the Commission and Assistants and County Board Chairman and County Board Members.

SECTION 5: COMMISSION TO INCLUDE AGENCY

When in this Ordinance the Commission shall be referred to, it shall include the Commission and any committee or other agency appointed by such Commissioner.

SECTION 6: POWERS AND DUTIES OF COMMISSIONER AND COMMISSION

The Commissioner and the Commission, in addition to the powers and duties herein given and provided, shall have all the powers and duties as provided for in the Act.

SECTION 7: FILING WITH COUNTY CLERK THE APPOINTMENTS OF MEMBERS OF THE COMMISSION

The Commissioner shall file a copy of an appointment of the members of the Commission in the Office of the County Clerk of McHenry County, Illinois within five (5) days after their respective appointments.

SECTION 8: LICENSE REQUIRED

No person, firm, partnership, association or corporation shall act as a retailer of alcoholic liquor or engage in a business of selling, offering for sale, or keeping with an intention of selling for use or consumption and not for resale or providing for consumption by the public alcoholic liquors in the County of McHenry, Illinois, outside the corporate limits of any city, village or incorporated town without first having obtained a retail liquor license as hereinafter provided.

No Person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish with or without cost or possess any alcoholic liquor for beverage purposes, except as specifically provided for in the Act.

SECTION 9: CLASSIFICATION OF LICENSES - FEES

- A. The Commissioner shall have powers to grant liquor licenses for selling at retail of alcoholic liquor for a period beginning on the first day of May of any year and ending on the thirtieth (30th) day of April of the next year. Such licenses shall be and are hereby divided into the following categories and none other, to wit:

Class "A": License shall authorize retail sale on premises of alcoholic liquor for consumption on the premises or retail sale of unbroken packaged liquor for consumption off the premise on all days, such license being subject to the time restrictions set forth in paragraph A of Section 23 of this Ordinance. The fee for a Class "A" license shall be \$1,500.00 (one thousand five hundred and no/100 dollars).

Class "B": License shall authorize retail sale on premises, in unbroken packages, of alcoholic liquor for consumption off the premises on all days, such license being subject to time restrictions set forth in paragraph A of Section 23 of this Ordinance. The fee for a Class "B" license shall be \$1,500.00 (one thousand five hundred and no/100 dollars).

Class "C": License shall authorize a caterer to serve alcoholic liquor as an incidental part of a food service that serves prepared meals which excludes the serving of snacks as a primary meal, either on or off-site, subject to time restrictions in paragraph A of Section 23 of this Ordinance. The Fee for a Class "C" license shall be \$1,500.00 (one thousand five hundred and no/100 dollars).

Class "D": License shall authorize the retail sale of alcoholic beverages for consumption beyond the confines of the premises specified in the license but within the property lines of the property upon which the premises is located. The requirements for obtaining a Class "D" license shall be the same as for a current license. No person shall be eligible for a Class "D" license who has not been issued a current Class "A" or Class "E" liquor license. The fee for a Class "D" license shall be \$500.00 (five hundred and no/100 dollars).

Class "E": License shall authorize retail sale on premises of alcoholic liquor for the consumption on the premises or retail sale of unbroken packaged liquor for consumption off the premise, for a fee of \$800.00. Said Class E license to be in force for 150 consecutive days, subject to time restrictions in paragraph A of Section 24 of this Ordinance. Dates will be determined by the applicant when applying for a Class E Liquor License.

Class "F": License shall authorize retail sale on premises of alcoholic liquor for the consumption on the premises for a period of 24 hours. A Class "F" license may be issued only to charitable group, or non-profit associations or corporations, or religious corporations upon a determination by the Commission that the retail sale of alcoholic liquor will be for a charitable purpose. No more than three (3) Class F" licenses shall be issued to any such organization or association in any one license year, such year beginning May 1 and

ending April 30. In addition, prior to the issuance of a Class F License, the applicant shall submit the following items to the Liquor Control Commission: (1) location upon the premises where alcohol is to be sold; (2) a safety plan for the event including crowd control, security if necessary, and the prevention of underage drinking; (3) a list of members who will be selling alcohol during the event; and (4) official documentation the licensee has authority from the charitable or non-profit group to apply for the license. The Liquor Control Commission may impose other requirements on a Class F License as may be appropriate upon reviewing the above submitted information.

Twenty-four (24) hour license shall be \$125.00 (one hundred twenty-five and no/100 dollars), provided that the license may be extended to an additional four consecutive calendar days at a fee of \$75.00 (seventy-five and no/100 dollars) for each additional 24 hour period or fraction thereof. Such license is subject to the time restrictions set forth in paragraph A of Section 23 of this Ordinance.

- B. Other than Class "E" or "F" licenses, if a new application for a liquor license is made during the last six months of any license year, the license fee shall be one-half the appropriate regular fee .

SECTION 10: ISSUANCE OF LICENSES - PROCEDURE AND APPLICATION

- A. An applicant for a license shall submit to the Commissioner written application which shall become a permanent record of the Commission, and under oath shall state the following:
- (1) Applicant's name and residential address. If the premises are leased, name and address of the landlord, and a copy of lease. Lease must be in name of applicant and for the entire license period;
 - (2) Name and address of applicant's business;
 - (3) Proof of proper zoning for the licensed premises;
 - (4) If applicable, date of filing of an "assumed name" of its business with the McHenry County Clerk;
 - (5) In a case of a partnership, date of formation of the partnership; in case of an Illinois corporation, date of its incorporation; or in a case of a foreign corporation, the State where it was incorporated and date of its becoming qualified under the "Business Corporation Act of 1983" (805 ILCS 5/1.01 *et seq.*) to transact business in the State of Illinois.
 - (6) Applicant's Retailer's Occupation Tax (ROT) Registration Number; whether the applicant is delinquent in the payment of the Retailer's Occupation Tax (Sales Tax), and if so, the reasons therefore;
 - (7) Whether the applicant is delinquent under the thirty (30) day credit law, and if so, the reasons therefore;
 - (8) Whether the applicant has made an application for a liquor license which has been denied in any jurisdiction, and if so, the reasons therefore;
 - (9) Whether the applicant has ever had any previous liquor license suspended or revoked in any jurisdiction, and if so, the reasons therefore;
 - (10) Whether the applicant has ever been convicted of a gambling offense or felony, and if so, the particulars thereof;
 - (11) Whether the applicant, partner, shareholder or manager is an elected, appointed, or law enforcement public official, and if so, the particulars thereof;

- (12) Applicant's name, sex, date of birth, social security number, FEIN Number, position and percentage of ownership in the business; and the name, sex, date of birth, social security number, position and percentage of ownership in the business of every sole owner, partner, corporate officer, director, manager and any person who owns five percent (5%) or more of the shares of the applicant business entity or parent corporations of the applicant business entity.
- (13) That applicant has not received or borrowed money or anything else of value, and that applicant will not receive or borrow money or anything else of value (other than merchandising credit in the ordinary course of business for a period not to exceed 90 days as expressly permitted in Section 6-5 of the Act), directly or indirectly, from any manufacturer, importing distributor or distributor or from any representative of any such manufacturer, importing distributor or distributor, nor be a party in any way, directly or indirectly, to any violation by a manufacturer, distributor or importing distributor of Section 6-6 of the Act.
- (14) That the applicant has a one-year pre-paid in effect Liquor Law Liability (Dram Shop) Insurance policy for the entire term of the license. Evidence of said coverage shall be in the form of a Certificate of Insurance which the applicant shall submit with the written application. The Certificate of Insurance must be marked paid in full.
- (a) There shall be a thirty (30) day notification to the Liquor Commission in an event of cancellation of the Liquor Law Liability Insurance; such notification requirement shall be stated on the Certificate of Insurance.
- (b) That a renewal of Liquor Law Liability Insurance shall be sent to the Liquor Commission no later than fifteen (15) days prior to the expiration date of the Liquor Law Liability Insurance.
- (c) To show evidence, satisfactory to the Commission, of issuance of a policy of liquor liability insurance (Dram Shop) and insuring against liability for any injury or death on account of acts of negligence, omission, or violating the Liquor Control Act. Said policy shall carry an amount of coverage which meets or exceeds the limitation on actions for damages caused by intoxication (235 ILCS 5/6-21) and must be increased as statutorily amended. Each licensee shall furnish the Commission a certificate of such insurance and, in the event of cancellation, notify the Commission immediately of such cancellation. If the Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of a community, he/she may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing, order the licensed premises closed for not more than seven (7) days, giving the licensee an opportunity to be heard during that period except that if such licensee shall also be engaged in the conduct of another business or businesses on the licensed premises such order shall not be applicable to such other business or businesses.
- (15) In addition to the foregoing information, such application shall contain such other and further information as the Commission may, by rule or regulation not inconsistent with law, prescribe.

All license holders have a perpetual duty to update the aforementioned information for duration of license. Failure to update information to the Liquor Commissioner within ten (10) days shall be deemed a violation of this Ordinance.

If the applicant reports a felony conviction as required under paragraph eleven (11) of this Section, such conviction may be considered by the Commissioner in determining qualifications for licensing, but shall not operate as a bar to licensing.

If said application is made on behalf of a partnership, the application must be signed by at least two partners. Applications made on behalf of an association, club or corporation must be signed by two officers in good standing with the organization.

- B. At the time of application for either a new or Class "D" license, the applicant shall submit certifications from the McHenry County Health Department and Building and Zoning Department that the proposed license premises are in conformity with all regulations and ordinances of said Departments.
- C. There shall be a onetime, nonrefundable Liquor License Application Fee of \$1,000.00 (one thousand and no/100 dollars) charged to new applicants of all classes of liquor licenses, excepting Class "F" licenses and Extended Permits. The application fee shall not apply to renewals of liquor licenses by the same licensee. Licensees who add new corporate officers or partners during the license period, or add or change corporate officers so that an officer now owns 5% or more of stock shall not be deemed a renewal for the next application period and shall be subject to paying the Application fee.
 - (1) *New Applicants and/or New Managers:* New Applicants for a liquor license and/or new managers, if any, shall be finger printed and photographed by the McHenry County Sheriff's Police Department. Said photographs shall be placed in the Commission's files.

New applicants for a liquor license and/or new managers, if any, shall file with the application for such license written letters of recommendation from at least three (3) individuals. A letter of recommendation shall be signed by its maker and shall contain the name, address, and telephone number of said maker.
- D. On an annual basis, after the second manager application and interview, applicants shall pay an additional fee of \$75.00 (seventy-five and 00/100 dollars) per manager interview and obtain an affidavit signed by the Sheriff of McHenry County stating that the applicant has been fingerprinted according to and has complied with the provisions of this Ordinance. Such affidavit shall be filed with the Commission. The Liquor Commission reserves the right to waive the \$75.00 (seventy-five and 00/100 dollars) fee after the second manager under extenuating circumstances, such as a death, serious illness, accident, etc.

SECTION 11. PERSONS/ENTITIES INELIGIBLE TO RECEIVE LICENSE

- A. No license of any kind issued by the Commissioner shall be issued to:
 - (1) A person who is not a resident of the County of McHenry, Illinois, unless eligible under section 11, item 12 except in the case of railroad or boat licenses.
 - (2) A person who is not of good character and reputation in the community in which he resides;
 - (3) A person who is not a citizen of the United States;
 - (4) A person who has been convicted of a felony under any Federal or State law, if the Commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust. Burden of proof to show sufficient rehabilitation shall be on the applicant;
 - (5) A person who has been convicted of being the keeper or is keeping a house of prostitution and/or gambling;
 - (6) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality;
 - (7) A person whose license issued under this Ordinance or the Act has been revoked for cause;
 - (8) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

- (9) A partnership, or any general partnership thereof, or any limited partnership thereof, owning more than five percent (5%) of the aggregate limited partner interest in such co-partnership would not be eligible to receive a license hereunder, for any reason other than citizenship and residence within the County;
- (10) A corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in an aggregate more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license hereunder, for any reason other than citizenship and residence within the County;
- (11) A corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983" (805 ILCS 5/101 *et seq.*).
- (12) A person whose place of business is conducted by a manager or agent unless the manager/agent resides in McHenry County and the manager or agent possess the same qualifications required by the licensee;
- (13) A person who has been convicted of a violation of any Federal or State law concerning manufacture, possession or sale of alcoholic liquor or has forfeited his bond to appear in court to answer charges for any such violation;
- (14) A person or applicant who neither beneficially owns, nor leases for full period the premises for which license is issued;
- (15) Any law enforcing public official, including members of local liquor control commissions, any mayor, alderman, or member of a city council or commission, any president of a village board of trustees, any members of a village board of trustees, or any president or member of a county board, and no such official shall be interested directly in manufacture, sale or distribution of alcoholic liquor, except that license may be granted to such official in relation to premises which are not located within the territory subject to the jurisdiction of that official if the issuance of such license is approved by the State Liquor Control Commission;
- (16) A person who is neither an owner nor a beneficial owner of the business to be operated by the licensee;
- (17) A person who has been convicted of a gambling offense as prescribed by any of subsections (a) (3) through (a) (10) of Section 28-1 of, or as prescribed by Section 28-3 of the "Criminal Code of 1961", approved July 28, 1961, as heretofore or hereto after amended (720 ILCS 5/28-1, 5/28-3), or as prescribed by a statute or replaced by any of the aforesaid statutory provisions;
- (18) A person to whom a Federal Wagering Stamp has been issued by the Federal Government for the current tax period;
- (19) A partnership to which a Federal Wagering Stamp has been issued by the Federal Government for the current tax period, or if any of the partners have been issued a Federal Gambling device stamp or Federal Wagering Stamp by the Federal Government for the current tax period;
- (20) A corporation, if any officer, manager or director thereof, or any stockholder owning in an aggregate more than twenty percent (20%) of such corporation's stock has been issued a Federal Wagering Stamp for the current tax period;
- (21) Any premises for which a Federal Wagering Stamp has been issued by the Federal Government for the current tax period;
- (22) Any person or entity, not eligible for a State Retail Liquor Dealer's License;

- (23) Any person or entity indebted for any delinquent real estate or personal property taxes, sales ROT, debt or other financial obligation to the County of McHenry;
- (24) Any person or entity not able to provide a Certificate of Insurance that shows currently in force Liquor Law Liability (Dram Shop) Insurance;
- (25) For any other reason as outlined in the Act.

SECTION 12. FORM OF LICENSE ISSUED

All licenses issued by the Commissioner shall state thereon the name of the licensee, the address and description of the premises and of the building for which the license is granted, and the date of its issuance and expiration.

- A. Where two or more locations, places, or premises are under the same roof, or are located at one street address, a separate license shall be obtained for each such location, place, or premises, unless all rooms in which it is intended to serve alcoholic liquors are directly connected or are adjacent to, and accessible to each other without leaving the building. Each licensee shall define with certainty the room or rooms in which liquor is to be sold.
- B. Separate license for each premise; transfer to other premises. Licenses issued hereunder apply only to the premises described in the application and in the license issued thereon, and only one location shall be so described in each license. After a license has been granted for particular premises, the State Commission or the local commissioner, as the case may be, upon proper showing, may endorse upon said license permission to abandon the premises therein described and remove therefrom to other premises approved by him or it, but in order to obtain such approval the licensee shall file with the State Commission and local commissioner a request in writing and a statement under oath which shall show that the premises to which removal is to be made comply in all respects with the requirements of this Act. A transfer may only be requested to a premise within the same jurisdiction that issued the original local liquor license. A transfer fee of \$75.00 will be charged for each request.

SECTION 13. DISPLAY OF LICENSE

Each licensee shall cause his license issued under the provisions of this Ordinance to be framed and hung in plain view in a conspicuous place on the licensed premises. All licensees shall comply with the State mandated display of warning signs as cited in the Act.

SECTION 14. PRIVILEGE GRANTED BY LICENSE - NATURE AS PROPERTY - EXPIRATION OF LICENSE - NOT LIABLE TO ATTACHMENT, GARNISHMENT OR EXECUTION - TRANSFERABILITY

A license shall be purely a personal privilege and shall expire on April 30th next following the date of issuance, unless sooner revoked as in this Ordinance provided, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such license shall not descend by laws of testate or intestate devolution, but it shall cease upon death of the licensee, provided that executors or administrators of an estate of any deceased licensee, and a trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor under order of an appropriate court, and may exercise the privileges of the deceased or such insolvency or bankruptcy until expiration of such license but not longer than six months after the death, bankruptcy or insolvency of such licensee.

SECTION 15. RENEWAL of LICENSES

- A. Any licensee may renew his license at the expiration thereof, provided he is qualified to receive a license and the premise for which such renewal license is sought is suitable for such purpose; and provided further that the renewal privilege herein provided for shall not be construed as a vested right which shall in any case

prevent the McHenry County Board from decreasing the number of licenses to be issued within McHenry County.

- B. Any license issued to a corporation for profit shall terminate upon transfer of ownership from one individual or individuals to another of more than thirty percent (30%) of the corporation stock, and any application for renewal of the license in the corporation's name subsequent to transfer of the ownership of more than thirty percent (30%) of the corporate stock shall be considered and treated as a new application.
- C. Whenever a non-corporate licensee under this Ordinance forms a corporation to operate in lieu of said licensee, a new application and fee is required, even when the shareholder or shareholders of said corporation and the licensee or licensees are one and the same persons (see Section 10C).
- D. Failure to apply for renewal of a liquor license and to accompany such renewal application with an appropriate fee by the expiration date of the present valid liquor license may be considered by the Commission as a decision not to renew.

SECTION 16. ANNUAL REPORT BY LICENSED CORPORATION

- A. Each corporation licensed under this Ordinance shall file an annual report on a form provided by the Commission setting forth:
 - (1) Name of the corporation, the address, including street and number, if any, of its registered office in this State, and the name of its registered agent at such address;
 - (2) Names and respective addresses, including street and number, if any, of its directors and officers;
 - (3) A statement of the aggregate number of shares issued by the corporation;
 - (4) Names and respective addresses, including street and number, if any, of all shareholders owning greater than 5% of any class of its corporate stock;
 - (5) Such annual report shall be delivered to the Commission at the time of any new or renewal application and shall be made a part of said application.
- B. Each corporation that fails or refuses to file its annual report within the time prescribed, or fails or refuses to answer truthfully and fully questions on the annual report or fails or refuses to report any change in ownership of its shares to the Commissioner within the time prescribed by this Ordinance, shall be subject to suspension, as provided under Section 30.
- C. Each corporation shall file a report with the Commissioner within thirty (30) days of the issuance of either a new class or new shares of stock or of the transfer of five percent (5%) or more of already issued shares to new shareholders.

SECTION 17. SALES IN STATE AND COUNTY BUILDINGS

No alcoholic liquors shall be sold, delivered or consumed in any building belonging to or under control of the County of McHenry. No person shall furnish any alcoholic liquor to any prisoner confined in jail, except on a physician's prescription for medicinal purposes. No person shall furnish any alcoholic liquor to any patient of Valley-Hi Nursing Home, except on a physician's prescription for medicinal purposes.

SECTION 18. SALES

- A. No licensee, nor any officer, associate, member, representative, agent or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under an age of twenty-one (21) years, or to any intoxicated person. No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such

alcoholic liquor to another person under an age of twenty-one (21) years, except in performance of a religious ceremony or service.

- B. If a licensee or his agents or employees believes or has reason to believe that a sale or delivery of any alcoholic liquor is prohibited because of non-age of a prospective recipient, he shall, before making such sale or delivery, demand presentation of written evidence of age and identity of the person in a document issued by a Federal, State, county or municipal government, or subdivision or agency thereof, including, but not limited to a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act (50 U.S.C. App. Sec. 451 *et seq.*), or an identification card issued to a member of the Armed Forces.

SECTION 19. ATTIRE, ENTERTAINERS, VISUAL DISPLAYS, CONDUCT, ETC. ON PREMISES

- A. The following acts or conduct are prohibited on licensed premises.

- (1) Performance of acts, or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or other sexual act.
- (2) Actual or simulated touching, caressing or fondling of breasts, buttocks, pubic hair, anus or genitals.
- (3) Actual or simulated display of breasts, buttocks, pubic hair, anus, vulva, or genitals.
- (4) Permitting any person to remain upon licensed premises who exposes to public view any portion of his or her breasts, buttocks, genitals, vulva, or anus.
- (5) A display, showing, or viewing of any type depicting a live performance of anything prohibited in sub-paragraphs a), b), c), or d) above.
- (6) Subject to those provisions as set out above herein, entertainers shall perform only upon a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from the nearest patron.

- B. Common Entrances and Passageways

No licensed premises shall have a common entrance or passageway with a place of entertainment or business in which any of the acts prescribed above are performed or allowed to be performed.

- C. Noise Prohibited

An emission beyond boundaries of a licensed premise of any noise that unreasonably interferes with enjoyment of life or with any lawful business or activity including but not limited to any one or more of the following is prohibited:

- (1) Noise constituting a violation (as determined by findings and order of the Illinois Pollution Control Board) of 415 ILCS 5/23 *et seq.* as from time to time amended or any regulation or standard adopted by the IPCB pursuant thereto as set forth in the Illinois Administrative Code, subsequently entitled "Noise", Section 900.101 *et seq.*
- (2) Noise emitted by use or operation of a sound amplifying device so that the device produces a loud, disturbing or raucous sound which can be heard by persons at a distance greater than 100 feet from the boundaries of the licensed premises at any time.

Amplified live or recorded music or entertainment is permitted on any licensed premises, as long as subsections (1) and (2) above are not violated, except that no licensee shall permit any live or recorded

music or entertainment to be amplified by any means outside any building on the premises after 9:00 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday, and 12:00 midnight on Friday and Saturday.

D. Other Nuisances

Any conduct or activity occurring on the licensed premises which constitutes a nuisance as defined by:

- (1) 740 ILCS 55/221 as from time to time amended, adopted herein by reference.
- (2) Article III of the Public Health Ordinance, adopted herein by reference.

SECTION 20. SANITARY AND SAFETY CONDITIONS OF PREMISES

Failure to conform to the McHenry County Public Health Ordinance may be considered sufficient cause for revocation or suspension of license.

SECTION 21. DISORDERLY CONDUCT NOT TO BE PERMITTED ON PREMISES

No licensee under this Ordinance shall permit any disorderly conduct or disturbance of peace thereon.

SECTION 22. RECORDS OF LICENSES ISSUED

The Commissioner shall keep or cause to be kept a record of all such licenses issued by him/her and shall furnish a list of such licenses to the County Clerk, Sheriff and State's Attorney, and upon issuance of any new license or upon expiration and failure to renew or revocation of any old license, the Commissioner shall give written notice of such action to each of these officers within 48 hours of such action.

SECTION 23. OPENING AND CLOSING HOURS

- A. No alcoholic liquor shall be sold or furnished at retail in McHenry County outside the corporate limits of any city, village or incorporated town between the hours of 2:00 a.m. and 6:00 a.m. on any day of the week. Time referred to herein shall be Central Standard Time, except that portion of the year when Central Daylight Savings time is in effect.
- B. During the times when alcoholic liquor may not be sold at retail, the premises for which the license has been issued shall be closed for the sale of alcoholic liquor and such premises shall be totally closed to the public one-half hour thereafter, provided that the premises of restaurants, hotels or clubs, as defined in this Ordinance and in the Act, and the premises of a convenience store, as defined in this Ordinance, may be kept open in addition to the hours referred to in paragraph A of this Section for purposes other than the sale of alcoholic liquor.

SECTION 24. COMPLAINT OF VIOLATION - HEARING

A complaint may be filed with the Commission by no less than any five residents of the County of McHenry stating that any retailer licensee, subject to jurisdiction of the Commission, has been or is violating the provisions of the Commission, has been or is violating the provisions of this Ordinance or the act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in a form of an affidavit signed and sworn to by those parties complaining. The complaint shall state the particular provision, rule or regulations believed to have been violated and those facts in detail upon which belief is based. If the Commission is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing in accordance with Sections 29, 30 and 31 of this Ordinance, and shall serve a copy of the Complaint and notice upon the licensee of the time and place of such hearing. Such notice shall be served at least three (3) days prior to the hearing.

SECTION 25. PROCEDURE BEFORE COMMISSION ON CITATIONS

- A. The Commission shall have a right to proceed originally by citation and notice of hearing to require any licensee of said Commission to appear at a time and place specified in said notice and to show cause why the local liquor license issued to said licensee by this Commission should not be suspended or revoked for violations of the provisions of this Ordinance or the Act or the rules and regulations issued pursuant thereto.
- B. All such original proceedings shall be instituted by citation in writing, shall state the particular provision, rule or regulation alleged to have been violated and the facts in detail upon which such allegation is based and shall be signed by the Commissioner or his Assistant Commissioners.
- C. The licensee against whom the citation has been filed shall be entitled to be served with a copy of the citation and shall be given notice of the time and place set for the hearing of said citation.
- D. Said citation and notice of hearing shall be served on the licensee named therein, not less than three (3) days prior to the date specified in said notice of hearing. Service of the Citation on the manager shall constitute service on the licensee. If the licensee's whereabouts are unknown or reasonable attempts to serve the licensee have failed, service shall be by publication in a newspaper of general circulation within McHenry County.
- E. Said licensee named in said citation and notice of hearing shall appear at the time and place designated in said citation and notice hearing.

SECTION 26. REVOCATION OR SUSPENSION OF LOCAL LICENSE - NOTICE - HEARING - APPEAL - PENALTIES

- A. The Commissioner may revoke or suspend any license issued by him if he determines that the licensee has violated any of the provisions of this Ordinance, any applicable rule or regulations established by the Commissioner or the State Commission or any provision of the Act. In lieu of suspension or revocation, the Commissioner may instead levy a fine on the licensee for such violations. The fine imposed shall not exceed \$1,000.00 for a first violation within a 12-month period, \$1,500 for a second violation within a 12-month period, and \$2,500 for a third or subsequent violation within a 12-month period. Each day on which a violation continues shall constitute a separate violation. Not more than \$15,000 in fines under this Section may be imposed against any licensee during the period of his license. However, no such license shall be so revoked or suspended and no licensee shall be fined except after a public hearing by the Commission with a three (3) day written notice to the licensee affording the licensee an opportunity to appear and defend. All hearings conducted before the Commission shall be conducted by a Hearing Officer. The Commission shall appoint said Hearing Officer from a list provided by the State's Attorney. The Hearing Officer shall be an Attorney licensed to practice in the State of Illinois and shall preside over hearings and shall make rulings concerning the admission of evidence and the manner in which the hearing is conducted subject to this Ordinance. The Hearing Officer shall make all decisions and rulings with respect to the parties' rights to due process. The Hearing Officer may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or other evidence. No ruling of the Hearing Officer shall be appealable to the Commission. All hearings conducted before the Commission shall be recorded by a certified court reporter or a certified shorthand reporter. If the Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community, he/she may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing, order the licensed premises closed for not more than seven (7) days, giving the licensee an opportunity to be heard during that period except that if such licensee shall also be engaged in the conduct of another business or businesses on the licensed premises such order shall not be applicable to such other business or businesses.
- B. The Commissioner shall within five (5) days after such hearing, if he/she determines after such hearing that the license should be revoked or suspended, or that the licensee should be fined, state the reason or reasons for such determination in a written order, and either the amount of the fine, the period of suspension or that the license has been revoked, and shall serve a copy of such order within five (5) days upon the licensee.
- C. After receipt of such order of suspension or revocation, the licensee shall have a privilege, within a period of twenty (20) days after receipt of such order of suspension or revocation, of appealing the order to the State

Commission for a decision sustaining, reversing, or modifying the order of the Commission. The appeal shall be limited to a review of the official record of the proceeding before the Commission. If the State Commission affirms the Commissioner's order to suspend or revoke the license at the first hearing, the appellant shall cease to engage in the business for which the license was issued, until the Commissioner's order is terminated by its own provisions or reversed upon rehearing or by the Courts.

SECTION 27. PROCEDURE BEFORE COMMISSION ON REQUEST FOR CONTINUANCE OF ANY HEARING

- A. A request for continuance of any hearing in any matter before the Commission will not be allowed by the Commission unless for a good and valid reason and unless made at least five (5) days prior to the date set for hearing.
- B. The Commission may, in its discretion, grant a continuance if extenuating and unusual circumstances are presented in support of the request for continuance.

SECTION 28. COMMISSIONER'S REPORT

The Commissioner shall report in writing to the Illinois Liquor Control Commission within ten (10) days after any hearing has been held before such Commissioner for a violation by any retail alcoholic liquor licensee of any State law or any provision of this Ordinance, or any rule or regulation established by the State Commission.

The report from the Commissioner shall specify the time and place where the hearing was held, whether a suspension or revocation was entered therein, or what other disposition was made or entered in such Commissioner's report.

SECTION 29. APPEALS FROM ORDER OF COMMISSIONER

Any order or action by a Commissioner levying a fine or refusing to levy a fine on a licensee, granting or refusing to grant a license, revoking or suspending or refusing to revoke or suspend a license, or refusing for more than thirty (30) days to grant a hearing upon a complaint to revoke or suspend a license may within twenty (20) days after notice of such order or action be appealed by any resident of the political subdivision under the jurisdiction of the Commissioner or any person interested to the State Commission. A certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter shall be filed by the Commissioner within five (5) days after the notice of the filing of such appeal, if the appellant licensee pays for the costs of the transcript. The appeal shall be limited to a review of the official record of the proceedings before the Commission.

SECTION 30. OWNER OF PREMISES PERMITTING VIOLATION - ACTS OF AGENT OR EMPLOYEE - LIABILITY OF LICENSEE - KNOWLEDGE

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises, or the agent of such owner or person, shall knowingly permit the licensee to use said licensed premises in violation of the terms of this Ordinance or the Act, said owner, agent or other person shall be deemed guilty of a violation of this Ordinance or the Act to the same extent as said licensee and be subject to the same punishment.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance or the Act, by any officer, director, manager or other agent or employee of any licensee, shall be deemed and held to be the act of such employer and licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

SECTION 31. PENALTIES

Whenever any licensee shall be convicted of any violation of this Ordinance or the Act, or his license shall be revoked and no appeal is taken from said order or revocations or any appeal taken therefore is decided adversely to the licensee, the licenses of said licensee may, in the discretion of the Commission, be revoked and forfeited.

Whenever any officer, director, manager or other employee in a position of authority of any licensee under this Ordinance shall be convicted of any violation of this Ordinance or the Act while engaged in the course of his employment or while

upon the premises described by said license, said license shall be revoked and the fees paid thereon forfeited both as to the holder of said license and as to said premises.

In addition to the above penalties, any person who violates any provision of the Ordinance shall be guilty of a petty offense and fined not more than \$500.00 (five hundred and 00/100 dollars).

SECTION 32. SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 33. REPEAL OF PRIOR ORDINANCES

All ordinances or parts thereof in conflict with the provision of this amended Ordinance are hereby repealed as of May 1, 2006.

BE IT FURTHER ORDAINED that this Ordinance and its provision as adopted by the McHenry County Board will take effect on May 1, 2006 and replaces all previous Liquor Control and Liquor Licensing Ordinances for the County of McHenry, Illinois.

DATED at Woodstock, McHenry County, Illinois this sixth day of December, A.D., 2005.

KENNETH D. KOEHLER, Chairman
McHenry County Board

ATTEST:

KATHERINE C. SCHULTZ, County Clerk