

Chapter 21

LICENSES*

Art. I. In General, §§ 21-1 – 21-35

Art. II. Business Registration, §§ 21-36 – 21-46

ARTICLE I. IN GENERAL

Sec. 21-1. Required.

No person shall engage or be engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of this Code without first obtaining a license from the city in the manner provided for in this article. (Gen. Code 1946, Ch. 6, § 102.1; Code 1972, § 7.1)

Sec. 21-2. Reserved.

Editor's note—Ord. No. 502-83, adopted March 28, 1983, repealed former § 7.2 of the 1972 Code, which had been included as § 21-2 of this Code, pertained to multiple businesses and was derived from Gen. Code 1946, Ch. 6, § 102.2; Code 1972, § 7.2.

Sec. 21-3. State issuance of license no exemption.

The fact that a license has been issued to any person by the state to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall not exempt such person from the necessity of securing a license from the city if such license is required by this Code. (Gen. Code 1946, Ch. 6 § 102.3; Code 1972, § 7.3)

***Cross references**—Administration, Ch. 2, license for sale of alcoholic liquors, § 6-16 et seq., business license for ambulance service, § 7-22 et seq. attendant and attendant-driver licenses, § 7-42 et seq., licenses for amusements, § 8-16 et seq., license for auctioneers, § 10-16 et seq., licensing of gasoline stations, § 19-5, licenses for outdoor assemblies, § 27-16 et seq., licenses for peddlers and solicitors, § 30-20 et seq., license for secondhand and junk dealers, § 34-31 et seq., license for pawnbrokers, § 34-73 et seq., licensing of sign erectors, § 35-3, license for transient merchants, § 42-16 et seq., license for transient photographers, § 43-16 et seq., business license for taxicabs, § 46-24 et seq., driver's license for taxicab, § 46-39 et seq.

Sec. 21-4. Application.

Unless otherwise provided in this Code, every person required to obtain a license from the city to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for said license to the Inspections Department upon forms provided by the Inspections Department and shall state under oath or affirmation such facts as may be required for, or applicable to, the granting of such license. (Gen. Code 1946, Ch. 6, § 102.4; Code 1972, § 7.4; Ord. No. 502.83, 3-28-83)

Editor's note—Provisions of Ord. No. 502-83, adopted March 28, 1983, not specifically amendatory of this Code, have been construed as being amendatory of § 21-4 at the discretion of the editor.

Sec. 21-5. Term.

Except as otherwise herein provided as to certain licenses, the license year shall begin July first of each year and shall terminate at midnight on June thirtieth of the following year. Original licenses shall be issued for the balance of the license year at the full license fee. License applications for license renewals shall be accepted and licenses issued for a period of fifteen (15) days prior to the annual expiration date. In all cases where the provisions of this Code permit the issuance of licenses for periods of less than one year, the effective date of such licenses shall commence with the date of issuance thereof. (Gen. Code 1946, Ch. 6, § 103; Code 1972, § 7.5)

Sec. 21-6. Conditions for issuance.

No license required by this Code shall be issued to any person who is required to have a license from the state, until such person shall submit evidence of such state license and proof that all fees appertaining thereto have been paid. No license shall be issued to any applicant therefor until such applicant has complied with all of the provisions of this Code applicable to the trade, profession, business or privilege for which application for license is made. (Gen. Code 1946, Ch. 6, § 104.2; Code 1972, § 7.6)

Sec. 21-7. Certification prior to issuance.

In all cases where the certification of any city officer or state officer is required prior to the issuance of any license by the city clerk, such certification must be presented to the city clerk before any license is issued. (Gen. Code 1946, Ch. 6, § 104.1; Code 1972, § 7.7)

Sec. 21-8. Health officer's certificate.

In all cases where the certification of the health officer is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the person making application and the premises in which he proposes to conduct or is conducting the trade, profession, business or privilege comply with all the sanitary requirements of the state and of the city. (Gen. Code 1946, Ch. 6, § 104.3; Code 1972, § 7.8)

Sec. 21-9. Fire chief's certificate

In all cases where the certification of the fire chief is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the premises in which the person making application for such license proposes to conduct or is conducting the trade, profession, business or privilege comply with all the fire regulations of the state and of the city. (Gen. Code 1946, Ch. 6, § 104.4; Code 1972, § 7.9)

Cross reference-Department of public safety, § 2-44 et seq.

Sec. 21-10. Police chief's certificate.

In all cases where the certification of the police chief is required prior to the issuance of any license by the city clerk, such certification shall be based upon a finding that the person making application for such license is of good moral character. (Gen. code 1946, Ch. 6, § 104.5; Code 1972, § 7.10)

Cross reference-Department of public safety, § 2-28 et seq.

Sec. 21-11. Building inspector's certificate.

In all cases where the carrying on of the trade, profession, business or privilege involves the use of any structure or land, a license therefor shall not be issued until the building inspector shall certify that the proposed use is not prohibited by the zoning regulations of the city. (Code 1972, § 7.11)

Cross reference-Buildings and building regulations, Ch. 11.

Sec. 21-12. Denial for conviction of a crime.

The city manager may, in his discretion, refuse the issuance of a license under this chapter if the applicant has been convicted of a crime.

Sec. 21-13. Denial to minors.

No license shall be issued to any minor.

Sec. 21-14. Bonds

Where the provisions of this Code require that the applicant for any license furnish a bond, such bond shall be a surety bond and shall be furnished in an amount deemed adequate by the proper city officer, or, where the amount thereof is specified in the schedule of fees and bonds set out in section 21-24 or elsewhere in this Code, in the amount so required; the form of such bond shall be acceptable to the city attorney. In lieu of a bond, an applicant for a license may furnish one or more policies of insurance in the same amounts and providing the same protection as called for in any such bond; any such policies of insurance shall be approved as to substance by the city official issuing the license and as to form by the city attorney.

Sec. 21-15. Right to issuance.

If the application for any license is approved by the proper officers of the city, as provided in this Code, the license shall be issued and shall serve as a receipt of payment for same. (Gen. Code 1946, Ch. 6, § 105.3; Code 1972, § 7.14)

Sec. 21-16. Payment of fees

The fee required by this Code for any license shall be paid at the office of the issuing authority prescribed in this Code upon or before the issuing of the license. (gen. Code 1946, Ch. 6, § 105.4; Code 1972, § 7.15)

Sec. 21-17. Exemption from fees.

No license fee shall be required from any person exempt from such fee by state or federal law. Such persons shall comply with all other provisions of this chapter. The city clerk shall, in all such cases, issue to such persons licenses which are clearly marked as to the exemption and the reason therefor. (Gen. code 1946, Ch. 6, § 105.5; Code 1972, § 7.16)

Sec. 21-18. Renewal; late renewal.

- (a) Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application.
- (b) All fees for the renewal of any license which are not paid at the time the fees shall be due, shall be paid as "late feed" at the rate of one hundred and twenty-five (125) percent of the license fee required for such licenses under the provisions of section 21-24. (Gen. Code 1946, Ch. 6, §§ 105.2, 107.1; Code 1972, §§ 7.13, 7.19)

Sec. 21-19. Exhibition.

No licensee shall fail to carry any license issued in accordance with the provisions of this chapter upon his person at all times when engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which the license was issued; except that where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, the license shall exhibit at all times in some conspicuous place in his place of business, and he shall produce the same for examination when applying for a renewal thereof or when requested to do so by any city police officer or by any person representing the issuing authority. (Gen. Code 1946, Ch. 6, § 108.1; Code 1972, § 7.20)

Sec. 21-20. Display on vehicle or machine.

No licensee shall fail to display conspicuously on each vehicle, or mechanical device or machine required to be licensed by this Code such tags or stickers as are furnished by the city clerk. (Gen. Code 1946, Ch. 6, § 108.2; Code 1972, § 7.21)

Sec. 21-21. Invalid display.

No person shall display any expired license or any license for which a duplicate has been issued. (Gen. Code 1946, Ch. 6, § 108.3; Code 1972, § 7.22)

Sec. 21-22. Transferability; misuse.

- (a) No license issued under the provisions of this Code shall be transferable unless specifically authorized by the provisions of this Code. No licensee shall, unless specifically authorized by the provisions of this Code, transfer or attempt to transfer his license to another nor shall he make improper use of the same.
- (b) In addition to the general penalty provision for violation thereof, any attempt by a licensee to transfer his license to another unless specifically authorized by the provisions of this Code or to use the same improperly shall be void and result in the automatic revocation of such license. (Gen. Code 1946, Ch. 6, § 109; Code 1972, §§ 7.23, 7.24)

Sec. 21-23. Suspension or revocation.

- (a) Any license or permit issued by the city may be suspended or revoked by the city manager or issuing authority for cause. The licensee shall have the right to a hearing before the commission on any such action of the city manager or issuing authority, provided a written request therefor is filed with

the city clerk within five (5) days after receipt of notice of such suspension. The commission may confirm such suspension or revocation or may revoke or reinstate any such license. The action taken by the commission shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.

(b) The term “cause” as used in this section, shall include the doing or omitting of any act or permitting any condition to exist in connection with any trade, profession, business or privilege for which a license or permit is issued under the provisions of this Code, or any premises or facilities used in connection therewith, which act, omission or condition is:

- (1) Contrary to the health, morals, safety or welfare of the public;
- (2) Unlawful, irregular or fraudulent in nature
- (3) Unauthorized or beyond the scope of the license or permit issued; or
- (4) Forbidden by the provisions of this Code or any duly established rule or regulation of the city applicable to the trade, profession, business or privilege for which the license or permit has been issued.

(Gen. Code 1946, Ch. 6, § 106; Code 1972, §§7.17, 7.18)

Sec. 21-24. Fee and bond schedule.

Fees for licenses shall be as prescribed in the following provisions of this section under the business, trade, occupation or privilege to be licensed. Bonds or insurance coverage, where required, shall be in the amounts listed beneath the license fee prescribed for such business:

Ambulances:

- (1) Business license, per ambulance, per year.....\$ 120.00
- (2) Attendant or attendant-driver license per year 15.00

Cross reference-Ambulance service, Ch. 7.

Amusement devices:

- (1) Mechanical, each device, per year..... 50.00
- (2) Non-mechanical, each device, per year..... 30.00

Cross reference-Amusements generally, Ch. 8.

Amusement parks:

- (1) Per day..... 150.00
- (2)Annual fee..... 600.00

Auctioneers:

- (1) Per day..... 50.00
- (2) Annual fee..... 600.00
- (3) Bond..... 1,500.00

Cross reference-Auctioneers generally, Ch. 10.

Bed and breakfast, annual fee..... 35.00

Bicycle registration fee, permanent..... 1.00

Billiard rooms (see Pool rooms)

Bowling establishments

- (1) First lane, annual fee..... 100.00
- (2) Plus for each additional lane, annual fee..... 25.00

Boxing or wrestling exhibitions, per day..... 75.00

Building wrecker/demolitions, annual fee..... 100.00

Circuses:

- (1) Under 1,000 seats, per day..... 150.00
- (2) Over 1,000 seats, per day..... 500.00
- (3) Coin machines (see Amusement devices)

Concerts (see Outdoor assemblies)

Dance halls:

- (1) Per day..... 50.00
- (2) Annual fee..... 350.00

Dry cleaning plants:

- (1) Dry cleaning plant, annual fee..... 100.00
- (2) Agencies, annual fee..... 150.00

Cross reference-Fire prevention code, § 17-16 et seq.

Electricians, registration of license and bond, see section 11-78 et seq.

Exhibitions (see Outdoor assemblies, also Shows)

Exterminators (see Fumigators)

Fumigators:

- (1) Annual fee..... 150.00
- (2) Bond..... 2,000.00

Fumigation permits, each building..... 10.00

Games (see Amusement devices)

Gasoline stations:

- (1) Fee, per year..... 100.00
- (2) Each additional pump, per year..... 25.00

Going out of business/fire/liquidation sales, annual..... 50.00

Jukeboxes (see Amusement deices)

Junk dealers, annual fee..... 150.00

Mechanical amusement devices (see Amusement devices)

Outdoor assemblies:

(1) Each day.....	150.00
(2) Bond.....	10,000.00

Peddlers and solicitors:

(1) Per day.....	30.00
(2) Per month.....	150.00
(3) Per year.....	500.00
(4) Bond.....	2,000.00

Photographers (see Transient photographers)

Plumbers, registration of license and bond, see section 11-130 et seq.

Pool rooms:

(1) First table, annual fee.....	100.00
(2) Each additional table, annual fee.....	25.00
(3)	

Rubbish collector, annual fee..... 150.00

Rummage or garage sales, three day limit..... 15.00

Secondhand dealers, annual fee..... 150.00

Shooting galleries:

(1) Annual fee.....	150.00
(2) Liability insurance:	
a. Personal injury or death:	
One person.....	100,000.00
One accident.....	300,000.00
b. Property damage, one accident.....	25,000.00

Shows (tent shows)

(1) Under 1,000 seats, per day.....	150.00
(2) Over 1,000 seats, per day.....	550.00

Sign erectors:

(1) Annual fee.....	150.00
(2) Bond.....	7,500.00

Solicitors:

(1)	Per day.....	30.00
(2)	Per month.....	100.00
(3)	Per year.....	500.00
(4)	Bond.....	3,000.00

Taxicabs

(1)	Each vehicle, annual fee.....	100.00
(2)	Liability insurance, each vehicle:	
a.	Personal injury or death	
	Each person.....	100,000.00
	Each accident.....	300,000.00
b.	Property damage.....	100,000.00
(3)	Driver's license:	
	Original.....	15.00
	Annual renewal.....	15.00

Theaters:

(1)	Under 500 seats, annual fee.....	100.00
(2)	500-1,000 seats, annual fee.....	150.00
(3)	Over 1,000 seats, annual fee.....	500.00

Transient photographers:

(1)	Per day.....	30.00
(2)	Annual fee.....	300.00
(3)	Bond generally and for new establishment.....	2,000.00

Transient traders:

(1)	Per day.....	50.00
(2)	Per month.....	100.00
(3)	Per year.....	500.00
(4)	Bond.....	2,000.00

Zoning board of appeals..... 40.00.

Secs. 21-25 – 21-35. Reserved.

ARTICLE II. BUSINESS REGISTRATION*

Sec. 21-36. Short title.

This article shall be known and may be cited as the "General Business Registration Ordinance."
(Ord. No. 609-89, § 1, 1-30-89)

Sec. 21-37. Definitions.

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- (1) *Business* is meant to include all kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit, or benefit, either directly or indirectly, on any premises in this city or anywhere else within its jurisdiction.
- (2) *City* is the City of Benton Harbor.
- (3) *City commission* is the City Commission of the City of Benton Harbor.
- (4) *City manager* is the city manager of the City of Benton Harbor.
- (5) *Insignia* or its singular number *insigne* is any tag, plate, badge, emblem, sticker or any other kind of device which may be required for any use in connection with any license.
- (6) *Registration or registrant licensee* as used generally herein shall include respectively the words “permit” or “permittee,” or the holder for any use or period of time of any similar privilege, wherever relevant to any provision of this article or other law or ordinance.
- (7) *Person* is meant to include individual natural persons, partnerships, joint adventures, societies, associations, clubs, trustees, trusts or corporations; or any officers, agents, employees, factors, or any kind of personal representatives of any thereof, in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.
- (8) *Premises* is meant to include all lands structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise use in connection with any such business conducted on such premises.
(Ord. No. 609-89, § 1, 1-30-89; Ord. No. 630-89, § 1, 4-24-89)

Sec. 21-38. Application of regulations.

- (a) *Compliance required.* It shall be unlawful for any person, either directly or indirectly to conduct any business or nonprofit enterprise or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which registration or a permit is required by any law or ordinance of this city, without registration of that business with the city as required by this article or other law or ordinance of the city. This article applies to all businesses and nonprofit enterprises which occupy any premises located in the city which is owned by, leased by, licensed for the use of or otherwise the responsibility of or under the direction of that business or nonprofit enterprise. It shall also apply to any business and nonprofit enterprises which, repeatedly though intermittently occupy any premises in the city. It shall also apply to transient sellers of goods or nonprofessional services.
- (b) *Exceptions.* This article does not apply to individuals with permanent business or nonprofit enterprise establishment outside the city who meet in the city with previously arranged appointments in a restaurant, motel or hotel or the premises of a registered business or nonprofit enterprise located in the city. It also shall not apply to any person if its application to such person would render this article or any portion of it unconstitutional or unlawful.

(c) *Single act.* Except as otherwise provided in this section, for the purpose of this article, any person shall be deemed to be in business or engaging in a nonprofit enterprise and thus subject to the requirements of this article when that person does one act of:

- (1) Selling any goods or services;
- (2) Soliciting business or offering goods or services for sale or hire;
- (3) Using any vehicle or any premises in the city for business purposes;
- (4) Provides any services for any type of remuneration or consideration

(d) *Agents responsible for registering.* The agents or other representatives of nonresidents who are doing business in this city shall be personally responsible for the compliance of their principals and of the business they represent with the provisions of this article.

(e) *Joint registration.* A person engaged in two (2) or more businesses at the same location shall not be required to obtain separate registrations for conducting each of such businesses but, when eligible, shall be issued one registration which shall specify on its face all such businesses.

(f) *No license required for mere delivery.* [Nonprofit, charitable, and religious purposes] The city manager shall issue special permits, without the payment of any license fee or other charges therefor, to any person or organization for the conduct or operation of a nonprofit enterprise, either regularly or temporarily when he find that the applicant operate without private profit for a public, charitable, educational, literary, fraternal or religious purpose.

(Ord. No. 609-89, § 1, 1-30-89; Ord. No. 631-89, § 1, 4-24-89; Ord. of 3-16-92)

Sec. 21-39. Duties of building inspections division.

(a) The division of buildings and inspections in the public safety department shall collect all registration fees and shall register in the name of the city all persons qualified under the provisions of this article and shall:

- (1) Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this article;
- (2) Submit all applications to interested city officials for their endorsements thereon as to compliance by the applicant with all city regulations which they have the duty of enforcing;
- (3) Investigate and determine the eligibility of any applicant for registration as prescribed herein;
- (4) Notify any applicant of the acceptance or rejection of an application and shall, upon refusal of any registration or permit, at the applicant's request, state in writing the reasons therefor and deliver them to the applicant.

(Ord. No. 609-89, § 1, 1-30-89; Ord. No. 632-89, § 1, 4-24-89)

Sec. 21-40. Issuance of license.

(a) *Application required.* Every person required to register under the provisions of this article shall submit an application for such registration to the division of buildings and inspections within the public safety department. The application shall:

- (1) Be in writing upon forms provided by the division of buildings and inspections;

- (2) Require the disclosure of all information which the division of buildings and inspections shall find to be reasonably necessary to the fair administration of this article;
- (3) Be accompanied by the full amount of the fees chargeable for such registration.
- (b) *Issuance of receipts.* Whenever a registration cannot be issued at the time the application for the same is made, the division of buildings and inspections shall issue a receipt to the applicant for the money paid in advance. Such receipt shall not be construed as the approval of the division of buildings and inspections for registration; nor shall it entitle or authorize the applicant to open or maintain any business contrary to the provisions of this article.
- (c) *Renewal procedures.* The applicant for the renewal of a registration previously approved shall submit an application for such registration to the division of buildings and inspections. The application shall disclose the conduct and operation of the applicant's business during the preceding registration period as it's reasonably necessary to the determination by the division of buildings and inspections of the applicant's eligibility for continued registration.
- (d) *Duplicate registration.* A duplicate registration certificate shall be issued for one which has been lost, stolen, defaced or destroyed. There shall be no additional fee charged for duplicate issuance.
- (e) *Denial of registration.* The division of buildings and inspections shall disapprove any application where the applicant's business premises fails to comply with any applicable law, rule, regulation, ordinance provision or lawful order or directive. Upon disapproving any application submitted under the provisions of this article, this article, the division shall refund all fees paid in advance by the applicant provided the applicant is not otherwise indebted to the city.
- (f) *Compliance pending legal action.* When registration is denied and any action is instituted by the applicant to appeal its denial or to compel its issuance, such applicant shall not engage in a business for which the registration was refused unless a registration certificate be issued to him pursuant to a judgment ordering the same.

(Ord. No. 609-89, §1, 1-30-89; Ord. No. 633-89, § 1, 4-24-89; Ord. of 3-16-92, § 1)

Sec. 21-41. Fee rate.

- (a) The general business registration fee shall be in the amount of fifty dollars (\$50.00).
- (b) Fees shall be prorated for partial years.
- (c) Except as provided herein, no rebate or refund of any fee or part thereof shall be made by reason of the nonuse of such registration or by reason of a change of location or business rendering the use of such registration ineffective.

Sec. 21-42. Registration certificate.

Each registration issued hereunder shall state upon its face the name of the registrant and any other name under which such business is to be conducted, business address, the dates of issuance and expiration thereof.

(Ord. No. 609-89, § 1, 1-30-89)

Sec. 21-43. Duties of registrant licensee.

- (a) *General standards of conduct.* Every registrant under this article shall:
- (1) Ascertain and at all times comply with all laws, ordinances and regulations applicable to such business;

(2) Avoid all forbidden, improper or unnecessary practices or conditions which do or may affect the public health, safety and general welfare.

(b) *Display of registration.* Every registrant shall display the registration certificate at the business premises. If the registrant does not have an actual physical business premises or utilize such premises on an intermittent basis, the registrant shall carry such registration on his person.

(c) *Inoperative registration.* No registrant shall allow any registration to remain posted or displayed or used after the period for which it was issued has expired, or when it has been suspended or revoked or for any other reason become ineffective. The registrant shall promptly return such inoperative registration to the division of buildings and inspections.

(d) *Unlawful possession.* No registrant shall loan, sell, give or assign to any person, or allow any other person to use or display, or destroy, damage or remove, or to have in his possession, except as authorized by the division of buildings and inspections or by law, any registration which has been issued to said registrant

(e) *New location desired.* A registrant shall have the right to change the location of the registered business; provided the registrant shall obtain written permission from the division of buildings and inspections for such change of location and promptly report the completed act of such transfer to the division of buildings and inspections and surrender the registration certificate.

(f) *New registration issued.* Upon the completion of a transfer of registration in compliance with subsection (e) above, the division of buildings and inspections shall issue a new registration certificate to the transferee for the unexpired term of the old registration.

(Ord. No. 609-89, § 1, 1-30-89; Ord. of 3-16-92, § 3)

Sec. 21-44. Enforcement

(a) *Inspection of premises.*

(1) *Persons authorized.* The following city official are authorized to conduct inspections in the manner prescribed herein:

a. The public safety department shall make all investigations reasonably necessary to the enforcement of this article;

b. The public safety department shall have the authority to inspect and examine businesses within the City of Benton Harbor to enforce compliance with this article.

(2) *Authority to inspect.* All persons authorized herein to inspect businesses shall have the authority to enter pursuant to law, with or without search warrant, at all reasonable times, the following premises:

a. Those for which registration is required;

b. Those for which registration certificates were issued and which, at the time of inspection, are operating under such registration;

c. Those for which the registration has been revoked or suspended.

(3) *Reports by inspectors.* Persons inspecting registrants, their businesses or premises as herein authorized shall report all violations of this article or of other laws or ordinances through the chain of command to the city manager and shall submit such other reports as the city manager shall order.

(b) *Provisional order.* When an official authorized with the enforcement of this article determines that a violation of this article has occurred, the division of buildings and inspections shall issue to the affected person a provisional order to comply. The provisional order shall be in writing and shall be personally served and shall apprise the person affected or his specific violations. In the absence of the person affected or his agent or employee, a copy of such notice shall be affixed to some structure on the premises. Depositing such notice in the United States mail shall constitute service thereof. The provisional order shall require compliance within ten (10) business days of service on the affected person.

(c) *Citation.* Upon the failure or refusal of the violator to comply with the provisional order, the enforcement official shall issue a citation for the violation.
(Ord. No. 609-89, § 1, 1-30-89; Ord. No. 634-89, § 1, 4-24-89)

Sec. 21-45. Penalty.

Any person and/or business convicted of violating any provision of this general business registration article shall be guilty of a misdemeanor and subject to the penalties of Chapter 1, section 1-8 of the Code of Ordinances of the City of Benton Harbor, Michigan, except that there shall be a minimum fine of one hundred fifty dollars (\$150.00) for each violation.
(Ord. No. 609-89, § 1, 1-30-89; Ord. No. 635-89, § 1, 4-24-89)

Sec. 21-46. Liability of violator.

The amount of any unpaid fee, the payment of which is required hereunder, shall constitute a debt to the city which may be collected by an action at law or may be certified on the delinquent tax rolls of the city as prescribed by law.
(Ord. No. 609-89, § 1, 1-30-89)

ARTICLE III. ALCOHOLIC BEVERAGE LICENSE

Sec. 21-47. Legislative intent.

The purpose of this Article is to require all persons operating a retail liquor establishment, to be licensed by the city to sell or offer for sale any alcoholic liquor. It is the further intent to protect minors against the illegal sale and use of alcohol.

Sec. 21-48. City license to sell required.

No person shall sell or offer for sale any alcoholic liquor in the City of Benton Harbor without first having obtained a city beverage license under the provisions of this Article and laws of the State of Michigan.

Sec. 21-49. Definitions.

The following words and phrases, when used in this Article, shall have the meanings respectively ascribed to them:

- A. *Alcoholic Liquor or Alcoholic Beverages:* as defined in The Liquor Control Code of 1998 [MCL 436.1105 (3)] as any beverage containing one-half of one percent or more of alcohol by volume, and is intended for human consumption. This includes beer, wine and distilled spirits.
- B. *Drinking Establishment:* a premise that may be open to the general public, where alcoholic liquor by the individual drink is sold.
- C. *Retail Liquor Establishments:* any person(s) who sells at retail, or offers for sale at retail, alcoholic liquors in the original package for consumption off of, and away from the premises.
- D. *Sale or Sell:* any transfer of goods for money, trade, barter, or other consideration.

- E. *Minor*: for the purposes of buying, consuming, or possessing alcoholic beverages for personal use, a person who is less than 21 years of age shall be considered a minor.
- F. *Licensee*. An individual, partnership, or corporation that has been properly issued a license, to operate a nightclub within the corporate limits of the City of Benton Harbor
- G. *Person*: any natural person, corporation, partnership or association or any other entity.
- H. *Compliance Checks*. The system the city uses to investigate and ensure that those authorized to sell alcoholic beverages are in compliance with the requirements of this ordinance.
- I. *Regulating Authority*: an authorized city, county, or state official charged with regulating the provisions of this ordinance, including but not limited to, police, fire, inspections.

Sec. 21-50. Authority to issue city beverage licenses.

(a) An application for a city beverage license under this Article shall be made to the Inspections Department on forms provided by the Inspections Department as more fully set forth in Sec 21-4.

(b) The City shall issue the a beverage license to:

1. Any liquor store;
2. Any convenience store selling beer and wine;

(c) In order to be approved for a city beverage license under this Article, an applicant must meet all conditions set forth in this Article, and all other conditions set forth for the issuance of the parallel state license prescribed by the State of Michigan.

Sec. 21-51. Obligations of licensee.

No person licensed under this Article shall fail to comply with all applicable provisions of state law and applicable requirements of this Code and any ordinances of the city regulating the conduct of licensed businesses.

Sec. 21-52. Denial to minors.

No license shall be issued to any minors.

Sec. 21-53. Authority to deny issuance of licenses.

(a) The Inspections Department may deny an application for an original license under this Article upon a determination that:

1. The applicant has failed to supply any of the information required on the application;
2. The applicant has failed to pay the required license fee;

(b) If the Inspections Department denies a license application under this section, the department shall notify the applicant in writing stating the specific grounds for the denial.

(c) The applicant shall have the right to a hearing before the City Manager on any such action of the city, provided a written request is filed with the City Clerk within five (5) days after receipt of notice of such denial. The City Manager may confirm the denial or may order the Inspections Department to issue the applicant a beverage license. The decision and disposition of the City Manager shall be reduced to writing and a copy of such decision shall be forthwith sent to the applicant. The action taken by the City Manager shall be final. Upon denial, the application fee shall be refunded to the applicant.

Sec. 21-54. Term and renewal of city beverage licenses.

(a) The term of the city beverage license issued under this Article is twelve months from the date of issuance.

(b) Applicants for renewal of city beverage licenses shall apply to the Inspections Department 45 days prior to the date of expiration of the license.

(c) An application for renewal of a license shall be considered in the same manner as the original application.

(d) The city may object to the renewal of a city beverage license upon a determination that:

1. The applicant has failed to supply any of the information required on the renewal application;
 2. The applicant has failed to pay the required renewal fee;
 3. The applicant has multiple violations of this Article during the term of the license.
 4. The applicant is prohibited by Federal, State, or local law or regulation, from holding such a license.
- (f) If the city objects to the renewal of a city beverage license for cause, a beverage license shall not be issued to the applicant. The city’s decision to object to the renewal shall be reduced to writing. A copy of such decision shall be forthwith sent to the applicant.
- (g) Renewal applications received less than 45 days prior to the license renewal date may not be processed in time. If so, the applicant shall cease all sales of alcoholic beverages until the license renewal process is completed.

Sec. 21-55. Transfer of city beverage license.

No person licensed under this Article shall transfer the city beverage license to another person or to another location without the prior approval of the city. Standards for transfer of a city beverage license are those applicable to transfers of state licenses under state law.

Sec. 21-56. Beverage license fees.

If the application for any license is approved by the proper officers of the city, as provided in this Code, the city shall issue a beverage license upon receipt of the beverage license fee prescribed below.

a) The applicant for a beverage license shall pay the appropriate application fee, as follows:

<i>Application</i>	<i>Fee</i>
New license	\$1,000.00
Transfer of location or ownership of license	\$500.00
License renewal	\$500.00
Duplicate license	\$50.00
Trade name/corporation name change	\$50.00

Sec. 57. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Sec. 21-58. Complaints, revocation and suspension of city license.

(a) The City Manager shall hear all violations and complaints against any licensee brought by a regulating authority. The City Manager shall have the authority for cause to suspend or revoke any city operating license of any licensee found to be in violation of this ordinance. The term “cause” shall have the same meaning ascribed to it in Sec. 21-23.

(b) The City Manager shall give written notice of hearing to the licensee at least ten (10) days in advance of the meeting. The licensee shall have the right to appear and give testimony at said meeting.

(c) Action by the City Manager shall be decided upon deliberation of all facts. The City Manager shall give written notice within (5) five business days of any proscribed action to be taken. If the City Manager determines that a violation of this ordinance did occur, that decision, along with the City Manager's reasons for finding a violation and the penalty to be imposed under this ordinance, shall be recorded in writing.

(d) The licensee shall be notified of said actions by mail sent to the address of the licensee. The licensee may appeal the decision of the City Manager to the City Commission by filing a written appeal with the City Clerk within five (5) days following the postmarked date on the notice from the City Manager.

(e) The city may suspend or revoke a license for any of the following reasons:

1. The licensee has fraudulently obtained the license by giving false information in the application therein;
2. The licensee has violated any of the provisions of this Article or and amendments thereto;
3. The licensee has become ineligible to obtain a beverage license;
4. The sale or furnishing of alcohol to a minor (MCL 436.1701) and/or allow person under 21 to consume or possess alcohol (MCL 436.1707(5));
5. The nonpayment of any license renewal fees;
6. Permitting any gambling in or upon the licensee's place of business;
7. Permitting any person to mix drinks with material brought in for that purpose;
8. The employment of persons under 18 years of age in dispensing or selling alcoholic liquor;
9. The licensee has been convicted of a violation of Michigan Liquor Control Code of 1998.

(f) Any license that is suspended or revoke must be immediately confiscated by the Inspections Department for the duration of the suspension.

(g) If the city finds grounds for suspension or revocation of a tobacco license, the City Manager shall determine whether to revoke the license for the remainder of its term or suspend it for any shorter period according to the severity of the offense.

(h) The decision and disposition of the City Manager shall be reduced to writing and the dates of any suspension or revocation shall be stated therein. Said noticed shall be sent to the licensee in writing.

(i) The licensee shall have the right to appeal before the City Commission on any such action of the City Manager, provided a written request is filed with the City Clerk within five (5) days after receipt of notice of such suspension or revocation. The commission may confirm such suspension or revocation or may reinstate such license. The decision and disposition of the City Commission shall be reduced to writing and a copy of such decision shall be forthwith sent to the licensee. The action taken by the City Commission shall be final. Any subsequent violations committed by the licensee shall be adjudicated in the same manner. Upon suspension or revocation of any license or permit, the fee shall not be refunded.

Sec. 21-59. Inspections and Investigations

Investigators for the City of Benton Harbor or the State of Michigan may inspect any licensed business under this ordinance that sells alcoholic beverages, to determine compliance with this Article, and the Michigan liquor laws and rules. Inspections may be made during normal business hours, or at any time when the premises is occupied. (MCL 436.1217)

Sec. 21-60. Obstructing Liquor Investigators

Licensees shall not fail to cooperate, or obstruct any investigator who is investigating or inspecting the licensed premises for liquor code and rule requirements. Any obstruction of justice will result in an immediate suspension, and possible revocation of the city license.

Sec. 21-61. Citations for Violations of Liquor Laws and Regulations

Any violations of this Article will result in a violation report to be sent to the Michigan Liquor Control Commission. Any sanctions brought against a licensee by the City of Benton Harbor are separate from, and unrelated to any sanctions that may also be levied by the MLCC.

Sec. 21-62. Compliance checks and inspections.

All licensed premises shall be open to inspection by the local law enforcement or other authorized official at any time. At the discretion of local law enforcement, the city shall conduct unannounced compliance checks.

Sec. 21-63. Violations and Penalties

A violation of any provision of this ordinance shall be a misdemeanor. Unless otherwise provided for in this ordinance, each violation shall subject the defendant to a minimum fine of not less than five hundred dollars (\$500), and/or not more than ninety days in jail or both. Additionally, any operating license issued by the City of Benton Harbor may be suspended or revoked for repeated violations and/or for severe violations of city, state or federal laws.

Sec. 21-64. Severability

If any term or other provision of this ordinance is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

If the final judgment of such court or arbitrator declares that any term or provision hereof is invalid, void or unenforceable, the parties agree to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term or provision.

Sec. 21-65. Effective date.

This ordinance shall take effect immediately upon approval and officially published in the local newspaper. Existing businesses affected by this ordinance shall have 60 days to comply with all licensing provisions set forth in this Article.

ARTICLE IV TOBACCO LICENSE

Sec. 21-66. Purpose.

This ordinance shall be intended for the licensing, sale, and regulation of tobacco products in the City of Benton Harbor. Additionally, this ordinance is for the purpose of enforcement to protect minors against the illegal use of tobacco.

Sec. 21-67. City license to sell required.

No person shall sell or offer for sale any tobacco product in the City of Benton Harbor without first having obtained a city tobacco license under the provisions of this Article.

Sec. 21-65. Definitions.

- A. *Tobacco or Tobacco Products.* any substance or item containing leaf tobacco, including but not limited to, cigarettes, cigars, pipe tobacco, snuff chewing tobacco, or any other forms of leaf tobacco prepared in a manner to be suitable for human consumption through chewing, sniffing, or smoking.
- B. *Loosies.* A common term used to refer to single cigarette(s) or cigar(s) that has been removed from its original packaging with the intent to sell separately.
- C. *Minor.* Any individual who has not yet reached the age of eighteen (18) years.
- D. *Sale or Sell.* Any transfer of goods for money, trade, barter, or other consideration.
- E. *Licensee.* An individual, partnership, or corporation that has been properly issued a license, to operate a nightclub within the corporate limits of the City of Benton Harbor.
- F. *Person.* Any natural person, corporation, partnership, association or any other entity.
- G. *Compliance Checks.* The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related paraphernalia are following and complying with the requirements of this ordinance.
- H. *Regulating Authority.* An authorized city or state official charged with regulating the provisions of this ordinance, including but not limited to, police, fire, or inspections.

Sec. 21-68. Authority to issue city tobacco licenses.

An application for a city tobacco license under this Article shall be made to the Inspections Department on forms provided by the Inspections Department as more fully set forth in Sec 21-4.

Sec. 21-69. License.

(a) No person shall sell or offer to sell any tobacco product without first having obtained a license to do so from the City of Benton Harbor.

(b) In order to be approved for a city tobacco license under this Article, an applicant must meet all conditions set forth in this Article, and all other conditions set forth for the issuance of the parallel state license prescribed by the State of Michigan.

(c) Applicant must meet the following requirements:

1. The applicant must be at least 18 years of age.
2. The applicant must not have been convicted within the past five years of any violation of a Federal, State, or local regulations relating to tobacco or tobacco products.
3. The applicant has not had a license to sell tobacco suspended or revoked within the preceding twelve months of the date of application.

Sec. 21-70. Revocation or suspension. Any license issued under this ordinance may be revoked or suspended as provided in Sec. 21-72 of this ordinance.

Sec. 21-71. Authority to deny issuance of licenses.

(a) The Inspections Department may deny an application for a license under this Article upon a determination that:

3. The applicant has failed to supply any of the information required on the application;
4. The applicant has provided false or inaccurate information on the application.
5. The applicant has failed to pay the required license fee;
6. The applicant has been convicted of an offense and would create danger to the public health, safety, or welfare if the applicant were to engage in such offensive conduct after the license were issued.

(b) If the Inspections Department denies a license application under this section, the department shall notify the applicant in writing stating the specific grounds for the denial.

(c) The applicant shall have the right to a hearing before the City Manager on any such action of the city, provided a written request is filed with the City Manager within five (5) days after receipt of notice of such denial. The City Manager may confirm the denial or may order the Inspections Department to issue the applicant a tobacco license. The decision and disposition of the City Manager shall be reduced to writing and a copy of such decision shall be forthwith sent to the applicant. The action taken by the City Manager shall be final. Upon denial, the application fee shall be refunded to the applicant.

Sec. 21-72. Transfers.

All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be allowed.

Sec. 21-73. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Sec. 21-74. Term and renewal of city tobacco licenses.

(a) A city tobacco license shall be renewed annually.

1. The term of the city tobacco license issued under this Article is twelve months from the date of issuance.

2. Applicants for renewal of city tobacco licenses shall apply to the Inspections Department (45) forty-five days prior to the date of expiration of the license.
3. An application for renewal of a license shall be considered in the same manner as the original application.
 - (b) The city may object to the renewal of a city tobacco license upon a determination that:
 5. The applicant has failed to supply any of the information required on the renewal application;
 6. The applicant has failed to pay the required renewal fee;
 7. The applicant has multiple violations of this Article during the term of the license.
 8. The applicant is prohibited by Federal, State, or local law or regulation, from holding such a license.
- (c) Renewal applications received less than 45 days prior to the license renewal date may not be processed in time. If so, the applicant shall cease all sales of alcoholic beverages until the license renewal process is completed.

Sec. 21-75. Fees.

No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee for a license under this ordinance shall be as follows.

<i>Application</i>	<i>Fee</i>
New license	\$500.00
License renewal	\$250.00
Late application fee for expired license	\$350.00
Duplicate license	\$50.00
Trade name/corporation name change	\$50.00

Sec. 21-76. Complaints, revocation and suspension of city license.

- (a) The City Manager shall hear all violations and complaints against any licensee brought by a regulating authority. The City Manager shall have the authority for cause to suspend or revoke any city tobacco license of any licensee found to be in violation of this ordinance. The term “cause” shall have the same meaning ascribed to it in Sec. 21-23.
- (b) The City Manager shall give written notice of hearing to the licensee at least ten (10) days in advance of the meeting. The licensee shall have the right to appear and give testimony at said meeting.
- (c) Action by the City Manager shall be decided upon deliberation of all facts. The City Manager shall give written notice within (5) five business days of any proscribed action to be taken. If the City Manager determines that a violation of this ordinance did occur, that decision, along with the City Manager's reasons for finding a violation and the penalty to be imposed under this ordinance, shall be recorded in writing.
- (d) The licensee shall be notified of said actions by mail sent to the address of the licensee. The licensee may appeal the decision of the City Manager to the City Commission by filing a written appeal with the City Clerk within five (5) days following the postmarked date on the notice from the City Manager.
- (e) The city may suspend or revoke a license for any of the following reasons:
 1. The licensee has fraudulently obtained the license by giving false information in the application.
 2. A person has had its corresponding state license suspended or revoked.
 3. The licensee has violated any of the provisions of this Article.
 4. The sale or furnishing of tobacco to a minor (MCL 722.642a) and/or allow person under 18 to consume or possess tobacco.

5. The nonpayment of any license renewal fees.
 6. The employment of persons under 18 years of age in dispensing or selling tobacco.
- (f) Any license that is suspended or revoke must be immediately confiscated by the Inspections Department for the duration of the suspension.
- (g) The decision and disposition of the City Manager shall be reduced to writing and the dates of any suspension or revocation shall be stated therein. Said noticed shall be sent to the licensee in writing.
- (h) The licensee shall have the right to appeal before the City Commission on any such action of the City Manager, provided a written request is filed with the City Clerk within five (5) days after receipt of notice of such suspension or revocation. The commission may confirm such suspension or revocation or may reinstate such license. The decision and disposition of the city commission shall be reduced to writing and a copy of such decision shall be forthwith sent to the licensee. The action taken by the city commission shall be final. Any subsequent violations committed by the licensee shall be adjudicated in the same manner. Upon suspension or revocation of any license or permit, the fee shall not be refunded.

Sec. 21-77. Prohibited Sales.

It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco product:

1. To sell or otherwise provide any tobacco product to any minor,
2. To sell “loosies” as defined in Sec. 21- 65 of this ordinance.
3. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law or regulation.

Sec. 21-78. Responsibility.

All licenses under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

Sec. 21-79. Compliance checks and inspections.

All licensed premises shall be open to inspection by the local law enforcement or other authorized official at any time. At the discretion of local law enforcement, the city shall conduct unannounced compliance checks.

Sec. 21-80. Obstructing Tobacco Investigators

Licensees shall not fail to cooperate, or obstruct any investigator who is investigating or inspecting the licensed premises for tobacco code and rule requirements. Any obstruction of justice will result in an immediate suspension, and possible revocation of the city license.

Sec. 21-81. Illegal Acts by minors.

Unless otherwise provided, the following acts shall be a violation of this ordinance.

1. **Illegal Possession.** It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco product.
2. **Illegal Use.** It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.
3. **Illegal Procurement.** It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco product and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco product.
4. **Use of False Identification.** It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Sec. 21-82. Violations and penalties

A violation of any provision of this ordinance shall be a misdemeanor. Each violation shall subject the defendant to a minimum fine of not less than five hundred dollars (\$500), and/or not more than ninety days in jail or both. Additionally, any operating license issued by the City of Benton Harbor may be suspended or revoked for repeated violations and/or for severe violations of city, state or federal laws.

Sec. 21-83. Severability.

If any term or other provision of this ordinance is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

If the final judgment of such court or arbitrator declares that any term or provision hereof is invalid, void or unenforceable, the parties agree to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term or provision.

Sec. 21-84. Effective date.

This ordinance shall take effect immediately upon approval and officially published in the local newspaper. Existing businesses affected by this ordinance shall have 60 days to comply with all licensing provisions set forth in this Article.