

## CHAPTER 6 ALCOHOLIC LIQUORS\*

- Art. I. In General, §§ 6-1-6-15  
Art. II. License, §§ 6-16-6-30  
Art. III. Use by Minors, §§ 6-31-6-35

### ARTICLE I. IN GENERAL

#### **Sec. 6-1. Definitions.**

The words "alcoholic liquor", when used in this chapter shall be as defined in Act 58 of 1998 of the Public Acts of Michigan (MCL 436.1105). "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume which are fit for use for beverage purposes.

#### **Sec. 6-2. Hours of sale.**

No licensee, by himself, or another, shall sell, furnish, give or deliver any alcoholic liquor to any person on any day during the hours not permitted by state law or the state liquor control commission. (Gen. Code 1946, Ch. 4, § 506; Code 1972, § 9.233)

#### **Sec. 6-3. Furnishing to intoxicated persons prohibited.**

It shall be unlawful for any person to sell, give away or furnish alcoholic liquor to any intoxicated person, or to any person perceptibly under the influence of intoxicating liquor. (Gen. Code 1946, Ch.4, § 503; Code 1972, § 9.233)

State law reference –Sales to intoxicated persons, MCL § 436.29, MSA § 18.1000.

#### **Sec. 6-4. Public consumption prohibited.**

No person shall consume nor be in possession of an open containing any alcoholic liquor, or offer any alcoholic liquor to another person, on any highway, street, sidewalk, alley, public building, public park, in any automobile while parked or being driven on any street in the city, or, any public or private property which is open to the general public.

#### **Secs. 6-5-6-15. Reserved.**

## ARTICLE II. LICENSE\*

### **Sec. 6-16. Required.**

It shall be unlawful for any person to sell alcoholic liquor by the glass and for consumption on the premises before such person shall have obtained license to engage in such business as required by this article and the laws of the state. (Gen. Code 1946, Ch. 4, § 501; Code 1972, § 9.232)  
State law reference-Local approval required, MCL § 436.17, MSA § 18.988.

### **Sec. 6-17. Qualifications.**

No person shall be eligible to obtain a license under this article and the laws of the state, unless such person is a citizen of the United States and of the State of Michigan and shall have resided in the state for at least one year previous to the filing of his application for a license. (Gen. Code 1946, Ch. 4, § 507; Code 1972, § 9.237)

### **Sec. 6-18. Quota.**

No license shall be issued for the sale of alcoholic liquors for consumption on the premises by the city commission in excess of one license for each fifteen hundred (1500) population or the major fraction thereof, as determined by the last federal decennial census or by any federal decennial census hereafter taken; provided, however, that the above quota shall not bar the right of existing licensees to renew their licenses or transfer the same subject to the consent of the city commission; provided, further, that the above quota shall not include club licenses as defined by state law. (Gen. Code 1946, Ch. 4, § 508; Code 1972, § 9.238)  
State law reference-Similar provisions, MCL § 436.19c, MSA § 18.990(3). Cross reference-Licenses generally, Ch. 21.

### **Sec. 6-19. Transfer.**

It shall be unlawful for any person who has been granted a license under this article to transfer such business or license to any other location in the city without first obtaining the written permission of the city commission. (Gen. Code 1946, Ch. 4, § 509; Code 1972, § 9.239)

**Sec. 6-20.** Standards for city commission recommendation for denial, non-renewal or revocation of an alcoholic liquor license and for approval or denial of request for transfer of location of existing alcoholic liquor license.

Pursuant to the authority granted by Section 17 of Act No.8 of the Public Acts of 1933, Extra Session (MCLA 436.17, MSA 18.988), as amended, the city commission may recommend to the Liquor Control Commission approval or denial

of an application for a new alcoholic liquor license, approval or denial of the transfer of a location of an existing license, denial of the renewal of an existing license, or revocation of an existing license. Prior to making any such recommendation for the approval or denial of transfer, denial of renewal or revocation of any such existing license, the city commission shall hold a public hearing, after due notice to the licensee of the hearing, at which hearing the licensee may present witnesses and testimony and confront adverse witnesses. The licensee shall be provided with a written statement of the findings of the city commission based upon the evidence presented.

- (1) Any recommendation to the Liquor Control Commission by the city commission pursuant to this section may be based upon a finding that the applicant or the licensee has engaged in, or has permitted to occur on or involved the licensed premises or any other licensed premises in which the licensee has had an interest, any one or more of the following:
  - a. The consumption of spirits, if licensed to sell only beer or wine or both beer and wine.
  - b. Dancing or live entertainment open to the public, with or without an admission charge, unless holding a valid dance or dance-entertainment permit.
  - c. Any disorderly conduct or action which disturbs the peace and good order of the neighborhood.
  - d. Any incidents of prostitution, solicitation for prostitution, or larceny.
  - e. Any gambling activity or the placing or using of any gambling apparatus or paraphernalia therein.
  - f. Any possession, sale or use of any illegal drug or controlled substance.
  - g. Use of interior lighting which is insufficient to enable a person with average vision to clearly see all persons within the premises.
  - h. Any violation of the building, electrical, medical, plumbing and zoning, health, fire or other applicable codes of the city.
  - i. Any violation of the fire code of the City of Benton Harbor.
  - j. Repeated or serious violations of state or local laws regarding the business.
  - k. Permitting of unlawful activities on the premises.
  - l. The conditions or practices of the business present immediate health and/or safety hazards.
  - m. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited onto adjoining properties.
  - n. Failure by the licensee to permit the inspection of the licensed premises by the city's agents or employees in connection with the enforcement of this chapter and the enforcement of the liquor laws and regulations.
  - o. The pattern of patron conduct in the neighborhood of the licensed establishment which is in violation of the law and/or disturbs the peace, order and tranquility of the neighborhood.
- (2) Any recommendation to the Liquor Control Commission by the city commission

pursuant to this section may be based in whole or in part on a finding that the applicant or the licensee is delinquent in or is in default in the payment of any obligation owed by the applicant or the licensee to the city including, but not limited to, real estate taxes on any property located in the city, personal property taxes imposed on any property in the city, water and/or sewer fees to the city without regard to the place where the water and/or sewer service was actually used, and any other obligation owed to the city.

- (3) Any recommendation to the Liquor Control Commission by the city commission pursuant to this section may be based upon finding that the applicant or the licensee does not qualify for the permit or license or the privilege or if the licensee or applicant is found to be in violation of the laws of the State of Michigan pertaining to the sale of alcoholic beverages or in violation of a rule of the Michigan Liquor Control Commission which directly pertains to the permit or license issued or the privilege granted.
- (4) Any recommendation to the Liquor Control Commission by the city commission pursuant to this section may be based upon a finding that the applicant or licensee has failed to perform or has violated any written or oral agreement or promise or representation made by the applicant or licensee to the city commission in connection with any application for a new alcoholic liquor license, any hearing or proceeding on any proposal to grant or deny a transfer of location of an existing license, any hearing or proceeding involving any proposed denial of the renewal of an existing license or the revocation of any existing license.
- (5) Any recommendation to the Liquor Control Commission by the city commission pursuant to this section may be based in whole or in part upon the beneficial or adverse impact that the city commission may find that any such action may have upon:
  - a) Use and utilization of the police and other public safety resources of the City of Benton Harbor and/or
  - b) Peace and tranquility of the adjoining areas and neighborhoods and/or
  - c) Parking in the neighborhood.
- (6) Any recommendation to the Liquor Control Commission by the city commission pursuant to this section may be based upon the cumulative effect that the city commission may find that all of the above factors have. The city commission may also consider such other factors as it shall find to be persuasive. However, if factors not enumerated above are used in the decision by the city commission, then the city commission shall grant an adjournment of the hearing to the applicant or licensee if such an adjournment is requested by the applicant or licensee for the purpose of allowing a fair and reasonable time for response.
- (7) That if a section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall

not be affected other than the part invalidated.  
(Ord. of 6-28-93)

**Secs. 6-21-6-30. Reserved.**

**ARTICLE III. USE BY MINORS\***

**Sec. 6-31. Furnishing to.**

It shall be unlawful for any person licensed under this chapter and the laws of the state or any other person to sell, give away or furnish alcoholic liquor to any person under the age of twenty one (21) years except upon authority of and pursuant to a prescription of a duly licensed physician. (Gen. Code 1946, Ch. 4, §503; Code 1972, § 9.234; Ord. No. 615-89, § 1, 3-27-89)

State law reference-Similar provisions, MCL §§ 436.33, 750.141a; MSA §§ 18.1004, 28.336(1).

**Sec. 6-32. Purchase or possession by.**

It shall be unlawful for any person under the age of twenty-one (21) years to offer to buy, obtain, drink or possess any alcoholic liquor. (Gen. Code 1946, Ch. 4, § 510.1; Code 1972, § 9.235; Ord. No. 615-89, § 1, 3-27-89)

State law reference-Similar provisions, MCL § 436.33b, MSA § 18.1004(2).

**Sec. 6-33. False representation as to age.**

It shall be unlawful for any person under the age of twenty-one (21) years to falsely represent himself to be twenty-one (21) years of age or over to procure the sale or furnishing to himself of any alcoholic liquor, or for any person to make false representations as to the age of another to procure the sale or furnishing to any person under the age of twenty-one (21) years of any alcoholic liquor. (Gen. Code 1946, Ch. 4, § 510.2; Code 1972, § 9.235; Ord. No. 615-89, § 1, 3-27-89)

State law reference-Similar provisions, MCL §§ 436.33b; 750.141c, 750.141d; MSA §§ 18.1004(2), 28.336(3), 28.336(4).

**Sec. 6-34. Possession in motor vehicle.**

No person under the age of twenty-one (21) years shall purchase or knowingly possess, transport or have under his control in any motor vehicle any alcoholic liquor unless such person is employed by a licensee under state law and is possessing, transporting or having such alcoholic liquor in a motor vehicle under his control during regular working hours and in the course of his employment. (Gen. Code 1946, Ch. 4, § 510; Code 1972, § 9.236; Ord. No. 615-89, § 1, 3-27-89)

Cross reference-Traffic and motor vehicles generally, Ch. 41.

State law reference-Similar provisions, MCL § 436.33a, MSA § 18.1004(1).

**Sec. 6-35. Request for identification.**

The person in charge of any beer garden, tavern, restaurant or place where alcoholic liquor is sold, either by the glass or by specially designated merchants to take out, shall have the right at any time to demand of any person offering to buy, buying or obtaining any alcoholic liquor in such beer garden, tavern, restaurant or place where alcoholic liquor is sold who may appear to him to be under the age of twenty-one (21) years to show some identification and, on failure of such person to produce the same or other satisfactory evidence of his age, may refuse to serve such person with any alcoholic liquor and may exclude such person from such place of business. If any such person shall refuse to leave such place of business, he shall be deemed guilty of a misdemeanor punishable pursuant to section 1-8 of this code. (Gen. Code 1946, Ch. 4, § 510.4; Ord. No. 615-89, § 1, 3-27-89)