

**AN ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF PEORIA
PERTAINING TO SALE OF ALCOHOLIC BEVERAGES ADDING THE OPTION OF PLAN OF
OPERATION TO A NUISANCE ESTABLISHMENT AND SITE APPROVAL PROCESS**

WHEREAS, the City Council is a home rule unit of government pursuant to Article VII, Section 6 of the Constitution of the State of Illinois 1970, and may exercise any power and perform any function pertaining to its government and affairs including regulating and licensing the sale of alcoholic liquor;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, as follows:

Section 1: Chapter 3 of the Code of the City of Peoria is hereby amended by deleting the following stricken words and by adding the following underlined words.

Sec. 3-32. Hearings on violations; complaint by citizens council.

(a) Any five residents of the city or any member of the city council shall have the right to file a complaint with local commissioner stating that any licensee subject to this chapter has been or is violating the provisions of this chapter or the Illinois Liquor Control Act or the rules or regulations issued pursuant to either. Such complaint shall be in writing in the form prescribed by the local liquor commissioner and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule or regulation believed to have been violated and the facts in detail upon which such belief is based. If the local liquor commissioner is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, he shall set the matter for hearing and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint.

(b) Every liquor licensee has a duty to take reasonable steps to correct objectionable conditions occurring on the licensed premises and on property adjacent thereto while the establishment is open for business and within one hour or less of the time the establishment is opened or closed for business. A licensee's failure to satisfy this duty shall be deemed to be a public nuisance. Any group of five or more residents who reside within 500 feet of a licensed premises (measured from the nearest exterior walls of each applicable building) may file with the local liquor control commissioner a complaint that a licensee's business is a public nuisance because the licensee has failed to take reasonable steps to correct objectionable conditions occurring on the licensed premises or adjacent property while the establishment is open for business and within one hour or less of the time the establishment is open or closed for business. The local liquor commissioner may notify the licensee to appear before the commissioner, in the presence of the complaining persons, to define, discuss and seek resolution of problems giving rise to the complaint. The commissioner may also order subsequent hearings to review progress toward resolution of the problems. Failure of a licensee to appear in response to a notice, or to attend subsequent meetings as ordered by the commissioner, shall be grounds for the imposition of a fine or for the suspension or revocation of the licensee's license. Hearings under this subsection may also be convened at the request of the district councilmember in which the premises are located based upon his or her reasonable belief that the sale of liquor at the particular location is a public nuisance. Notice of a hearing scheduled under this section shall be given to the district council member of the district in which the licensed premises are located.

(c) For purposes of this section and Section 3-34:

(1) "Adjacent property" means:

(A) any private property that is owned, leased or rented by the licensee and that is located next to the business premises;

(B) any public way located next to the business premises; or

(C) any private property which is owned, leased or rented by the licensee which is located next to such portion of the public way described in above paragraph (B). For the purposes of this section, the term "public way" shall mean any and all streets, alleys, sidewalks, boulevards and rights-of-way.

(2) "Objectionable conditions" include but are not limited to disturbance of the peace, public drunkenness, drinking alcoholic liquor in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise or continual state of disrepair of the exterior of the establishment or the fencing or outdoor furniture for a beer garden or sidewalk café.

(3) "Reasonable steps" includes, but is not limited to, the following:

(A) Calling the Police Department. Timely calls to the police department via "911" that are placed by the licensee, or his or her agents or employees, shall not, in and of themselves, be construed by the local liquor control commissioner as evidence of objectionable conditions that constitute a nuisance.

(B) Directing those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, reasonably believe that their personal safety would be threatened in making that such direction. Directions of this nature may be provided orally or in writing.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture.

(D) Maintaining in good working condition and appearance of the fencing and other outdoor furniture or accessory structures.

(4) When determining what constitutes "reasonable steps," the local liquor control commissioner shall consider site configuration constraints and other factors related to the unique circumstances of the nature of the business as well as the frequency of complaints of objectionable conditions and the manner in which the licensee has sought to address such conditions.

Section 3-34 Public nuisance.

Whenever any of the complaint procedures described Subsection 3-32(b) of this Code have been initiated against a business licensed under this chapter, and in the opinion of the local liquor control commissioner, the complaint procedures initiated pursuant to Subsection 3-32(b) of this Code have not resulted in a successful outcome, the local liquor control commissioner may initiate a license disciplinary hearing to determine whether the sale of liquor by the licensee has caused a public nuisance. Notice of the hearing shall be given to the licensee. Notice of a hearing scheduled under this section shall be given to the district council member in which the licensed premises is located.

The licensee and all interested parties shall have the right to testify. At the conclusion of the hearing, if the liquor commissioner or his/her designee finds by a preponderance of the evidence that the licensee's sale of liquor at the licensed premises is a public nuisance because a licensee has failed to take reasonable steps to correct objectionable conditions on the licensed premises or on adjacent property during business hours and within one hour before and one hour after such business hours, the local liquor control commissioner shall enter an order suspending or revoking the license.

Notwithstanding any other provision of this section, if a licensee has provided satisfactory proof to the local liquor control commissioner that the licensee has devised a plan of operation that will provide reasonable assurance that operation of the business at which liquor is sold will not cause a public nuisance, the local liquor control commissioner may suspend the effectiveness of the suspension or revocation order for a period of six months while that plan is in effect. Such a plan must be submitted within 20 days after a suspension or revocation order is issued under this section, and the local liquor control commissioner shall postpone enforcement of the order pending his or her review of the plan. If no plan is submitted within 20 days after the issuance of a suspension or revocation order under this section, or if the local liquor control commissioner rejects the plan, the suspension or revocation order shall become final. If the local liquor control commissioner approves the plan, he or she shall continue the hearing to a specified date prior to the expiration of the six month period. The plan may include conditions upon the licensee's operation of the premises that are useful or necessary to mitigate a public nuisance, including but not limited to: providing security personnel, restricted hours of operation, providing outdoor lighting, the display of sign, providing trash pickup services, or any other reasonable restrictions on business practices. After a continued hearing at which interested persons shall have the opportunity to be heard, the local liquor control commissioner may: (1) reimpose the suspension or revocation order if the local liquor control commissioner determines that the licensee has failed to adhere to the written plan of operation; (2) order the modification of the plan of operation, including the addition or removal of conditions on the operation of the premises; (3) vacate the suspension or revocation order if the local liquor control commissioner determines that the order is no longer necessary to prevent a public nuisance; and/or (4) continue the hearing for an additional six months, during which the effectiveness of the suspension or revocation order may continue to be suspended pending further evaluation of the licensee's efforts to correct objectionable conditions.

Any order issued under this section, other than a final order imposing a suspension or revocation or vacating such sanction, shall not be considered a final order for purposes of appeal.

A licensee's failure to adhere to a written plan of operation approved by the local liquor control commissioner pursuant to this section or the complaint procedures described in subsection (b) of Section 3-32 of this Code shall constitute a basis to impose a fine and to suspend or revoke the liquor license and other licenses held by such licensee, as appropriate.

Sec. 3-63. General restrictions upon issuance.

No license authorized by this chapter shall be issued to:

(31) Any establishment in which the city council has approved the site application upon the condition of a Plan of Operation for that particular location and the applicant has failed to enter into a Plan of Operation that is approved by the mayor of the deputy liquor control commissioner.

Sec. 3-92. Suitability of site.

(a) The mayor shall not issue any license authorized under this chapter, other than temporary event licenses, unless the site for which the license is to be used has been designated by the city council as being suitable for the retail sale of alcoholic liquors under a specified class of license, as set forth in section 3-52 of this chapter, and such license to be issued conforms to the license classification approved for such site. For purposes of this section, Class B and Class B-1 shall be treated as same class of license, Class E and E-1 shall be treated as same class of license.

(b) The city council and the liquor commission, in determining whether to approve or recommend approval, respectively, of the suitability of a site for the retail sale of alcoholic liquors, shall consider all relevant facts relative to the specified class of license and proposed site, including, but not limited to, the following:

- (1) That the establishment, maintenance, location or operation of the proposed site will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the city.
- (2) That the proposed site and use conforms to all applicable regulations of the city's Zoning Code, Appendix B. For the purposes of this section, a site may be rejected even if it is a legal, non-conforming use under the Zoning Code, if the proposed site could not be developed under current zoning regulations.
- (3) That the proposed site and use, when considered separately or in conjunction with other licensed liquor establishments, will not be injurious

to the use and enjoyment of other property in the vicinity, including residences, schools, hospitals, places of worship and other businesses.

- (4) That the proposed site will not generate more automobile traffic and/or parking demand than the existing streets and off-street parking can reasonably accommodate.
- (5) That the structure on or to be placed on the proposed site complies with applicable building and fire codes of the city.
- (6) That motor fuel will not be pumped directly into motor vehicles as a part of the business to be operated on the proposed site; provided, however, that this prohibition shall not apply in the case of Class C-2, C-3, C-4 and C-5 licenses.
- (7) That the proposed site will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values with the neighborhood in which it is to be located.

(c) Prior to granting site approval, the city council may impose any additional conditions or limitations upon establishment, location, construction, maintenance or operation of the proposed liquor establishment as devised by a plan of operation that will provide reasonable measures to control objectionable conditions as defined in Section 3-32 of this Code from the operation of the proposed establishment. ~~may in its judgment be necessary for protection of the public interest and to secure compliance with the standards specified above.~~ The city council may require such evidence and guarantees as it deems necessary, as proof that the conditions imposed are being and will be fulfilled. Where additional limitations and conditions are imposed by the city council including conditions and limitations in an approved plan of operation, the same must be implemented prior to the sale of alcoholic liquor or prior to the issuance of any subsequent liquor license for that site unless the city council adopts another date. Failure to fulfill the conditions and/or limitations shall be grounds for revocation of the site approval and liquor license granted for such site after a hearing held pursuant to section 3-29. The requirement of plan of operation shall remain with the particular site and any subsequent applicant for liquor license at such site shall be required to enter into a plan of operation that must be approved by the mayor or the deputy liquor control commissioner.

Section 2. This ordinance shall be in full force and effect immediately after its passage and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this _____ day of _____, 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel