

TOWNSHIP OF ENSLEY

NEWAYGO COUNTY, MICHIGAN

ORDINANCE NO. 09-02

Liquor License and Control Ordinance

AN ORDINANCE TO ESTABLISH PROCEDURES AND STANDARDS FOR REVIEW OF APPLICATIONS, RENEWALS, AND REVOCATION OF LICENSES TO SELL BEER, WINE OR SPIRITS WITHIN THE TOWNSHIP; TO SECURE THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE TOWNSHIP BY PROVIDING FOR THE REGULATION OF ALCOHOL AND LIQUOR TRAFFIC WITHIN THE TOWNSHIP THROUGH THE ENFORCEMENT OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998; TO PROVIDE PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; AND TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.

THE TOWNSHIP OF ENSLEY, NEWAYGO COUNTY, MICHIGAN (“Township”) ORDAINS:

Section 1. Title

This Ordinance shall be known as the “Township of Ensley Liquor License and Control Ordinance.”

Section 2. Definitions

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means the Michigan Liquor Control Code of 1998, Act No. 58 of the Public Acts of Michigan of 1998, as amended, MCL 436.1101, et seq.

Alcohol means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

Alcoholic liquor means any spirituous, vinous, malt or fermented liquor, liquid or compound, whether or not medicated, proprietary, patented, and by whatever name

called, containing one-half of one (0.005) percent or more of alcohol by volume which is fit for use for beverage purposes.

Applicant means any person who seeks approval from the Township Board to sell alcoholic liquor.

Beer means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

Bona fide restaurant means a restaurant serving complete dinners and meals selected by the patron from a menu which includes choice of appetizer, salad, entrée (featuring a variety of meat, poultry or fish dishes), vegetable, bread, dessert and beverage and served by waitpersons, but only if: (a) at least fifty percent (50%) of the restaurant's gross receipts inclusive of alcoholic liquors are derived from the sale of food and beverages other than alcoholic liquors, (b) separate restroom facilities are available for men and women, (c) the restaurant's combined kitchen and food storage areas equal at least twenty five percent (25%) of the square footage of all dining areas, and (d) if additional counter space (*i.e.*, a bar) is provided for the dispensing and sale of alcoholic liquors, such space (i) is limited to accommodate not more than a number which is equal to twenty percent (20%) of the restaurant's dining capacity; and (ii) is segregated from the dining area by a suitable partition. The term *bona fide restaurant* does not include a restaurant serving food in baskets or on paper plates, or with disposable utensils, or a restaurant offering food for sale on a "drive up" or "drive through" basis. However, the sale of food on a "take out" basis with disposable utensils shall not preclude a restaurant from being a *bona fide restaurant*, so long as the restaurant meets the other requirements of this definition.

Class A license means a license for a hotel or motel authorizing the retail sale of beer and wine for consumption on the premises.

Class B license means a license for a hotel or motel authorizing the retail sale of beer, wine and spirits for consumption on the premises.

Class C license means a license for any place, other than a hotel or motel, authorizing the retail sale of beer, wine and spirits for consumption on the premises.

Inspectors means any sheriff's deputy and such additional township officials as may be appointed by the Township Board pursuant to Section 12 for the purpose of enforcing the Act and the terms and conditions of this Ordinance within the Township.

Person means any legal entity, including an individual, firm, partnership, association, corporation, business trust, club, or lodge.

Sacramental wine means wine containing not more than twenty-four (24) percent of alcohol by volume which is used for sacramental purposes.

Sale includes exchange, barter, traffic or furnishing or giving away any alcoholic liquor.

Spirits means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcohol content of more than twenty-one (21) percent by volume, except sacramental wine.

Tavern license means a license for any place, other than a hotel or motel, authorizing the retail sale of beer and wine for consumption on the premises.

Wine means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than twenty-one (21) percent of alcohol by volume, including fermented fruit juices other than grapes, and mixed wine drinks.

Section 3. Approval required

No person shall sell alcoholic liquor within the Township for consumption on the premises unless the person shall first secure the approval of the Township Board in accordance with the terms and conditions set forth in this Ordinance.

Section 4. Application times and procedures

- A. Application: Prior to the applicant's application to the state liquor control commission for a license to sell liquor for consumption on the premises, the applicant shall make application for approval by the Township. Two copies of such application for approval shall be filed, one with the Township Clerk for processing as described below, and one with the Township Supervisor for the purpose of monitoring the competing applications that have been filed. Applications shall be made upon forms to be provided by the Township Clerk or, if no such forms shall be available from the Township Clerk, duplicate copies of the application to be made to the state liquor control commission may be used along with a letter directed to the Township requesting approval, and shall in any event contain the information required to be submitted with applications pursuant to Section 5 of this Ordinance.
- B. Application fee: A fee as prescribed by resolution of the Township Board shall accompany all applications for new licenses, renewals and transfers of licenses made pursuant to this Ordinance.
- C. Preliminary review: Upon receipt of a completed application and the applicable license fee, the Township Clerk shall transmit the application to the Township Treasurer who shall endorse thereon a statement as to whether the applicant is in default to the Township in connection with the payment of any taxes or other obligations. Following endorsement by the Township Treasurer, the Township Clerk shall transmit the application to the Township Board.

- D. License hearings: The Township Board shall grant a public hearing on applications submitted in compliance with the requirements of this Ordinance, provided that: (i) such applications are complete, (ii) the application fee required by this Ordinance has been paid, and (iii) all preliminary review required by this Ordinance has been completed. Following such hearing, the Township Board shall adopt a resolution setting forth its findings and determinations and approving or denying the application, or taking other action consistent with this Ordinance. In no event shall an application be approved without satisfactory compliance with the restrictions set forth in Section 6, Paragraph A, 1 through 15, below, and the other provisions of this Ordinance and of all other ordinances.
- E. Reservation of authority: No applicant for a liquor license has the right to the issuance of such license to him, her or it, and the Township Board reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such license.
- F. Term of license: Approval of a license shall be for a period of one (1) year subject to annual renewal by the Township Board upon continued compliance with the regulations of this Ordinance as set forth below. Approval of a license shall be with the understanding that any necessary remodeling or new construction for the use of the license shall be commenced within six (6) months of the action of the Township Board and of the Michigan Liquor Control Commission approving such license, whichever lasts occurs. The Township Board may file a request for revocation of the license with the Michigan Liquor Control Commission if such remodeling or construction is not timely and diligently pursued to completion.
- G. Renewals: On or before the first February 1 after the first full year of licensure, and on or before February 1 of each year thereafter, each licensee licensed under this Ordinance shall prepare and submit an application for renewal of his, her or its license on upon forms to be provided by the Township Clerk, along with the applicable fee. The Township Board shall review the applications for renewal and may either approve the renewal or reject the renewal and file an objection to renewal or a request for revocation with the Michigan Liquor Control Commission.

Section 5. Application contents

- A. Information to be submitted: Applications for a license to sell beer, wine or (if authorized by resolution of the Township Board) spirits for sale within the Township shall be in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof, if a partnership or corporation, verified by oath or affidavit, and shall contain all of the following statements and information:
 - 1. The name, age and address of the applicant in the case of an individual; or, in the case of a co-partnership, the persons entitled to share in the profits thereof; in the case of a corporation, the objects for which organized, the names and addresses of the officers and directors, and, if a majority interest in the stock of such

corporation is owned by one person or his nominee, the name and address of such person.

2. The character of business of the applicant, and in the case of a corporation, the object for which it was formed.
 3. The length of time said applicant has been in business of that character, or, in the case of a corporation, the date when its charter was issued.
 4. The location and description of the premises or place of business which is to be operated under such license.
 5. A statement whether the applicant has made application for a similar or other license on premises other than described in this application, and the disposition of such application.
 6. A statement that the applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this Ordinance or the laws of the State of Michigan.
 7. A statement that the applicant will not violate any of the laws of the State of Michigan or of the United States or any ordinances of the Township in the conduct of its business.
 8. The application shall be accompanied by building plans showing the entire structure and premises and, in particular, the specific areas where the license is to be utilized. The application shall also be accompanied by a site plan showing the entire premises along with all the required elements as per the site plan review provisions of the Township's Zoning Ordinance. The plans shall demonstrate adequate off-street parking, lighting, refuse disposal facilities and where appropriate, adequate plans for screening and noise control.
 9. For premises pending or under construction, evidence of the financial capability of the applicant to satisfactorily complete the development and construction of the premises.
- B. Additional information: The applicant shall also provide such other information as requested by the Township Board in connection with its review of an application. The Township Board may waive any information it deems unnecessary for review of the application.

Section 6. Restrictions on licenses

- A. Restrictions: Except to the extent that the Township Board issues a variance as permitted in Section 6.C., below, no new license, renewal or transfer of an existing license shall be issued or approved to or for:
1. A person whose license, under this Ordinance, has been revoked for cause.
 2. A person who, at the time of application or renewal of any license issued hereunder, would not be eligible for such license upon a first application.
 3. A co-partnership, unless all of the members of such co-partnership shall qualify to obtain a license.
 4. A corporation, if any officer, manager or director thereof, or a stock owner or stockholders owning in the aggregate more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license hereunder for any reason.
 5. A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
 6. A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession or sale of alcoholic liquor or a controlled substance.
 7. A person who does not own the premises for which a license is sought or does not have a lease therefore for the full period for which the license is issued.
 8. A person who has knowingly made any false statement in his or her application, or who has failed to fully complete the application.
 9. Any law enforcing public official covered by MCL 436.1523, as amended.
 10. Any premises where there exists a violation of the applicable building, electrical, mechanical, plumbing, or fire codes, applicable zoning regulations, applicable public health regulations, or any other applicable Township ordinance.
 11. Any premises where it is determined by a majority of the Township Board that the premises do not or will not reasonably soon after commencement of operations, have adequate off-street parking, lighting, refuse disposal facilities, screening, noise, or nuisance control or where a nuisance does or will exist.
 12. Any premises which shares a common hallway or restroom with another premises, unless a license for the sale of liquor shall have been approved for each premises sharing a common hallway or restroom pursuant to this Ordinance.

13. Any premises which the Township Board determines, by majority vote, to be inappropriate considering the desirability of establishing a location in developed, commercial areas, in preference to isolated, undeveloped areas; the attitude of adjacent residents and property owners; traffic safety; accessibility to the site from abutting roads, capability of abutting roads to accommodate the commercial activity; distance from public or private schools for minors; the anticipated or likely effect on adjacent properties; the Township's interest in utilizing licensure to promote the creation of suitable dining establishments for the residents of the Township; and the accessibility of the premises from primary roads or state highways.
14. Any premises where the proposed liquor license use would not fully comply with the applicable zoning regulation or other Township ordinance.
15. In the case of a Class A license, unless the premises contains at least twenty (20) guest rooms and a bona fide restaurant and utilizes the license only in conjunction with the operation of the hotel/motel and bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than one thousand one hundred (1100) square feet, and dining capacity of at least seventy five (75) patrons at a ratio of not less than 15 square feet of dining area for each patron.
16. In the case of a Class B license, unless the premises contains at least twenty five (25) guest rooms and a bona fide restaurant and utilizes the license only in conjunction with the operation of the hotel/motel and bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than one thousand one hundred twenty five (1125) square feet, and dining capacity of at least eighty five (85) patrons at a ratio of not less than 15 square feet of dining area for each patron.
17. In the case of a Tavern license, unless the premises contains a bona fide restaurant and utilizes the license only in conjunction with the operation of the bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than one thousand one hundred (1100) square feet, and dining capacity of at least fifty (50) patrons at a ratio of not less than 15 square feet of dining area for each patron.
18. In the case of a Class C license, unless the premises contains a bona fide restaurant and utilizes the license only in conjunction with the operation of the bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than one thousand one hundred twenty five (1125) square feet, and dining capacity of at least fifty (50) patrons at a ratio of not less than 15 square feet of dining area for each patron.
19. Any person who has not demonstrated sufficient financial assets: (a) to carry on or maintain the licensed business, and (b) if the specific areas where the license is to be utilized are part of a new premises, to complete construction of the new

premises according to the approved site plan and building plans filed with the Township, and (c) to otherwise comply with the requirements of this Ordinance.

B. Continued compliance: Should any licensee or licensed premises at any time cease to meet the requirements of this section following issuance of a license, or should any such licensee have any delinquent outstanding utility bill, real or personal property tax or assessment, the Township Board may suspend or revoke its approval pursuant to Section 8, below, and the continued sale of liquor for consumption on the premises shall constitute a violation of this Ordinance. All licensees shall maintain accurate records of receipts and disbursements in such a manner that receipts from food and beverages other than alcoholic liquors can be readily distinguished from receipts for alcoholic liquors. Such records shall be available for inspection by the Township or its agent from time to time during normal business hours.

C. Variances:

1. In connection with the issuance, transfer or renewal of a license, the Township Board, in its sole discretion, may allow a variance from the strict requirements of this Ordinance where it is shown by the applicant that:
 - (A) It would be impossible or very difficult for the applicant to comply with the strict requirements of this Ordinance (financial hardship alone shall not satisfy this requirement);
 - (B) The variance provides for adequate alternate means of ensuring that the spirit and intent of this Ordinance is maintained;
 - (C) The variance sought is sufficient to protect the health, safety and general welfare of the Township and its residents;
 - (D) The variance sought will not contradict other applicable laws, rules or regulations.
2. In connection with the grant of a variance, the Township Board may impose other requirements to ensure that the spirit and intent of this Ordinance is maintained and that the health, safety and general welfare of the Township and its residents is protected.
3. A variance granted pursuant to this section is not transferable to another licensee or location.

Section 7. Competing applications. Where there are competing applications for an available liquor license, the Township Board shall use criteria including but not limited to compare the relative strength of each application in light of the criteria described in Section 6, and the Township's interest in promoting the creation of suitable dining establishments for the residents of the Township, in determining which application, if any, should be approved.

Section 8. Objections to renewal and request for revocation

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

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

Following the hearing, the Township Board shall submit to the license holder and the Liquor Control Commission, a written statement of its findings and determination.

B. Criteria for nonrenewal or revocation: The Township Board shall recommend nonrenewal or revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exist:

1. Violation of any provision of this Ordinance or of the restrictions on the license.
2. Maintenance of a nuisance (defined as any violation of this Ordinance, or any other Township ordinance, or any state or federal law, rule or regulation, or the maintenance of any common law nuisance) upon the premises.
3. Fraudulent information provided upon original application or application for renewal or transfer of a license.
4. The consumption of spirits on the premises, if it is licensed to sell only beer or wine, or both beer and wine.
5. Dancing or live entertainment open to the public, with or without an admission charge, unless holding a valid dance or dancing entertainment permit.
6. Any disorderly conduct or action which disturbs the peace and good order of the neighborhood.
7. Any incidents of prostitution, solicitation for prostitution, or larceny.
8. Any unlawful gambling activity or the placing or using of any unlawful gambling apparatus or paraphernalia therein.

9. Any unlawful possession, sale or use of any controlled substance.
 10. Use of interior lighting which is insufficient to enable a person with average vision to clearly see all persons within the premises.
 11. Any violation of any other provision of any Township ordinance, or any violation of any law, rule, regulation or lawful order or directive which is designed to protect the public health, safety or welfare.
 12. Any violation of the Act or any rule or regulation promulgated by the Michigan Liquor Control Commission.
 13. Nonpayment of any federal, State of Michigan or local tax or special assessment.
 14. Nonpayment or repeated delinquency payment of utility or other bills outstanding and owing to the Township.
 15. Any failure by the licensee, or the licensee's agent or employee to fully cooperate with any federal, state, county or Township official.
 16. Any failure by the licensee, or the licensee's agent or employee to fully cooperate with any law enforcement officer.
- C. Existing License Renewals: Existing licenses shall be subject to annual renewal by the Township Board.

Section 9. Nudity prohibited

- A. A licensee shall not allow in or upon the licensed premises any person in a state of nudity.
- B. A licensee shall not hire, employ, or procure a person to appear in or upon the licensed premises in a state of nudity.
- C. No person shall appear in or upon premises licensed for the sale of alcoholic liquor in a state of nudity.
- D. A licensee shall not allow in or upon the licensed premises the showing of films, television, slides, or other electronic reproductions which depict scenes wherein any person appears in a state of nudity. This prohibition does not apply to any public broadcast television transmission from a federally licensed station.
- E. For the purposes of this section, "nudity" means a state of undress so as to expose to the view of another person the following body parts without any covering or with less than a fully opaque covering:
 1. The whole or part of the pubic region;

2. The whole or part of the anus;
3. The whole or part of the buttocks;
4. The whole or part of the genitals; or
5. Any portion of the female breast below the top of the areola.

A woman's breast feeding of a baby does not constitute nudity irrespective of the foregoing.

- F. For purposes of this section, "licensee" means a person or entity having a license to sell alcoholic liquor and the owners, officers, agents, and employees of such person or entity.

Section 10. Issuance or renewal not required

Nothing in this Ordinance shall be construed to require the Township or the Township Board to renew a license or to issue or approve the issuance of a license that may be available due to the population. Whether a license should be issued or renewed shall be determined in the sole discretion of the Township Board.

Section 11. Enforcement

For the purpose of the enforcement this Ordinance and of the Act within the Township, the Township Board may, but is not obligated to, appoint one or more inspectors with full power, authority, and duty to see that the provisions of the Act and the rules and regulations of the Michigan Liquor Control Commission adopted pursuant to the Act are enforced within the Township. Inspectors appointed by the Township Board shall be entitled to such compensation as the Township Board may determine, and shall be reasonably available to investigate complaints received under this Ordinance and to enforce the provisions hereof.

Section 12. Inspection

Inspectors, if appointed, shall periodically inspect all liquor establishments in the Township licensed under the Act and report the results of all inspections promptly to the Township Board. Inspectors shall further promptly investigate all complaints received concerning violations of the Act or improper operations and practices concerning alcoholic liquor traffic with the Township and report the same to the Township Board and, where appropriate under the Act, to the Michigan Liquor Control Commission for appropriate proceedings against the violator. Inspectors may also issue and/or obtain, as applicable, misdemeanor complaints and warrants for violations of this Ordinance.

Inspectors shall have the right to inspect any place in the Township where alcoholic liquor is manufactured, sold, offered for sale, kept for sale, possessed or transported, or where the Inspectors suspects the same is being thus manufactured, sold, offered for sale, kept fore sale, possessed or transported. Whenever possible, all inspection reports shall be made on liquor law

enforcement forms furnished by the Michigan Liquor Control Commission or on similar forms approved by the Township Board for such purposes.

Section 13. Appropriations

For the purpose of carrying out the provisions of this Ordinance and financing the inspections herein provided for, the Township Board may appropriate reasonable monies for such use, and is hereby authorized and directed to annually appropriate such an amount as will, in its discretion, be sufficient to maintain and operate such inspections for the ensuing fiscal year of the Township.

Section 14. Penalties

Any person who shall violate any of the provisions of the Act or any rule or regulation of the Michigan Liquor Control Commission promulgated thereunder, or who shall violate any of the provisions of this Ordinance, and any person who shall prohibit or interfere with the authorized inspectors appointed hereunder shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 90 days or by a fine of not more than \$500 or both, in the discretion of the court. Each day that a violation continues to exist shall constitute a separate offense.

It is the intent of the Township Board that the court, in imposing punishment under the provisions of this Ordinance, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this Ordinance or any of the rules or regulations of the Michigan Liquor Control Commission promulgated under the Act.

Section 15. Severability

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

Section 16. Effective date

This Ordinance shall become effective 30 days after this Ordinance (or a summary thereof) is published in the newspaper as provided by law. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The foregoing Ordinance was offered for adoption by Board Member Philip Starr, and was supported by Board Member John VanderMeulen, the vote being as follows:

YEAS: Faye Folkema, John VanderMeulen, Cynthia Harwood, and Philip Starr

NAYS: Brenda Bird

ABSTAIN/ABSENT: None.

ORDINANCE DECLARED ADOPTED.

Cynthia Harwood, Township Clerk

CERTIFICATION

I hereby certify the foregoing to be a true copy of an Ordinance adopted by the Township of Ensley Township Board at a regular meeting held on February 3, 2009, at the Ensley Township Offices pursuant to the required statutory procedures.

DATED: February 3, 2009

Respectfully submitted by,

Cynthia Harwood, Township Clerk

05852 (001) 436869.1