



cityofnovi.org

## CITY of NOVI CITY COUNCIL

Agenda Item 2  
May 6, 2013

**SUBJECT:** Approval of Zoning Ordinance Text Amendment 18.266 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions", to add Section 2525, "Service of Alcoholic Beverages; Special Use Approval Required", and to amend Article 16, TC and TC-1 Town Center Districts at Sections 1601 and 1602, to require Special Use Approval for the sale of alcohol for consumption on premises, along with associated fee resolution.

### FIRST READING

**SUBMITTING DEPARTMENT:** Department of Community Development, Planning Division *Bach*

**CITY MANAGER APPROVAL:** *UM*

### BACKGROUND INFORMATION:

At the March 11<sup>th</sup> City Council meeting, the City Council referred the matter of zoning ordinance amendments for liquor license approval procedures to the Planning Commission for consideration, public hearing and recommendation back to the City Council. The Planning Commission first reviewed the matter at the April 3<sup>rd</sup> meeting, and again on April 24<sup>th</sup> for a public hearing, review and recommendation. The attached packet provides the background information that was presented for review by the Planning Commission.

The attached recommended zoning ordinance language provides for an administrative special land use and public hearing process by a staff team represented by members of the Community Development, Public Services and Assessing Departments for any new liquor license application, or for those applications that request an amendment to a site plan. The results of the special land use consideration and the public hearing process will be forwarded to the City Council for consideration to approve, deny, or approve with special conditions. Any existing use that already has a license would be "grandfathered", until there is a new application or a site plan amendment. This administrative public hearing process is contained in a new Section 2525 of the zoning ordinance.

One additional amendment is proposed for the TC/TC-1 Town Center District. The TC/TC-1 District already lists brew pubs as a permitted use. This use will be moved into the special land use category, consistent with the other changes provided in the ordinance.

Fees for the administrative special land use review are recommended to be \$500 (regardless of the size of the site), which is consistent with other small-scale special land use review fees in Novi. The fee will help the city cover the costs of advertising the public hearing in the local newspaper and providing mailings to property owners and residents within 300 feet of the request. The fees would also cover staff time in preparation for the hearing, holding the hearing and preparing the recommendation to the City Council.

Staff surveyed other communities for fees charged in the review for special land use consideration of liquor license approval and found the following range of fees:

- City of Birmingham \$2650 + postage + \$200 annual review
- City of Livonia \$600 minimum
- Royal Oak \$1500
- Grand Rapids \$1650

Staff believes the recommended \$500 fee is reasonable and competitive with our peer communities.

The City Council is asked to approve the First Reading of the ordinance, along with the associated fee resolution for the changes to the ordinance and review procedures.

**RECOMMENDED ACTION:** Approval of Zoning Ordinance Text Amendment 18.266 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions", to add Section 2525, "Service of Alcoholic Beverages; Special Use Approval Required", and to amend Article 16, TC and TC-1 Town Center Districts at Sections 1601 and 1602, to require Special Use Approval for the sale of alcohol for consumption on premises, along with associated fee resolution. **FIRST READING**

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

**SUGGESTED FEE RESOLUTION**

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

**FEE RESOLUTION FOR ADMINISTRATIVE SPECIAL LAND USE PROCEDURES**

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_ o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers \_\_\_\_\_

ABSENT: Councilmembers \_\_\_\_\_

The following preamble and Resolution were offered by Councilmember \_\_\_\_\_ and supported by Councilmember \_\_\_\_\_.

**WHEREAS**, the City of Novi City Council has established Special Land Use Review procedures for any land use that requires a license from the Michigan Liquor Control Commission (LCC) for the consumption of beer, wine, or alcoholic beverage on-premises and any expansion or other changes in such a land use; and,

**WHEREAS**, City Administration will provide notification of Special Land Use Review Public Hearings as required by ordinance and the established fee will defray the cost to the City for the publication and mailing of such notices; and,

**WHEREAS** the fee for acts and services performed by the City in carrying out its duties under state statutes and local ordinances are set by resolution of the City Council of the City of Novi; and

**WHEREAS**, the City Council has reviewed the following fee and determined that the amount provided therein is reasonable for the designated purpose.

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Novi shall, and hereby does adopt the following fee effective as of June 1, 2013:

Fee for Liquor License Special Land Use Review and Public Hearing: \$500.

**AYES:**

**NAYS:**

RESOLUTION DECLARED ADOPTED.

\_\_\_\_\_  
Maryanne Cornelius, City Clerk

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

\_\_\_\_\_  
Maryanne Cornelius, City Clerk  
City of Novi

**DRAFT ORDINANCE LANGUAGE**

**STATE OF MICHIGAN**  
**COUNTY OF OAKLAND**  
**CITY OF NOVI**  
**ORDINANCE NO. 18.266**

**AN ORDINANCE TO AMEND ORDINANCE NO. 97-18 AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 25, "GENERAL PROVISIONS," TO ADD SECTION 2525, "SERVICE OF ALCOHOLIC BEVERAGES; SPECIAL USE APPROVAL REQUIRED", TO REQUIRE SPECIAL USE APPROVAL FOR THE SALE OF ALCOHOL FOR CONSUMPTION ON PREMISES.**

**THE CITY OF NOVI ORDAINS:**

**Part I. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 25 – General Provisions, is amended to add a new Section 2525, "Service of Alcoholic Beverages; Special Use Approval Required," to read as follows:**

Section 2525. Service of alcoholic beverages; special use approval required

- a. *Purpose.* Alcohol-related uses can have a detrimental effect on a geographic area where there is a concentration of such uses in proximity to each other. Neighborhood character, use type and type of activities, hours of operation, public safety resources, and the secondary effects resulting from such uses must be taken into consideration during the alcohol licensing process.
- b. *Applicability.* Any land use that requires a license from the Michigan Liquor Control Commission (LCC) for the sale or consumption of beer, wine, or alcoholic beverages on-premises and any expansion or other changes in such a land use, shall require a special use permit in accordance with this Section.
- c. *Application Requirements.* Each application shall be accompanied by a detailed site plan and such information as is necessary to demonstrate that the proposed use or change in use meets the review standards contained herein. The following shall be submitted as part of a special use application:
  - (1) *License Application.* A copy of the license application submitted to the LCC.
  - (2) *Site Plan.* A site plan illustrating the proposed location where the alcohol sales would occur, as well as all other locations where on-premises sales presently exist within a one thousand (1,000) foot radius of the closest lot lines of the subject site.

d. *Standards for review.* An applicant shall establish that:

- (1) The proposed establishment will promote the City's economic development goals and objectives, and will be consistent with the City's master plan and zoning ordinance;
- (2) Given the character, location, development trends and other aspects of the area in which the proposed use or change in use is requested, it is demonstrated that the use will provide a service, product, or function that is not presently available within the City or that would be unique to the City or to an identifiable area within the City and that the addition of the use or proposed change in use will be an asset to the area.
- (3) The use or change in use as constructed and operated by the applicant is compatible with the area in which it will be located, and will not have any appreciable negative secondary effects on the area, such as:
  - a. Vehicular and pedestrian traffic, particularly during late night or early morning hours that might disturb area residents.
  - b. Noise, odors, or lights that emanate beyond the site's boundaries onto property in the area on which there are residential dwellings.
  - c. Excessive numbers of persons gathering outside the establishment.
  - d. Peak hours of use that add to congestion or other negative effects in the neighborhood.
  - e. Fighting, brawling, outside urination, or other behavior that can accompany intoxication

e. *Approval process.*

A public hearing as required under Section 3006 shall be held jointly by the Director of Public Services, the Director of Community Development, and the Assessor, or their designees, who shall make a recommendation to the City Council whether the proposed special use meets the criteria of this Section and should be approved. The recommendation may include conditions on any recommended approval. The City Council shall determine whether to deny, approve, or approve with conditions the special use.

f. *Existing uses.* Existing and new establishments with alcoholic beverage sales for on-premises consumption shall obtain special land use approval upon application for a site plan review as required by this ordinance.

**Part II. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 16, "TC and TC-1 Town Center Districts," Section 1601, Principal Uses Permitted, is hereby amended to delete subsections 12 and 13 and to renumber Sections 14-16, and to read as follows:**



Sec. 1601. - Principal Uses Permitted.

In the TC and TC-1 Town Center Districts, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided for in this Ordinance:

1. - 11. [Unchanged]

~~12. Microbreweries, subject to the following conditions:~~

- ~~a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.~~
- ~~b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.~~
- ~~c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.~~
- ~~d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.~~
- ~~e. No more than sixty five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.~~
- ~~f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.~~
- ~~g. No outside beer tent shall be permitted on any off street parking lot or off street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.~~
- ~~h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.~~

~~13. Brewpubs, subject to the following conditions:~~

- ~~a. Brewery production shall not exceed two thousand (2,000) barrels per year.~~
- ~~b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in~~

~~tractor trailers shall be permitted longer than twenty four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.~~

- ~~e. There shall be compliance with standards at Section 2519, Performance Standards.~~
- ~~d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.~~
- ~~e. No more than fifty (50) percent of the total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.~~
- ~~f. No outside beer tent shall be permitted on any off street parking lot or off street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.~~

1412. Instructional Centers, such as schools for dance, music, language, arts, or general education; tutoring centers; private schools that offer courses in business, real estate, accounting, information systems, and similar instructional uses.

1513. Other uses similar to the above uses subject to conditions noted.

1614. Accessory structures and uses customarily incidental to the above permitted uses.

**Part III. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 16, "TC and TC-1 Town Center Districts," Section 1602, Principal Uses Permitted, is hereby amended to add new Sections 5 and 6, to read as follows:**

Sec. 1601. - Principal Uses Permitted Subject to Special Conditions.

1. - 4. [Unchanged]

5. Microbreweries, subject to the following conditions:

- a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.
- b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.

- c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.
  - d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.
  - e. No more than sixty-five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
  - f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.
  - g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.
  - h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.
6. Brewpubs, subject to the following conditions:
- a. Brewery production shall not exceed two thousand (2,000) barrels per year.
  - b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
  - c. There shall be compliance with standards at Section 2519, Performance Standards.
  - d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.
  - e. No more than fifty (50) percent of the total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
  - f. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be

permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.

**PART IV.**

**Severability.** Should any 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.

**PART V.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**PART VI.**

**Repealer.** All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**PART VII.**

**Effective Date: Publication.** Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
ROBERT J. GATT, MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**EXCERPT FROM  
DRAFT  
PLANNING COMMISSION MINUTES**

*Excerpt from Draft*

**PLANNING COMMISSION MINUTES**

CITY OF NOVI

Regular Meeting

**April 24, 2013 7:00 PM**

Council Chambers | Novi Civic Center | 45175 W. Ten Mile  
(248) 347-0475

**ROLL CALL**

**Present:** Member Greco, Member Lynch, Chair Pehrson, Member Prince, Member Zuchlewski

**Absent:** Member Gutman, Member Anthony

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Gary Dovre, City Attorney; Kristen Kapelanski, Planner; Adam Wayne, Engineer; David Beschke, Landscape Architect.

**1. ZONING ORDINANCE TEXT AMENDMENT 18.266 LIQUOR LICENSE REQUIREMENTS**

An ordinance to amend ordinance no. 97-18 as amended, the City of Novi Zoning Ordinance, Article 25, "General Provisions," to add Section 2525, "Service of alcoholic beverages; special use approval required," to require special use approval for the sale of alcohol for consumption on premises.

Deputy Director McBeth said currently, the City regulates licensed establishments like bars, restaurants selling beer, wine, and liquor for on-premises consumption mostly through Chapter 3 of the City Code. There is a licensing process, with full reviews by the Public Safety and Community Development Departments and the Clerk's office. The City Council reviews the applications and either approves or denies the license. This process is followed whether the license being applied for is a "quota" or new license. Since 1930s, the state's Liquor Code was read to require local legislative approval for either a quota license or a transfer license. If the local body did not approve the license, the state's Liquor Control Commission, which actually issues liquor license, would not issue it. But last year, the Liquor Control Commission issued a bulletin that said, essentially, it had re-read the Code and no longer believes that it actually requires a local approval for a transfer license. Most groups representing local governments believe that the Commission is wrong in its interpretation of the Code. We're still awaiting an opinion from the Attorney General's office. In the meantime, we are faced with the possibility of the Liquor Control Commission granting a transfer license over the objections of the City – a new situation that must be dealt with. Separately from what's being considered here tonight, the City Council may be looking at changes to Chapter 3 of the City Code to try and beef up its current requirements. But there is the chance that some future applicant who is denied a transfer might argue that the state license was all that was needed, even if it was issued over the City's objection.

So, the City Council, at the March 11<sup>th</sup> meeting, asked the Planning Commission to study the idea of another layer of review authority – the special land use requirement. Right now, in the City of Novi the only zoning requirement for a licensed establishment is that a bar or restaurant be permitted in the zoning district. In other communities such as Birmingham, Royal Oak, Livonia, and Grand Rapids, license users are also required to get a special land use approval. The Council asked the Administration to prepare possible changes to the ordinance that would add a special land use requirement for licensed establishments. Two versions were presented: Version 1 used all of the provisions of Section 2516.2.c – the full review criteria for all special land uses in the City, plus additional standards related to economic development, other uses in the area, etc. It is the more "regulatory" of the two, because it requires the applicant to address more criteria. Version 2 is scaled back. It does not require all of the same findings as a full special land use under Section 2516.2.c, but would instead use the standards found in proposed new Section 2525.

Ms. McBeth continued that there are a few important points in consideration of this ordinance amendment. As drafted, the new special land use provisions of Section 2525 would not require a full review and public hearing before the Planning Commission. Section 2525 authorizes an administrative public hearing process, with the results and recommendation from that public hearing being forwarded to the City Council for consideration to deny, approve, or approve with special conditions the request for special land use. Two alternatives are presented in the draft ordinance involving staff members that would be involved in conducting the public hearing – Staff is now recommending that a mix of representatives from Community Development, Public Services and Assessor be the team that would administer the public hearing and provide the recommendation to the City Council. Any existing use that already has a license would be "grandfathered", until there is a new application or a site plan amendment. The TC/TC-1 Town Center District already lists brew pubs as a permitted use. This use will be moved into the special land use category, consistent with the other changes provided in the ordinance. To clarify: a special land use requirement for licensed establishment would not replace the Chapter 3 process; it would only supplement it. So tonight, the Planning Commission is asked to hold a public hearing on this ordinance amendment and make a recommendation to the City Council. Again, our recommendation was that a team of staff people as indicated in the draft ordinance be the administrative body that holds the public hearing.

Chair Pehrson opened the public hearing.

No one in the audience wished to speak and there was no correspondence. Chair Pehrson closed the public hearing.

Member Lynch said at the end of the day the City Council still retains the right to approve a liquor license, right?

Ms. McBeth said that's the intent. The intent is for the city to continue in the process that has been in place. The idea is to bolster the standards in case there's a question about somebody getting a license through the state without getting a City Council approval.

Member Lynch said instead of the Planning Commission holding a public hearing, all this really does is we have an administrative public hearing. How does that work?

Ms. McBeth said we have an administrative public hearing for other items as well, such as

for temporary special land use. If somebody needs to have a temporary use, it's not going to be a permanent change to the landscape, they can request a temporary special land use public hearing. That's usually held by the Building Official or the Community Development Director. Staff notifies property owners within a certain range of that location. The public is invited to come in when the public hearing is held and then a decision is made.

Member Lynch said all I'm getting to is I want to make sure the public still has an opportunity to voice their pleasure or displeasure because we're going to eliminate the Planning Commission portion of this.

Ms. McBeth said currently there is not a Planning Commission portion to the liquor license approvals. Currently the City Code calls for a staff review process that makes a recommendation to the City Council.

Member Lynch said when I read through this it just says that the version that we're looking at would not require a full review and a public hearing from the Planning Commission. I don't have a problem with that though, because it really resides with City Council and the public. I don't have a problem taking the Planning Commission out of the loop and I think that's what you're doing.

Member Greco said what we're really looking for then is support for version two.

Ms. McBeth said that's staff's recommendation is version two that provided a mix of staff numbers including Community Development, the Assessor and somebody from Public Works being on the administrative team.

Member Greco said when I read the issue and heard in the presentation, obviously we see that the state Liquor Control Commission has attempted to take away a right that the City believes that it has. If you look at this process that's setup, it looks like it was some action or something to get around that. Because first, pursuant to Chapter 3 we have in place, licensees have to come for approval. Now the fear is that licensees either ignore it or don't come in for review. With the Special Land Use requirement, it makes sure the applicants come before the City Council anyway. So in looking at it that way, I think, well wait a second, let's wait for the Attorney General's opinion to come down - let's see how this plays out. But I think ultimately the Special Land Use requirement is not out of left field with respect to these types of things. This is a permitted way for the City to deal with licensees like this. It's really changing our scheme, but not necessarily getting around something. It's getting around what we have setup and used traditionally, but is not out of left field with respect to what other cities are doing. So with that in mind, I have no problem with what is being created here.

Chair Pehrson said relative to the idea for the possible alternative on page 2, Approval Process Section E, talks about an alternative which is the Director of Public Works, Community Development and the Assessor.

Ms. McBeth said that's the one that staff is recommending at this point.

Chair Pehrson said relative to the next section for the Town Center where we describe what a brewery is and isn't. Realizing that that's specific to the Town Center, how close is the language in any other parts of the ordinances that match this or come close to this relative to creating the language of a brewery?



Ms. McBeth said micro-brewery is already included for the TC District but it's listed as a Permitted Use. The suggestion is to move that use over to the Special Land Use section.

Chair Pehrson said so this whole thing would then transfer over to Special Land Use?

Ms. McBeth said yes. We're not proposing to change the language at all.

Chair Pehrson said agrees that's where it needs to be. Then we go back just to the City Council minutes on page four, maybe you could help me understand what the City Manager was talking about how the Special Land Use would require a public hearing and deliberation by the Planning Commission for recommendation back to City Council. So that seems contradictory to what we're saying now that the staff would do relative to an administrative role.

Ms. McBeth said the Planning Commission's public hearing process for liquor licenses is not the suggestion at this point. This ordinance amendment needs to come to the Planning Commission for the public hearing and recommendation back to City Council.

Chair Pehrson clarified, the transfer process will follow the same process as far as background checks?

Ms. McBeth said yes, that part is covered in the City Code. The City Council may take a look at that section to identify if it needs to be adjusted as well.

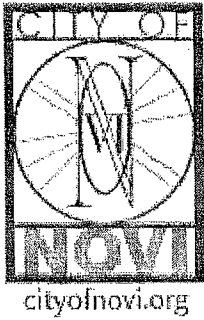
City Attorney, Gary Dovre said the proposed ordinance with the public hearing alternative that involves the Director of Public Services, Community Development, and the Assessor is recommended.

Moved by Member Zuchlewski and seconded by Member Lynch:

**ROLL CALL VOTE ON TEXT AMENDMENT 18.266 APPROVAL MOTION MADE BY MEMBER ZUCHEWSKI AND SECONDED BY MEMBER LYNCH:**

**Motion to recommend approval of the version of the Text Amendment 18.266 requiring an administrative Special Land Use hearing to be held by staff.**

**OFF-WEEK PACKET**



## MEMORANDUM

**TO:** CLAY J. PEARSON, CITY MANAGER  
**FROM:** BARBARA MCBETH, AICP, COMMUNITY DEVELOPMENT DEPUTY DIRECTOR  
**SUBJECT:** TEXT AMENDMENT 18.266 – LIQUOR LICENSE REQUIREMENTS  
**DATE:** APRIL 25, 2013

*To: Mayor & Council,  
Follow-up on Planning  
Commission action  
pertaining to  
Liquor license  
Requirements.  
Will appear on  
a future  
agenda.  
Vicki*

At the March 11<sup>th</sup> City Council meeting, the City Council referred the matter of zoning ordinance amendments for Liquor License approval procedures to the Planning Commission for consideration, public hearing and recommendation back to the City Council. The Planning Commission first reviewed the matter at the April 3<sup>rd</sup> meeting, and again last evening for a public hearing, review and recommendation.

The attached packet provides the background information and the draft zoning ordinance language that was presented for review by the Planning Commission.

Previously, the Council asked the Administration to prepare possible changes to the ordinance that would add a special land use requirement for licensed establishments. Two versions were presented to the City Council:

- Version 1 used all of the provisions of Section 2516.2.c – the full review criteria for all special land uses in the City, plus additional standards related to economic development, other uses in the area, etc. It is the more "regulatory" of the two, because it requires the applicant to address more criteria.
- Version 2 is scaled back: it does not require all of the same findings as a "full" special land use under Section 2516.2.c, but would instead use the standards found in proposed new Section 2525.

*★* // Version 2 was recommended to the Planning Commission for consideration, based on discussion at the March 11<sup>th</sup> City Council meeting.

Three points were highlighted in consideration of this ordinance amendment:

1. As drafted, the new special land use provisions of Section 2525 would not require a full review and public hearing before the Planning Commission. Section 2525 authorizes an administrative public hearing process, with the results and recommendation from that public hearing being forwarded to the City Council for consideration to deny, approve, or approve with special conditions the request for special land use.
2. Any existing use that already has a license would be "grandfathered", until there is a new application or a site plan amendment.

3. The TC/TC-1 Town Center District already lists brew pubs as a permitted use. This use will be moved into the special land use category, consistent with the other changes provided in the ordinance.

Additionally, the Planning Commission was informed that the City Council will separately be looking at possible changes to Chapter 3 of the City Code to try and beef up its current requirements that require a business seeking to transfer in a liquor license still needs to secure a City Council approval (and a certificate of occupancy) under that Chapter. The City believes it still has that authority and so far it hasn't been challenged.

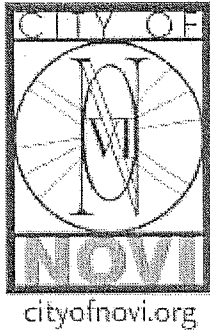
To clarify that a special land use requirement for licensed establishment would not replace the Chapter 3 process; it would only supplement it. //

The Planning Commission held the public hearing, discussed the proposed ordinance amendments and recommended favorable consideration of the draft ordinance as presented. This recommendation included support of the suggestion that the administrative staff team that would be involved in the new administrative public hearing procedure would include members from the Public Services Department, Community Development Department, and the City Assessor. ★

First Reading of the zoning ordinance amendments will be placed on an upcoming City Council agenda for review and further consideration, along with the minutes from the Planning Commission's discussion last evening. //

- C Victor Cardenas, Assistant City Manager
- Thomas R. Schultz, City Attorney
- Charles Boulard, Director of Community Development
- Rob Hayes, P.E., Director of Public Services / City Engineer
- D. Glenn Lemmon, City Assessor

# MEMORANDUM



**TO:** MEMBERS OF THE PLANNING COMMISSION  
**FROM:** BARBARA MCBETH, AICP, COMMUNITY DEVELOPMENT  
DEPUTY DIRECTOR *Write for Barb MCBETH*  
**SUBJECT:** TEXT AMENDMENT 18.266 – LIQUOR LICENSE REQUIREMENTS  
**DATE:** APRIL 17, 2013

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At the March 11<sup>th</sup> City Council meeting, the City Council referred a matter to the Planning Commission for consideration, public hearing and recommendation back to the City Council related to possible Zoning Ordinance amendments for Liquor License approval procedures for new or altered licensed establishments. Attached is some background information that was provided for a recent City Council meeting on March 11<sup>th</sup>.

Right now, the City regulates licensed establishments (i.e., bars, restaurants selling beer, wine, and liquor for on premises consumption) mostly through Chapter 3 of the City Code. There is a licensing process, with full reviews by the Public Safety and Community Development Departments and the Clerk's office. The City Council reviews the applications for a Class C license (the most typical, full on-premises license) and either approves or denies the license. This process is followed whether the license being applied for is a "quota" or new license--that is, a license that is allocated by law to the City under the state Liquor Control Code and that the City is allowed under the Code to grant (each community gets a certain number based on population) at no cost to an applicant--or a transferred license. A transferred license is one that an applicant secures from a third party who controls the license. Typically there is a payment made for the value of the license (which can be in the tens of thousands of dollars).

Since the end of Prohibition, in the 1930s, the Liquor Code was read to require local legislative approval for either a quota license or a transfer license. If the local body did not approve the license, the state Liquor Control Commission, which actually issues liquor license, would not issue it. Last year, as part of an administrative shuffle and effort to "streamline" the licensing process to help applicants, the commission issued a bulletin that said, essentially, it had re-read the Code and no longer believes that it actually requires a local approval of a transfer license. This is important to a City like Novi because it has no current quota license to give, so new bars, restaurants that come into the City will all be by way of transfer licenses.

Most groups representing local governments believe that the Commission is wrong in its interpretation of the Code, and Farmington Hills and Novi's City Council both went so far as to ask their state representatives to ask the Attorney General to look into the matter. No opinion has yet to be issued, however.

In the meantime, we are faced with the possibility of the Commission granting a transfer license over the objections of the City--a new situation that must be dealt with.

The City Council will be looking at changes to Chapter 3 of the City Code to try and beef up its current requirements that require a business seeking to transfer in a liquor license still needs to secure a City Council approval (and a certificate of occupancy) under that Chapter. The City believes it still has that authority and so far it hasn't been challenged.

But there is the chance that some future applicant who is denied a transfer might argue that the state license issued over the City's objection is all that was needed.

So, the City Council is asking the Planning Commission to study the idea of another layer of review authority--the special land use requirement. Right now, the only zoning requirement for a licensed establishment is that a bar or restaurant be permitted in the zoning district. In other communities (Birmingham, Royal Oak, Livonia, Grand Rapids) license uses are also required to get a special land use. A City's zoning authority is separate from its general "police powers" authority. The zoning ordinance is adopted under a different statute and contains different authority. In reviewing a proposed license establishment as a land use, the City would be acting under different authority than the Liquor Control Commission, and an applicant who got a liquor license from the Liquor Commission over the City's objection would, in the City's opinion, still need to qualify to operate under the zoning ordinance.

To clarify that a special land use requirement for licensed establishment would not replace the Chapter 3 process; it would only supplement it.

The Council asked the Administration to prepare possible changes to the ordinance that would add a special land use requirement for licensed establishments. Two versions were presented to the City Council:

- Version 1 used all of the provisions of Section 2516.2.c – the full review criteria for all special land uses in the City, plus additional standards related to economic development, other uses in the area, etc. It is the more "regulatory" of the two, because it requires the applicant to address more criteria.
- Version 2 is scaled back: it does not require all of the same findings as a "full" special land use under Section 2516.2.c, but would instead use the standards found in proposed new Section 2525.

Version 2 is being presented to the Planning Commission for consideration, based on discussion at the City Council meeting (please see attached City Council minutes).

There are a few important points in consideration of this ordinance amendment:

1. As drafted, the new special land use provisions of Section 2525 would not require a full review and public hearing before the Planning Commission. Section 2525 authorizes an administrative public hearing process, with the results and

recommendation from that public hearing being forwarded to the City Council for consideration to deny, approve, or approve with special conditions the request for special land use. Two alternatives are presented in the draft ordinance involving staff members that would be involved in conducting the public hearing – a mix of representatives from Community Development, Public Services and Assessor. Prior to the Planning Commission's public hearing on the proposed ordinance amendment, Planning staff will provide additional feedback on the staff recommended to conduct the public hearing.

2. Any existing use that already has a license would be "grandfathered", until there is a new application or a site plan amendment.
3. The TC/TC-1 Town Center District already lists brew pubs as a permitted use. This use will be moved into the special land use category, consistent with the other changes provided in the ordinance.

The Planning Commission set the public hearing date for April 24<sup>th</sup> for Planning Commission's opportunity to fully review the draft ordinance language, hold the public hearing, and forward a recommendation back to the City Council on the proposed zoning ordinance amendments.

If any Commissioner has any questions related to this request, please feel free to contact me.

PROPOSED ORDINANCE AMENDMENTS – STRIKE VERSION



STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 18.266

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18 AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 25, "GENERAL PROVISIONS," TO ADD SECTION 2525, "SERVICE OF ALCOHOLIC BEVERAGES; SPECIAL USE APPROVAL REQUIRED", TO REQUIRE SPECIAL USE APPROVAL FOR THE SALE OF ALCOHOL FOR CONSUMPTION ON PREMISES.

THE CITY OF NOVI ORDAINS:

**Part I. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 25 – General Provisions, is amended to add a new Section 2525, "Service of Alcoholic Beverages; Special Use Approval Required," to read as follows:**

Section 2525. Service of alcoholic beverages; special use approval required

- a. *Purpose.* Alcohol-related uses can have a detrimental effect on a geographic area where there is a concentration of such uses in proximity to each other. Neighborhood character, use type and type of activities, hours of operation, public safety resources, and the secondary effects resulting from such uses must be taken into consideration during the alcohol licensing process.
- b. *Applicability.* Any land use that requires a license from the Michigan Liquor Control Commission (LCC) for the sale or consumption of beer, wine, or alcoholic beverages on-premises and any expansion or other changes in such a land use, shall require a special use permit in accordance with this Section.
- c. *Application Requirements.* Each application shall be accompanied by a detailed site plan and such information as is necessary to demonstrate that the proposed use or change in use meets the review standards contained herein. The following shall be submitted as part of a special use application:
  - (1) *License Application.* A copy of the license application submitted to the LCC.
  - (2) *Site Plan.* A site plan illustrating the proposed location where the alcohol sales would occur, as well as all other locations where on-premises sales presently exist within a one thousand (1,000) foot radius of the closest lot lines of the subject site.

d. *Standards for review.* An applicant shall establish that:

- (1) The proposed establishment will promote the City's economic development goals and objectives, and will be consistent with the City's master plan and zoning ordinance;
- (2) Given the character, location, development trends and other aspects of the area in which the proposed use or change in use is requested, it is demonstrated that the use will provide a service, product, or function that is not presently available within the City or that would be unique to the City or to an identifiable area within the City and that the addition of the use or proposed change in use will be an asset to the area.
- (3) The use or change in use as constructed and operated by the applicant is compatible with the area in which it will be located, and will not have any appreciable negative secondary effects on the area, such as:
  - a. Vehicular and pedestrian traffic, particularly during late night or early morning hours that might disturb area residents.
  - b. Noise, odors, or lights that emanate beyond the site's boundaries onto property in the area on which there are residential dwellings.
  - c. Excessive numbers of persons gathering outside the establishment.
  - d. Peak hours of use that add to congestion or other negative effects in the neighborhood.
  - e. Fighting, brawling, outside urination, or other behavior that can accompany intoxication

e. *Approval process.*

The Director of Community Development, or designee, shall hold a public hearing as required under Section 3006 and shall make a recommendation to the City Council whether the proposed special use meets the criteria of this Section and should be approved. As part of its recommendation, the Director may propose conditions on any recommended approval. The City Council shall determine whether to deny, approve, or approve with conditions the special use.

**[Possible alternative?]** A public hearing as required under Section 3006 shall be held jointly by the Director of Public Services, the Director of Community Development, and the Assessor, or their designees, who shall make a recommendation to the City Council whether the proposed special use meets the criteria of this Section and should be approved. The recommendation may include conditions on any recommended approval. The City Council shall determine whether to deny, approve, or approve with conditions the special use.

- f. *Existing uses.* Existing and new establishments with alcoholic beverage sales for on-premises consumption shall obtain special land use approval upon application for a site plan review as required by this ordinance.

**Part II. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 16, "TC and TC-1 Town Center Districts," Section 1601, Principal Uses Permitted, is hereby amended to delete subsections 12 and 13 and to renumber Sections 14-16, and to read as follows:**

Sec. 1601. - Principal Uses Permitted.

In the TC and TC-1 Town Center Districts, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided for in this Ordinance:

1. - 11. [Unchanged]

~~12. Microbreweries, subject to the following conditions:~~

- ~~a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.~~
- ~~b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.~~
- ~~c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.~~
- ~~d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.~~
- ~~e. No more than sixty five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.~~
- ~~f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.~~
- ~~g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.~~

- h. ~~No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.~~
- ~~13. Brewpubs, subject to the following conditions:~~
- a. ~~Brewery production shall not exceed two thousand (2,000) barrels per year.~~
  - b. ~~No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.~~
  - c. ~~There shall be compliance with standards at Section 2519, Performance Standards.~~
  - d. ~~There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.~~
  - e. ~~No more than fifty (50) percent of the total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.~~
  - f. ~~No outside beer tent shall be permitted on any off street parking lot or off street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.~~
- ~~1412.~~ Instructional Centers, such as schools for dance, music, language, arts, or general education; tutoring centers; private schools that offer courses in business, real estate, accounting, information systems, and similar instructional uses.
- ~~1513.~~ Other uses similar to the above uses subject to conditions noted.
- ~~1614.~~ Accessory structures and uses customarily incidental to the above permitted uses.

**Part III. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, Article 16, "TC and TC-1 Town Center Districts," Section 1602, Principal Uses Permitted, is hereby amended to add new Sections 5 and 6, to read as follows:**

Sec. 1601. - Principal Uses Permitted Subject to Special Conditions.

1. - 4. [Unchanged]

5. Microbreweries, subject to the following conditions:

a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.

- b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
  - c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.
  - d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.
  - e. No more than sixty-five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
  - f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.
  - g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.
  - h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.
6. Brewpubs, subject to the following conditions:
- a. Brewery production shall not exceed two thousand (2,000) barrels per year.
  - b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
  - c. There shall be compliance with standards at Section 2519, Performance Standards.
  - d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.

- e. No more than fifty (50) percent of the total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
- f. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.

#### **PART IV.**

**Severability.** Should any 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.

#### **PART V.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

#### **PART VI.**

**Repealer.** All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

#### **PART VII.**

**Effective Date: Publication.** Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2013.

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ROBERT J. GATT, MAYOR

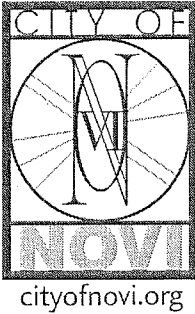
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MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

PLANNING COMMISSION MEETING  
DRAFT MINUTES – EXCERPT  
April 3, 2013





# PLANNING COMMISSION MINUTES

CITY OF NOVI

Regular Meeting

**April 3, 2013 7:00 PM**

Council Chambers | Novi Civic Center | 45175 W. Ten Mile

(248) 347-0475

## CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

## ROLL CALL

**Present:** Member Anthony, Member Lynch, Chair Pehrson, Member Prince, Member Zuchlewski

**Absent:** Member Gutman, Member Greco

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Gary Dovre, City Attorney; Kristen Kapelanski, Planner; Adam Wayne, Engineer; David Beschke, Landscape Architect; Doug Necci, Façade Consultant.

## PLEDGE OF ALLEGIANCE

Member Prince led the meeting attendees in the recitation of the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Anthony:

## VOICE VOTE ON THE AGENDA APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ANTHONY:

**Motion to approve the April 3, 2013 Planning Commission Agenda. Motion carried 5-0.**

## MATTERS FOR DISCUSSION

### 1. ORDINANCE AMENDMENTS RELATED TO THE SALE OF ALCOHOL FOR CONSUMPTION ON PREMISES

Deputy Director McBeth said the state liquor control commission has announced new procedures for the processing of the state level of transfers for liquor licenses and that has an impact on local communities. Currently the procedure is when the applicant wants to transfer a liquor license they submit an application to the clerk's office. A number of departments review that and provide some feedback. The recommendation of the staff will go to the City Council for consideration. At this point, our City attorney's office had noted that the process might be challenged and that it might be good to bolster the process a little bit if the City Council chooses to do that. City Council did discuss it at some length at a recent meeting and they forwarded a question to the Planning Commission for consideration of a possible Zoning Ordinance amendment.

There is nothing in this Zoning Ordinance that addresses the liquor license transfers but the process that is provided in the draft ordinance would include a public hearing that would be more of an administrative public hearing, not the public hearing in front of the Planning Commission but in front of our Community Development Director or a group of staff yet to be determined. They would then hear any comments the public might have discussed and reviewed in the same manor that we have done in the past and then forward a recommendation on to City Council. That would be the new Special Land Use permit procedures of the new Section 25.25 of the Zoning Ordinance. There are a couple things that the Planning Commission might want to consider. The version that was presented was actually called version two from the City Council's consideration. There would be a review with a public hearing, two alternatives with the staff members that would be involved. We'll come back with a recommendation based on comments from the staff people. We also want to note that any existing use that already has a license would be grandfathered in. Also there's a reference to liquor licenses in the Town Center, TC and TC-1, which have brew pubs as a permitted use. So if this goes ahead, the recommendation would be to take that section of the ordinance from the permitted use section and put it into the Special Land Use category. This has already set the public hearing for the April 24<sup>th</sup> Planning Commission meeting. Staff

welcomes any comments from the Planning Commission.

CITY COUNCIL MEETING  
MINUTES – EXCERPT  
March 11, 2013

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
MONDAY, MARCH 11, 2013 AT 7:00 P.M.  
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

Mayor Gatt called the meeting to order at 7:00 P.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:** Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Fischer, Margolis, Mutch, Wrobel

**ALSO PRESENT:** Clay Pearson, City Manager  
Victor Cardenas, Assistant City Manager  
Thomas Schultz, City Attorney

**APPROVAL OF AGENDA:**

**CM-13-03-025 Moved by Staudt, seconded by Wrobel; CARRIED UNANIMOUSLY:**

To approve the Agenda with the removal of item 8. Approval to award a one-year contract extension (the final of three extensions) to Brien's Services, Inc. to perform 2013 Lawn and Landscape Maintenance Services for an estimated annual amount of \$164,000.

Roll call vote on CM-13-03-025                      Yeas: Staudt, Casey, Fischer, Margolis,  
Mutch, Wrobel, Gatt  
Nays: None

**MATTERS FOR COUNCIL ACTION:**

7. Direction to City Administration to prepare amendments to Chapter 3, Alcoholic Liquor, of the City of Novi Code of ordinances and to Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, Article 25, "General Provisions," to revise regulations relating to the transfer of liquor licenses creating a requirement for applicants for all liquor licenses to secure approval by the City of a "plan of operation" and/or to create standards for issuance of special land use approvals for new/altered licensed establishments.

City Manager Pearson said this item results from actions by the State Liquor Control Commission (LLC) with a new interpretation they did by overturning local pre-approval before the LLC issues their licenses. We looked at options for changes for license requirements because we would like to protect our prerogatives and rights. Staff originally brought an idea that was used in Birmingham, Michigan with requiring a Special Land Use permit. After more research, we have another option for consideration of a license requirement that we believe upholds what has worked for getting information from liquor license holders to the City. We can then conduct reviews to do our due diligence and make recommendations. There is a plan of

operation without it being burdensome. We don't have a specific action other than to get some Council feedback.

Member Margolis likes the Special Land Use and Version Two is the less onerous operation plan. She was looking for something that models our transfer process and thought the Community Development Director making a recommendation to Council was the least onerous.

Mayor Gatt thinks the City should have the function of licensing and would support a motion.

Mayor Pro Tem Staudt thought less onerous is still onerous. He didn't see why we'd get this process involved in any zoning process and thought Lansing is well aware of our issues. It is being considered through the Attorney General's Office whether the interpretation is correct. He believed we should wait the process out and not make additional ordinances for something that is undefined. We have not had any circumstances within the last five years that would make us think that the State is not doing a good review. We could make a recommendation to the State, even though it is probably non-binding.

Member Mutch wanted clarification on how these pieces were going to work. He thought this would be an either-or kind of process. We could follow this plan of operation approach for existing and future liquor license applicants and transfers or we would go the zoning approach and accomplish the same thing. It would grandfather existing licenses but any change in applications or those licenses transferred in would be done through this process.

City Attorney Schultz explained Council has the ability to do the full range of the regulatory ordinance amendment with the plan of operation which would require an applicant to get a transfer approval from Council. The Special Land Use could be added or do neither of the above. It is not an either-or and is a policy question for Council. Member Mutch asked why have these two working in conjunction versus having one or the other. Mr. Schultz said the reason for the Special Land Use consideration is an additional review process in the event the regulatory process through Chapter 3, the normal licensing processing, is refused by the licensee. We can still take that position with an applicant. Presently, applicants will go through the local regulatory process. The Special Land Use is in the event they refuse to go through the local regulatory process. The Land Use aspect is in addition to the regulatory question where someone could argue that the City is preempted by the State Liquor Code. The argument would not work on the Zoning Ordinance with the Special Land Use process. It is a different process with less chance of someone saying the City does not have the ability to review their license. Birmingham already has the full transfer process and made everything go through a Special Land Use. Many communities already have both in place. Novi only has the licensing process and this would be a failsafe. Member Mutch asked if there was overlap in what the two cover and how they could be challenged. Mr. Schultz said the licensing process looks at the communities need, the site, and the applicant. The Land Use process really looks at the land use and fits

the proposed use in more of a planning review than the regulatory process. The regulatory process did have it as a discussion. There is a different body looking at a different set of standards that would be outlined in the Special Land Use section that focuses less on the applicant and on how the use relates to the area. Member Mutch confirmed that the approval process would require Council approval. Member Mutch said he was not in favor of a Special Land Use process because he felt it's appropriate for City to have oversight of this process, but he doesn't want an overly burdensome process. Mr. Schultz said that it is not necessary to have the Special Land Use in place but he felt it was the alternate process. The regulatory ordinance with a clarified transfer provision and the extra opportunity to review the plan of operation is a significant change and improvement. If Council didn't do the Special Land Use, he felt they wouldn't benefit the process in the way they want it to.

Member Fischer asked if it was possible to do a Special Land Use option without the licensing requirement. Mr. Schultz said it was possible. It would be a significant concession to the State process that he didn't think is what the statute actually states. That would be a concession and would be part of the Council's policy consideration. As the ordinance stands, we require the applicant to go through the City's regulatory process. To remove that would be a significant change. Member Fischer asked if they could ignore the plan of operation portion and add a Special Land Use. Mr. Schultz said that was an option. Member Fischer determined the licensing ordinance sounds like it could easily end up as a court discussion with an applicant saying that the license and the approval by the State pre-empts anything the City is trying to do. Mr. Schultz said it is more likely that someone would make the pre-emption argument on the regulatory ordinance than on the zoning ordinance. Member Fischer said even presently and with any changes that we make. Mr. Schultz said that we win both arguments but the challenge to the licensing is more likely. Member Fischer said in general he was fine with the licensing requirement as it is now. He didn't see the benefit of any tweaks, plan of operations, and doing what some other cities have done given that we don't know what might come of this discussion in Lansing. He would be willing to consider the Special Land Use version two as a secondary option. It is quite an addition to the process. He considered it a knee jerk reaction to what has taken place in Lansing. He thought they were acting too swiftly and with too much might. Mr. Schultz clarified to Council that the plan of operation is one concept and if they weren't going to do that, they still suggested a few minor changes to the existing transfer section and would still benefit from. It just makes it clearer that we will make the transfer come through the City. Member Fischer said his omission from discussion was his approval of that section.

Member Margolis wanted to clarify because they say they are moving too swiftly but if someone gets a liquor license transfer and comes to the City, it will be more difficult to go back and say we want to put them in place now. The character of the community is our responsibility and we have the ability to review the liquor license transfers that come in. She is not willing to give that up just because someone decided that we shouldn't. She thought it is a part of their job as Council and should take action sooner rather than later.

Mayor Gatt agrees with Member Margolis. Talking with colleagues at the County, the regulation has been reduced to the point where an undesirable establishment could come into Novi.

Member Casey agrees we don't need the plan of operation but take the other changes that have been suggested and move forward with a Special Land Use ordinance. Make it less onerous by having the Director of Community Development the one to make the recommendation versus having it come through Planning Commission or a larger body. She thought that the City should do its due diligence to make sure we are putting, in effect, the ability and conditions we have in front of us to continue to maintain control of liquor licenses coming into the City.

City Manager Pearson said he thought we have not had big problems because of the diligence of the reviews in the past. There is a real concern that it will not be there in the future. He thought these steps are necessary. The Liquor Control Commission issued this last spring and went into effect in July, 2012. Council has been presented with a couple different choices. The Special Land Use requirement would require a Public Hearing and deliberations by the Planning Commission with recommendations back to Council. He suggested Council could make referral to Planning Commission. He thought there was an interest in the Special Land Use with one of the options to the Planning Commission to start the process. Also, there was interest in updating the existing liquor license without adding the extra step for the plan of operation. It could come back to Council for a First Reading or refer that to the Ordinance Review Committee if they chose. He wanted it to start through the process to move forward instead of waiting.

**CM-13-03-035 Moved by Staudt, seconded by Mutch; MOTION CARRIED: 6-1**

**To approve bringing back the Liquor Licensing Ordinance amendment to City Council for a First Reading.**

Mayor Gatt won't support because it's not strong enough and thought we needed more because Lansing would override our decision.

Member Fischer didn't want anyone to think Council was taking this lightly. His concern was in his opinion, from what they have been told, if an adult entertainment establishment were to go to Lansing and get approval, that operation could take to court our ability to do anything whether we have a plan of operation and ordinance that needs our approval or not. That is why he wants to focus more on the Special Land Use. In his opinion, that is where we would have the authority in that type of establishment. He asked the City Attorney in regards to this. City Attorney Schultz said a Special Land Use would give the City the ability to deny an applicant. We already have regulations in the zoning ordinance on adult entertainment. It wouldn't be able to go just anywhere. It is a complicated question from a Land Use perspective, but making it a Special Land Use to have a license with it would be beneficial if anyone's intention was to not allow it. Member Fischer said that is why he could support the

motion without the plan of operation. He didn't have the faith in the license ordinance changes with a plan of operation. It wouldn't do anything and would be a complete exercise in futility to do it.

Mayor Pro Tem Staudt saw this as one step in what he thought would be additional steps. He wanted to show support for that particular part of it. He thought there may be another motion on other parts of the motion. He has greater faith in the Liquor Control Commission and the State of Michigan to protect our interests. He knew we were elected as was State Representative Crawford to protect this Community. He thought it would be more palatable if this were revenue neutral for the applicant. He would be concerned that a business and applicants would have additional costs and we haven't defined them. Mr. Schultz didn't see additional costs for the City. It would be an administrative process and might be reviewed. The applicants all have attorneys, especially, if it is a transfer. They would use an attorney to negotiate the transfer. There is a significant amount of consideration to acquire the license. There usually is an attorney involved representing the applicant at the City during the licensing process. There would most likely be attorney involvement in the Land Use process under a Zoning ordinance. Mayor Pro Tem Staudt said the concept is that this is a streamlining of a process that has been extremely difficult. He thought our reaction is that Council's rights have been taken away. In other communities, this is has been a situation where the rights of the applicant have been taken away. He would encourage his colleagues to consider the costs for the applicant and weigh it against the potential benefit to the community.

Member Margolis clarified the motion is to change the licensing ordinance and not to refer it to Ordinance Review but to instruct staff to change the Licensing ordinance and bring it back to Council.

Mayor Gatt said the cost was not an issue for him because Council's job is to protect the safety of the citizens. The trust we have in Lansing will not come from the Legislature but will come from the Liquor Control Commission. He said they do not live in Novi and have the same interest in Novi as this Council does. One more process for the applicant will not prevent them from transferring a license to Novi.

**Roll call vote on CM-13-03-035**

**Yeas: Margolis, Mutch, Wrobel, Staudt,  
Casey, Fischer**  
**Nays: Gatt**

**CM-13-03-036**

**Moved by Margolis, seconded by Gatt; MOTION CARRIED: 6-1**

**To refer to the Planning Commission for amendments to the Special Land Use Ordinance consistent with "Version Two" with recommendation that there is an Administrative review process with recommendation to Council.**



Member Margolis cannot trust the Legislature and the State of Michigan will protect our interests. The City went through the fireworks changes and she didn't think that protected our interests. Our zero revenue sharing doesn't protect our interests. She felt it was Council's job and strongly agreed with comments made earlier.

Member Casey commented we wouldn't have had this issue if the Liquor Control Commission didn't change the procedures that they have been operating under. She thought the way we had been operating had been working in the past and this is a position that we are being forced to look at because we are concerned that we will not have the ability to control what happens in our City.

Member Mutch said based on the conversation, he supports sending it to Planning Commission and echoed Member Casey's comments.

Member Margolis said it was pointed out to her there is some language that had to be changed because of the Brew Pubs being in the Town Center district but it is in the version two she referred to.

**Roll call vote on CM-13-03-036**

**Yeas: Mutch, Wrobel, Gatt, Casey, Fischer,  
Margolis**  
**Nays: Staudt**

POTENTIAL CITY CODE AMENDMENT-  
FOR INFORMATION PURPOSES ONLY

**STATE OF MICHIGAN**

**COUNTY OF OAKLAND**

**CITY OF NOVI**

**ORDINANCE NO. 13-\_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 3, "ALCOHOLIC LIQUOR," TO ADD A REQUIREMENT FOR A PLAN OF OPERATION, TO CLARIFY THE TIME FRAME FOR CITY COUNCIL DECISION, TO REVISE REQUIREMENTS FOR LICENSE TRANSFERS, AND TO ADD A PROHIBITION ON NUILITY.**

**THE CITY OF NOVI ORDAINS:**

**PART I.** That Chapter 3, "Alcoholic Liquor," Article II, "Licenses," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

**Sec. 3-12. - Scope and intent.**

This article governs applications for licenses to sell beer, wine, or spirits for on-premises consumption within the city, including, but not limited to, Class B licenses, Class C licenses, resort licenses, tavern licenses, club licenses, and hotel licenses. This article does not apply to applications for SDM and SDD licenses, special licenses granted by the Michigan Liquor Control Commission, or one-day permits as allowed by statute.

**Sec. 3-13. - Licensing policy.**

This article establishes an application and review process for the issuance of new licenses and the transfer of existing licenses into the city or between or among applicants. The process is intended to ensure that the individuals and entities seeking licenses from, or charged with operating licensed establishments within, the city meet certain minimum requirements as to criminal history, past conduct, and ongoing business operation standards. It requires city council review of application information in light of certain criteria that is established for purposes of identifying the kinds of facilities that qualify for a license. It reserves to the city any and all discretion afforded it under applicable law relating to the issuance of licenses.

As a general matter of policy, applicants for a license will need to demonstrate an identifiable benefit to the city and its inhabitants resulting from the granting of the license. While all of the criteria set forth in this article are relevant to the decision whether to grant a license, an applicant must demonstrate in particular that the proposed facility:

- (a) Will provide a service, product, or function that is not presently available within the city or that would be unique to the city or to an identifiable area within the city;
- (b) Is of a character that will foster or generate economic development or growth within the city, or an identifiable area of the city, in a manner consistent with the city's policies; or,
- (c) Represents an added financial investment on the part of a long-term business or resident with recognized ties to the city and the local community.

The weight to be given to each item of the criteria identified in this article, and the determination whether a particular applicant meets or satisfies those criteria is intended to be within the sole discretion of the city council.

### **Sec. 3-14. - Definitions.**

The following definitions shall apply to this chapter:

- (a) *Applicant* shall mean and include all persons and entities proposed to be owners of the license and/or of the licensed premises, all key personnel involved in the management of the licensed business, and all persons and entities proposed to be involved in the finance of the license and/or licensed premises. In the case of a partnership, "applicant" shall include all partners in the partnership. In the case of a corporation other than a corporation with publicly-traded stock, "applicant" shall include all shareholders. In the case of a limited liability company, "applicant" shall include all members.
- (b) *Person, firm, or corporation.* These terms include any person or legal entity of whatsoever kind or nature, either charitable or profitable, that desires to have or is already possessed of any license issued by the State of Michigan for the sale and dispensation of alcoholic beverages pursuant to a liquor license of any variety within the City of Novi.
- (c) *Alcoholic beverages.* This terms shall mean any spirituous, vinous, malt, or fermented liquor, liquid or compound, whether or not medicated, proprietary, or patented, and by whatever name called, containing one-half (1/2) of one (1) percent or more of alcohol by volume which are fit use for beverage purposes.

### **Sec. 3-15. - Applications for new license.**

- (a) *Submission to city clerk's office.* The applicant shall submit to the city clerk's office a fully completed "City of Novi Liquor License Application" on a form furnished by the clerk's office, along with all additional documents and materials referred to in the application form or otherwise required under this article.
- (b) *Required information.* The application shall include at least the following information:
  - (1) *Name and address of applicant.* If the applicant is a partnership, the name and address of each partner shall be provided, and a copy of any partnership agreement attached. If the applicant is a privately-held corporation, the names and addresses of all corporate officers, members of the board of directors, and stockholders shall be provided, and a copy of the articles of incorporation attached. If the applicant is a

publicly-held corporation, the names and addresses of all corporate officers, members of the board of directors, and stockholders who own ten (10) percent or more of the corporate stock shall be provided. If the applicant is a limited liability company, the names and addresses of all members, managers and assignees of membership interests shall be provided, and a copy of the articles of organization attached.

- (2) Type of license desired.
  - (3) The address and legal description of the property where the license is to be located.
  - (4) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, and conceptual plan showing the relationship of the building to the surrounding properties and uses, and proposed building elevations.
  - (5) A written statement as to the applicant's character, experience, and financial ability to meet the obligations and business undertakings for which the license is to be issued.
  - (6) A plan of operation, which shall contain an operational statement outlining the proposed manner in which the establishment will be continuously operated, including, but not limited to, the opening date, the business concept, the anticipated food-to-alcohol ratio, a schedule of the hours of operation, method of alcohol management, crowd control, plan for interior use and layout, use of facilities, parking facilities and arrangements, dance/entertainment permits needed or requested, and estimated cost of building and site improvements.
  - (6Z) Any other information pertinent to the applicant and operation of the proposed facility as may be required by this chapter, including information regarding each of the criteria listed in subsection (g).
- (c) *Nonrefundable application fee.* The application shall be accompanied by a deposit of a nonrefundable fee, in an amount determined by the city council, to be sufficient to cover the costs of investigation, review, and inspection.
  - (d) *Recommendations from city departments.* Following the receipt of the fully completed application, fees and other such information as may be requested by the city, the city clerk shall forward the application to the community development department, police department, fire department, and such other departments as required by the city manager, which departments shall make their recommendations prior to consideration by the city council. In making its review, the city may request from the application other pertinent information.
  - (e) *Placement upon city council agenda.* Upon receipt by the clerk's office of the recommendations of the departments identified above, the city clerk shall submit the application and recommendations for placement upon the agenda of the city council. ~~Such submission shall be made, which shall occur~~ no later than sixty (60) days after the receipt of the application by clerk's office.
  - (f) *City council action required.* All applications are subject to the final approval of the city council. The council may conditionally grant the requested license, postpone consideration for a reasonable period, or deny the license; provided, however, that a final decision shall be made by the city council within thirty (30) days after initial placement on the city council's agenda. If the license is either approved or denied, the council shall cause its decision to be transmitted to the Michigan Liquor Control Commission and promptly give

notice of the decision to the applicant, in writing. Unless otherwise indicated by the council, all approvals are contingent upon the applicant obtaining any required building permits and any other necessary permits, licenses, or approvals from the city or other regulatory agencies within sixty (60) days from the date of such conditional approval. The construction of new buildings and alterations of existing buildings shall commence within six (6) months after the date of the conditional approval, with a completion date of no more than one (1) year after the issuance of the relevant building permit. Extensions for completion of construction or alteration may be granted by the city council for good cause. Failure to comply with such contingency shall render the license subject to revocation.

- (g) *Review criteria.* In making its determination pursuant to subsection (f), the city council shall consider whether the applicant's proposal is reasonable when measured against the criteria listed below. For purposes of this review, an "applicant" shall be considered to include all officers, partners, members, and managers of an entity applying for a license.

(1) *General information regarding applicant:*

- a. The applicant's management experience in the alcohol/liquor business.
- b. The applicant's general business management experience.
- c. The applicant's general business reputation.
- ~~d. The applicant's moral character.~~
- Ed. The applicant's financial status and its ability to build and/or operate the proposed facility on which the proposed liquor license is to be located.
- fe. Past criminal convictions of the applicant for crimes involving moral turpitude, violence or alcoholic liquors.
- ~~g. The applicant's excessive use of alcoholic beverages.~~

(2) *Information related to the facility/building to which the license would apply:*

- a. The recommendations of the police department, building department, and/or fire department with regard to the proposed facility.
- b. Whether the facility to which the proposed liquor license is to be issued complies, or will comply, with the applicable building, plumbing, electrical and fire prevention codes, zoning ordinance, or other ordinances applicable in the city.
- c. The effects that the business facility to which the proposed license is to be issued would have upon vehicular and pedestrian traffic in the area.
- d. The effects that the business facility to which the proposed license is to be issued would have upon the surrounding neighborhood and/or business establishments, including impacts upon residential areas and church and school districts or uses.
- e. The availability of utilities to serve the facility.
- f. The proximity of the proposed business facility to other similarly situated licensed liquor facilities.
- g. The proximity to complementary uses, such as office and commercial development.

- h. Availability of adequate parking, taking all circumstances of the location into consideration.

(3) *Benefits to community:*

- a. The effects that the issuance of a license would have upon the economic development of the city or the surrounding area.
- b. The effects that the issuance of a license would have on the health, welfare, and safety of the general public.
- c. Whether the applicant has demonstrated a public need or convenience for the issuance of the liquor license for the business facility at the location proposed, taking into consideration the following, together with other factors deemed relevant by the council:
  - 1. The total number of licenses for similar establishments and/or operations in the city, considered both in terms of whether such number of similar establishments is needed and whether there may be a need for other types of establishments that could go unmet if the requested license were granted;
  - 2. The proximity of the establishment to other licensed liquor establishments, the type of such establishments, whether such other establishments are similar to that proposed, and the anticipated impact of all such determinations;
  - 3. Whether the proposed location is in an area characterized as developed, redeveloping, or undeveloped, and the anticipated impact of approving the newly proposed establishment in light of such character, taking into consideration the need for any type of additional licensed establishment in the area, and the need the particular type of establishment proposed;
  - 4. The impact of the establishment on city policing and code enforcement activities;
  - 5. The overall benefits of the proposed establishment to the city;
  - 6. The overall detriments of the proposed establishment to the city; and
  - 7. Any other factors that may affect the health, safety, and welfare relative to the need for and/or the convenience of the proposed establishment in the city.
- d. The uniqueness of the proposed facility when contrasted against other existing or proposed facilities, and the compatibility of the proposed facility to surrounding architecture and land use.
- e. The permanence of the establishment in the community, as evidenced by the prior or proposed contributions to the city or community by the applicant or business, and the extent to which the issuance of the license will assist in the further investment of the applicant or business in the city or the community.
- f. The character and extent of investment in improvements to the building, premises, and general area.
- g. Such other considerations as the council may deem proper, provided such considerations are reasonable under all of the circumstances.

- (h) *Restrictions on licenses.* No license shall be issued to:
1. A person whose liquor license has been revoked or not renewed for cause under this article, or a comparable city or township ordinance or state law, whether in Michigan or otherwise.
  2. A co-partnership or partnership, unless all the members of such co-partnership or partnership shall qualify to obtain a license.
  3. A corporation, other than a public corporation, if any officer, manager, or director thereof, or stockholder owning in the aggregate more than ten (10) percent of the stock of such corporation would not be eligible to receive a license hereunder for any reason.
  4. A limited liability company, if any member, manager or assignee owing a ten (10) percent membership interest or more would not be eligible to receive a license hereunder for any reason.
  5. A person who has been convicted of a crime punishable by death or imprisonment in excess of one (1) year under the law under which he was convicted; a crime involving theft, dishonesty or false statement (including tax evasion) regardless of punishment; or a crime or administrative violation of a federal or state law concerning the manufacture, possession or sale of alcoholic beverages or controlled substances.
  6. For 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 city ordinance.
- (i) *Changes in plans, drawings, etc.* After receipt of a conditional approval by the city council, no floor plan, building elevation, site plan, seating arrangement, kitchen lay-out, or other pertinent facts, drawings or documents submitted to the city council may be changed without the applicant first receiving approval from the engineering department, building department and city council.
- (j) *Recommendation for approval of liquor license.* Upon completion of the building and in accordance with the prior conditional approval of the council, the city council shall then thereupon recommend, above all others, the applicant for approval of the liquor license to the Liquor Control Commission of the State of Michigan.
- (k) *Reservation of authority.* No applicant for a liquor license has a right to the issuance of such license to him, her or it, and the city council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such licenses.
- (l) *Changes.* Substantial changes in the licensee's operation shall be approved by the city council. Substantial changes include changes in space of more than ten percent, reduction of more than ten percent in percentage of food or other sales not related to liquor, or changes in the approved plan which affects capacity, parking, noise generated or other impact on adjacent residents or property owners. No fee shall be charged for this process. Whenever the information submitted by a licensee pursuant to the application process contained in this



chapter changes, it shall be the duty of the licensee to notify the city clerk and to supplement the information previously submitted. The licensee is responsible for compliance with this section within ten days of the change of information or circumstances.

**Sec. 3-16. - Plan of Operation Required.**

(a) *Plan of operation.* All on-premises licensees shall operate in accordance with a plan of operation approved by the city council.

(b) *Contents of plan.* A plan of operation shall contain an operational statement outlining the proposed manner in which the establishment will be continuously operated in a manner consistent with the requirements of this article and the Code of Ordinances, including, but not limited to, the opening date, the business concept, the anticipated food-to-alcohol ratio, a schedule of the hours of operation, method of alcohol management, crowd control/security, use of building facilities, parking facilities and arrangements, plan for interior use and layout, dance/entertainment permits needed or requested estimated cost of building and site improvements, and any other pertinent information as requested by the city.

(c) *Use of license.* It is the intent of the city that approved licenses be put into use immediately following approval. Non-use or warehousing of licenses shall be explicitly prohibited in the plan of operation.

(d) *Compliance.* Licensees shall comply with all provisions of the Code of Ordinances, this article, and the approved plan of operation. Any change to the plan of operation shall be approved by the city council before implementation of the change by the licensee. Failure of such compliance or variance from an approved plan operation is a violation of this article and may result in the city objecting to the renewal of, or recommending revocation of, the license.

**Sec. 3-~~16~~17. - Transfer of existing licenses.**

(a) The transfer of any existing liquor license covered hereunder shall require approval of the city council before any use and occupancy of the facility to which the license is being transferred is permitted. An applicant for approval of a license transfer and the use and occupancy of such a facility shall:

(1) ~~be subject to~~ Submit an application with all of the information required under Section 3-15 above for a new liquor license, including a plan of operation;

(2) Pay the application procedure, including payment of application fees, set forth in this article for the granting of a new liquor license. In addition,

(3) ~~the transferee or applicant shall~~ furnish any necessary authorization to permit the city access to any and all files which may be in the Michigan Liquor Control Commission's possession regarding that commission's investigation of the transferee as a present licensee, or as a previous licensee, or in which transferee has or has had a partial interest in. In approving the transfer of any existing liquor license, the city council may direct the police department to include within the department recommendation to

~~the liquor control commission the condition that the construction of the building within which the applicant is to utilize the license, or any renovations to said building, be completed and approved in accordance with all applicable statutes, regulations, codes and ordinances.~~

(b) Review and approval by the city council and of the plan of operation shall be based on the criteria set forth in section 3-15.

(c) Transfers that involve the following circumstances may be placed on a city council agenda for consideration without payment of a fee and without the necessity of furnishing the information required for new licenses:

(1) The exchange of the assets of a licensed sole proprietorship, licensed general partnership, or licensed limited partnership for all outstanding shares of stock in a corporation in which the sole proprietor, all members of the general partnership, or all members of the limited partnership are the only stockholders of that corporation.

(2) The removal of a member of a firm, a stockholder, a member of a general partnership or limited partnership, or association of licensees from a license.

(3) The occurrence of any of the following events:

(a) A corporate stock split of a licensed corporation.

(b) The issuance to an existing stockholder of a licensed corporation of previously unissued stock as compensation for services performed.

(c) The redemption by a licensed corporation of its own stock.

(d) A corporate public offering.

(d) Existing permits ancillary to liquor licenses are transferred with the liquor license unless cancelled in writing. Transferees must present plans regarding the operation they intend to conduct using the particular permit.

### **Sec. 3-~~17~~18. - Prohibition on profiteering by class C liquor license holders.**

The city council has determined that profiteering by class C liquor license holders is contrary to the best interests of the city. Accordingly, in order to prevent profiteering, to the full extent authorized by law, the city council shall not approve the transfer of a class C liquor license issued as a new license under this Chapter within three (3) years of the date of the original issuance of the license. An agreement between the applicant and the city, following recommendation by the city attorney shall be prepared and agreed upon to give effect to this provision prior to final action being taken by the city council on an application. The city council may, but is not required to, excuse the above anti-profiteering limitation for any of the following reasons:

(1) If the license holder is a natural person, he or she dies or becomes incapacitated.

- (2) If the license holder is a corporation, the majority shareholder dies or becomes incapacitated, or the corporation dissolves for reasons other than to transfer the license.
- (3) If the license holder is a limited liability company, the company dissolves for reasons other than to transfer the license.
- (4) The license holder and the proposed license transferee establish that the transfer of the class C liquor license shall not result in profiteering.
- (5) The application of this anti-profiteering limitation will subject the applicant to financial hardship due to no fault of the applicant, such as a change in the business climate, illness or death, labor or supply problems, and/or other factors outside the applicant's control.

The agreement shall provide that, unless excused by the city council as provided above, in the event a license is proposed for transfer within three (3) years from the date of issuance, the applicant agrees that the Michigan Liquor Control Commission shall terminate the license and the city council may approve the issuance of a new license to a new applicant without any compensation to the licensee who placed the license into escrow, and that a licensee waives any property interest in such license upon placement of the license into escrow within such three-year period; provided, however, prior to the approval of such issuance to a new applicant, the person or entity who placed the license into escrow shall be afforded written notice and an opportunity to be heard, and all objections raised at the hearing shall be resolved (at the Michigan Liquor Control Commission or in the circuit court if necessary) prior to issuance of the license to a new applicant.

**Sec. 3-~~18~~19. - Objections to renewal and requests for revocation.**

- (a) *Generally.* The city council may object to a renewal of a liquor license or request the revocation of a liquor license with the Michigan Liquor Control Commission.
- (b) *Procedure.* Before filing an objection to the renewal or request for revocation of a license with the Michigan Liquor Control Commission, the city council shall serve the licenseholder, by first class mail, mailed not less than ten (10) days prior to the hearing, a notice of such hearing, which notice shall contain the following information:
  - (1) Notice of the proposed action.
  - (2) Reasons for the proposed action.
  - (3) Date, time and place of such hearing.
  - (4) A statement that the licensee may present evidence and testimony, and may confront witnesses and may be represented by a licensed attorney.
- (c) *Hearing and final decision.* Such hearing may be conducted by council as a whole, or by a hearing officer appointed by the council for such purposes. If a hearing officer is appointed, it shall be that officer's duty to undertake such hearing, and hear and take evidence and testimony of the licensee, or witnesses on its behalf, in opposition thereto. After such hearing, the hearing officer shall make a recommendation to the city council for the latter's ultimate final review and decision. The city council shall submit to the licenseholder, and the Michigan Liquor Control Commission, a written statement of its ultimate findings and determination.

- (d) *Criteria for non-renewal or revocation.* The city council may recommend non-renewal or request 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 exists:
- (1) A violation of any applicable building, electrical, mechanical, plumbing or fire code; applicable zoning regulations; applicable public health regulations; applicable rules and regulations of the county health department; or any other applicable city Code provision.
  - (2) Maintenance of a nuisance upon the premises.
  - (3) A material change in those conditions, statements or representations contained in the written application by the licensee, upon which the city council based its recommendation for approval, when that change is found to be contrary to the best interest of the city residents, in the judgment of the city council.
  - (4) A holder of a license or permit has been convicted of any federal or state law concerning the manufacture, possession or sale of alcoholic liquor or a controlled substance.
  - (5) The premises do not or will not reasonably soon have adequate off-street parking, lighting, refuse disposal facilities, screening, noise or nuisance control where a nuisance does or will exist.
  - (6) A violation of any section of this chapter or of the rules and regulations of the liquor control commission.
  - (7) For a dance, entertainment or dance-entertainment permit, any breach of the entertainment agreement entered into between the licensee and the city as required in this article.

**Sec. 3-20. - Nudity.**

No person, while appearing in a state of public nudity as defined in Section 5h of Act 279 of 1909, being MCL 117.5h, shall frequent, loiter, work for or perform in any establishment licensed or subject to licensing by the state liquor control commission. No proprietor or operator of any such establishment shall allow the presence in such establishment of any person who violates the provisions of this section.

**PART II.**

**Severability.** Should any 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.

**PART III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**PART IV.**

**Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

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Robert J. Gatt, Mayor

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Maryanne Cornelius, City Clerk

**Certificate of Adoption**

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2013.

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Maryanne Cornelius, City Clerk