CITY OF AURORA, ILLINOIS

ORDINANCE NO. 20-059
DATE OF PASSAGE September 8, 2020

An Ordinance amending the Aurora Liquor Control Ordinance pertaining to nuisance activity and the process of applying for licensure in certain locations.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City Council finds that it is appropriate and in the best interest of the City to amend Sec. 6-2 and Sec. 6-13 of the Aurora Liquor Control Ordinance to better define nuisance activity and to standardize the process for reducing the setback requirement for licensed premises in certain zoning districts; and

WHEREAS, for the purpose of consistency throughout the Code of Ordinances, City of Aurora, that the Aurora Liquor Control Ordinance hence be known as the "Liquor Control Ordinance."

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows:

Section One: That the Aurora Liquor Control Ordinance shall be and hereby is amended as set forth in said "Exhibit A."

Section Two: That this Ordinance shall be in full force and effect, and shall be controlling, upon its passage and approval.

Section Three: That all Ordinances or part of Ordinances in conflict herewith are hereby repealed insofar any conflict exists.
Section Four: That any section, phrase or paragraph of this Ordinance that is construed to be invalid, void or unconstitutional shall not affect the remaining sections, phrases, or paragraphs of this Ordinance which shall remain in full force and effect.

Section Five: That the City Clerk shall cause this Ordinance to be published in pamphlet form upon its passage.
RECOMMENDATION

TO: THE COMMITTEE OF THE WHOLE

FROM: THE RULES, ADMINISTRATION AND PROCEDURES COMMITTEE

The Rules, Administration and Procedures Committee at the regular scheduled meeting on Tuesday, August 18, 2020 recommended APPROVAL of An Ordinance Amending Chapter 6 - ALCOHOLIC LIQUOR, Sec. 6-13 of the City of Aurora Code of Ordinances entitled "Allowed Areas".

VOTE: 5-0

Submitted By:

Alderman Carl Franco, Chairperson

Alderman Emmanuel Llamas, Vice Chairperson

Alderman Edward Bugg

Alderman William Donnell

Alderman Patty Smith

Dated this 19th day of August, 2020
ORDINANCE NO. 020-059

PASSED AND APPROVED ON September 8, 2020

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ATTEST:

[Signatures]

Jennifer Haller
City Clerk

[Signatures]

Mayor
Sec. 6-1. - Title.

This chapter shall be known, cited and referred to as "the liquor control ordinance." Any citation or reference to "The Aurora Liquor Control Ordinance" shall be understood and construed as a citation and reference to this chapter.


Sec. 6-2. - Definitions.

All words and phrases used in this chapter, not otherwise defined herein, and which are defined in The Liquor Control Act of 1934 (235 ILCS 5/1-1 et seq.) as now or hereafter amended, shall have the meaning accorded to such words and phrases in such act. Unless the context otherwise requires, the following terms as used in this chapter shall be construed according to the definitions given below:

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Nuisance activity means any of the following activities, behaviors, or conduct as defined by federal or state law or municipal statute and/or local ordinance where a citation is given, an arrest made or a violation has been documented:

(1) Any activity specifically defined as a nuisance or public nuisance by federal or state law or by local ordinance; Mob action.
(2) Any activity defined as a felony or misdemeanor criminal offense under any Act codified in Chapter 720 of the Illinois Compiled Statutes and any similar provision of local ordinance; Unlawful assembly.

(3) Any activity that constitutes a violation of any provision of chapter 29 of this code; Assault.

(4) Any activity that constitutes a violation of any provision of the Liquor Control Act of 1934 pertaining to the purchase, sale, or service or alcoholic liquor; Battery.

(5) Any activity that constitutes a violation of any federal or state law, or local ordinance, concerning the humane treatment of animals; Unlawful use or possession of weapons or firearms.

(6) Any activity that constitutes a violation of any local ordinance pertaining to the safety, use, or maintenance of real property; Unlawful discharge of a firearm.

(7) Any activity that constitutes a violation of any rule duly adopted by the Illinois Department of Public Health pursuant to the Department of Public Health Act or by a local health department with jurisdiction over the premises; Prostitution.

(8) Soliciting or patronizing a prostitute.

(9) Keeping a house of prostitution.
(10) Pandering.
(11) Obscenity.
(12) Sexual assault and sexual abuse.
(13) Public indecency.
(14) Disorderly conduct.
(15) Unlawful production, sale, distribution, possession, or use of cannabis.
(16) Illegal gambling.
(17) Keeping or maintaining a place of illegal gambling.
(18) Unlawful possession of gambling devices.
(19) Arson.
(20) Criminal damage to property.
(21) Illegal consumption, sale, or possession of alcohol.
(22) Theft.
(23) Interference with public/peace officer.
(24) Harassment.
(25) Indecent exposure.
(26) Building and Zoning violations.
(27) Loitering.
(28) Unlawful possession, sale, distribution, or use of fireworks.
(29) Aiding and abetting.
(30) Conspiracy.
(31) Drug paraphernalia.
(32) Violations of any animal regulations.

(33) Any violation of 720 ILCS.

(34) Any violation of chapter 29 of the Aurora Code of Ordinances.

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(Code 1969, § 6-2; Ord. No. 086-5553, § 2, 9-2-96; Ord. No. 087-5622, § 1, 1-17-87; Ord. No. 089-66, § 1, 7-5-89; Ord. No. 093-45, § 1, 6-1-93; Ord. No. 093-62, § 1, 8-3-93; Ord. No. 094-91, § 1, 9-6-94; Ord. No. 096-74, § 1, 6-25-96; Ord. No. 098-100, § 1, 11-10-98; Ord. No. 002-158, § 1, 12-10-02; Ord. No. 008-24, § 1, 3-25-08; Ord. No. 008-105, § 1, 11-4-08; Ord. No. 010-030, § 1, 6-8-10; Ord. No. 011-004, § 1, 3-8-11; Ord. No. 015-053, 8-25-15; Ord. No. 018-003, 1-23-18; Ord. No. 018-011, 1-23-18; Ord. No. 018-027, 3-13-18; Ord. No. 018-119, § 1(Exh. A), 12-19-18; Ord. No. 020-023, § 1(Exh. A), 4-14-20)

Sec. 6-13. - Allowed areas.

(a) A liquor license shall be issued only to establishments located in those portions of the city hereinafter classified as predominantly business in character, unless otherwise provided.

(b) For it is determined for the purposes of this chapter that the following described portions of the city are predominantly business in character:
(1) Downtown, as defined herein.

(2) Shopping centers, as defined herein.

(3) Contiguous areas of at least fifteen (15) acres which are zoned under the terms of Ordinance No. 3100 amended, known as "Aurora Zoning Ordinance" and the map attached thereto as B-2 Business District-General Retail, B-3 Business and Wholesale District, B-4 Business-Boulevard District, ORI Office, Research and Light Industry District or M-1 Manufacturing District, Limited or combinations of said districts under the chapter 49 of this code and the zoning map attached thereto. In addition, any land zoned PDD-Planned Development District shall be included to the extent that such land has been designated for uses similar to the above zonings. Any area zoned R-1, R-2, R-3, R-4, R-5, B-1, M-2, downtown core, downtown fringe is specifically excluded from said business districts.

(c) (1) Nothing contained in this section shall preclude the issuance of a liquor license to Class-B—Fraternal Society or Club, Class—E—Restaurant or Class—F—Beer and Wine Restaurant establishments in portions of the city of Aurora classified as predominantly business in character.

(2) No new liquor Class—A, Class—B, Class—E or Class—F licenses may be issued after January 1, 2003 to any establishment that is within five hundred (500) feet of a
residential property without the applicant obtaining the approval of the liquor commissioner through a special use permit allowing the issuance of said license. The hearing process established in section 6-13(d)(2-4), provided the property has adequate off-street parking, and complies with all other requirements of the Code. However, if the license is located in the downtown or a shopping center, as defined above, then a Class E or F liquor license may be issued without the need for a special use permit so long as the license complies with all other requirements of the Code. Current Class A, Class B, Class C, and DE and Class E establishments in portions of the city located within five hundred (500) feet of a residential property shall not be required to obtain a special use permit approval from the liquor commissioner in order to renew their existing liquor license.

(d) No license shall be issued for the sale at retail of any alcoholic liquor within one hundred (100) feet of a church, grade school, middle school, alternative school or high school, hospital, or home for indigent persons. However, if the license is located in the downtown or a shopping center, as defined above, then a Class D, E, F, J, K, I or M license may be issued if the license is not located within one hundred (100) feet of a grade school, middle school,
alternative school or high school. In the case of a church, the distance of one hundred (100) feet shall be measured to the nearest part of any building used for worship services or educational programs and not to property boundaries.

(1) The liquor commissioner may grant a reduction of the distance requirement in this subsection (d), based on a finding from an administrative hearing officer that such a reduction would not detrimentally affect the church, grade school, middle school, alternative school or high school, hospital or home for indigent persons within one hundred (100) feet of the premise proposed to be licensed. If a reduction is granted, applicants must still comply with all other application requirements associated with the issuance of a liquor license.

(2) The hearing officer shall consider the following factors in reviewing a reduction in the distance requirement:

(i) The type of activity to be conducted at the premises proposed to be licensed and the days and times during which such activity will take place;

(ii) The size of the applicant's business and the affected establishment;

(iii) The availability of adequate parking for patrons of both the applicant's business and the affected establishment;
(iv) Whether the applicant is seeking a license to permit consumption of liquor at its premises or for the sale of package goods;

(v) Reports from the police regarding the location, as well as the history of activity conducted at or in conjunction with the premises and any associated infractions or violations of state law or local ordinances;

(vi) The relevant geography and location of the applicant's business;

(vii) The legal nature and history of the applicant; and

(viii) The measures the applicant proposes to implement to maintain quiet and security in conjunction with the establishment.

(3) An applicant seeking a distance requirement reduction shall make a written submission to the city clerk for review by an administrative hearing officer. Upon receiving a completed application the city clerk shall notify the alderman's office. The application shall present all factors the applicant believes to be relevant to whether a reduction is appropriate. Aldermen and/or representatives of the city will also have an opportunity to submit information they believe to be relevant to the hearing officer's recommendation. The request for
reduction shall be accompanied by an additional fee of up to one thousand dollars ($1,000.00) to defer the costs of the administrative hearing officer. The hearing officer shall review the information provided and shall incorporate it into the hearing officer's decision for the liquor commissioner's review and approval.

(4) If the liquor commissioner grants a liquor license with a distance reduction, the factors that were deemed relevant to the hearing officer's finding may be included in a plan of conduct. Any such plan of conduct shall be deemed a part of the license, and compliance with the plan of conduct shall be a necessary condition to the continued validity of the license. Failure to comply with one (1) or more elements of the plan of conduct shall subject the licensee to suspension or revocation of the liquor license.

(e) No Class A–Tavern license, as defined in section 6-2, shall be issued for any location that is within five hundred (500) feet of any location for which any existing license is held except in the "downtown" or "shopping centers."

(f) Nothing contained in this section shall preclude the issuance of a Class AE–Package Beer and Wine License to establishments with more than ten thousand (10,000) square feet devoted exclusively to retail sales and whose primary
purpose is other than the sale of alcoholic liquors; provided, that said establishment has met the appropriate zoning regulations, has adequate off-street parking and has complied with the other requirements of this Code.

(g) Outdoor seating areas serving alcohol shall be permitted only on the premises of those licensees holding a Class A, B, D, E, F, H, P, or S license. Nothing contained in this section shall preclude the approval and issuance of an outdoor seating area for a licensee located within the "downtown" area, defined as the downtown core and downtown fringe areas as defined from time to time, or "shopping centers" as defined in this article, provided that said establishment has met the other requirements as set forth in this section and has provided a business plan that includes, but is not limited to, a detailed plan to contain noise and music within its premises, as well as security and parking issues.

(1) Each licensee that desires to operate an outdoor seating area, must submit a permit request to the local liquor control commissioner. The local liquor control commissioner shall have final approval over any and all requests for an outdoor seating area. The application for outdoor seating area shall include:
a. A hard copy of a dimensioned plan drawn to scale including property lines showing the sidewalk or other outdoor space and all existing public improvements and encroachments such as light posts, benches, planters, fencing, trash receptacles, fences, trees and tree grates in the area, bicycle racks and newspaper boxes. The diagram shall also include the location of the curb relative to the building and proposed location of all furniture and equipment to be placed on the sidewalk or area. There shall be a single entry into the outdoor seating area from within the licensed premise and that entryway must be from within the licensed premise except for establishments located downtown. For businesses in the downtown a security plan must be submitted detailing the means to be taken to provide for adequate control of the area.

b. Proof that the applicant has written approval from the owner of the property for the outdoor seating area to be used by the applicant if the applicant or the city of Aurora is not the owner of the property.

c. The applicant for an outdoor seating area shall provide the city with copies of the certificates of insurance for the required policies for each type of
insurance naming the city as an additional, non-contributory insured party:

1. Worker's compensation insurance in at least the required statutory limits;

2. Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least two million ($2,000,000.00) dollars per occurrence, and two million ($2,000,000.00) dollars for any single injury; and

3. The required insurance policies shall each provide that they shall not be changed or cancelled during the life of the licensee period or until thirty (30) days after written notice of such change has been delivered to the city.

(2) The outdoor area upon which alcoholic beverages will be served must be clearly designated and segregated by use of a temporary or permanent fence or barrier approved by the city that is no less than twenty four (24) inches in height and no more than seventy-two (72) inches in height and provided with required, unobstructed exits as prescribed herein and by this code the City of Aurora Code as adopted from time to time.
a. Barrier designs. A variety of styles and designs are permissible for outdoor seating areas.

1. Sectional fencing. Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) is a desirable solution for outdoor seating areas using barriers. Such fencing is portable, but cannot be easily shifted by patrons or pedestrians, as can less rigid forms of enclosures. Sectional fencing must be of metal (aluminum, steel, iron or similar) or of wood or composite construction. In the downtown area fences shall be fabricated of decorative metal. Chain link, plastic, vinyl, or wood fences are prohibited.

2. Posts. Vertical support posts (stanchions, bollards, etc.) must be constructed of wood, metal (aluminum, steel, iron or similar), or composite materials. In the downtown area posts shall be fabricated of decorative metal.

3. Stanchion base must not be a tripping hazard. If a stanchion or other vertical supporting device is attached to a base, that base must be adequate to support the stanchion as approved by the city. No domed stanchion bases are permitted.
b. Freestanding or attached. Any barrier may be freestanding without any permanent or temporary attachments to buildings, sidewalks or other infrastructure or may be attached to a building.

c. Planters. Planters may be used in addition to or in place of other barrier designs. Planters and the plants contained within them must meet the following requirements:

1. Maximum height of planters. Planters may not exceed a height of thirty-six (36) inches above the ground. (This pertains to the planter only, not the plants contained therein).

2. Maximum height of plants. Plants (or seasonal displays of natural landscape material) may not exceed a height of seventy-two (72) inches above the level of the ground.

3. Planter material. All planters must have plants (live, artificial, or seasonal) contained within them. If the live plants within the planter die, the plants must be replaced or the planter removed. Empty planters with only dirt, mulch, straw, woodchips or similar material are not permitted.
d. Natural barriers. Barriers may be natural in design such as a hedge, shrub or other plant material approved by the city.

e. Prohibited barrier styles.

1. Fabric inserts. Fabric inserts (whether natural or synthetic fabric) of any size are not permitted to be used as part of a barrier.

2. Chain-link and other fencing. The use of chain-link, cyclone fencing, chicken wire or similar appurtenances is prohibited for the outdoor seating license. Materials not specifically manufactured for fencing or pedestrian control (including but not limited to such items as buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc.) are not permitted and may not be used as components of a barrier.

f. A separate emergency exit out of the outdoor cafe area may be required before the request is approved.

(3) The proposed use shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the uses permitted by an outdoor seating area reduce the open portion of any sidewalk or walkway to less than five (5) feet in width for more than two hundred (200) feet in length.
a. In order to allow adequate pedestrian traffic areas, federal and state accessibility requirements and emergency access around outdoor dining areas, the following dimensional requirements must be observed:

1. A space at least thirty-six (36) inches wide for unobstructed ingress/egress must be maintained between any restaurant doorway and the pedestrian traffic corridor.

2. Location: Access openings should be placed in a location that will not create confusion for visually impaired pedestrians and as approved by the fire department.

b. Design and placement of tables and chairs, as well as other equipment shall comply with applicable requirements of the Americans with Disabilities Act and the Illinois Accessibility Act.

c. All applicable county health department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special health department requirements.

d. All public areas encompassed by the outdoor seating area shall be maintained in a sanitary manner at all times. Food scraps and containers shall be disposed of
in appropriate refuse containers on a regular basis during the day by the permittee. Sweeping of refuse or food scraps into tree grates is not permitted.

e. Licensees are responsible for emptying the public trash containers placed by the city if they should become full prior to the next regular pickup time.

f. Licensees shall see that the public areas encompassed by their outdoor seating area are clean at the end of each business day, so as not to have any food or drink leftovers remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

g. No tables, umbrellas, enclosure fencing, or other equipment shall be attached or affixed to the sidewalk, parkway, poles or any other public facilities.

h. Partitions, chairs, tables, lighting, serving stations and other amenities included in the outdoor seating area shall be approved by the city. The outdoor seating area shall be maintained in compliance with the approved site plan.

i. An inspection of the outdoor seating area shall be made by the city prior to approval of the outdoor
seating area. Inspections may include, but are not limited to, inspections by the building department, police department and fire department prior to issuance of the permit.

j. The arrangement and number of tables and chairs within the authorized boundaries of the outdoor seating area shall reflect the approved plan and shall not be substantially changed, altered, added to or reduced without the approval by the city during the annual permit period.

k. The licensee has an affirmative duty to prohibit any alcoholic liquor from leaving the permitted service area, except in a package properly sealed, bagged and receipted pursuant to section 6-25(e) of the City of Aurora Code of Ordinances.

l. The licensee shall indemnify, defend, protect, and hold harmless the city, its corporate authorities, officers, employees, agents and volunteers from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including but not
limited to reasonable attorney's fees, expert witness fees and costs of defense (collectively, the "Losses") directly or proximately resulting from licensee's acts or omissions, except to the extent that the city is the sole legal cause of said losses. The foregoing notwithstanding, under no circumstances shall the issuance of any license provided for under the Aurora Municipal Code, including but not limited to a liquor license, to the licensee or any other person or entity constitute an act of negligence or willful misconduct. Nothing set forth in the said license shall be deemed a waiver by the city of any defenses or immunities relating to the licensee or its property, or to any person or entity or their property, that are or would be otherwise available to the city or its corporate authorities, officers, employees, agents and volunteers under the common law of the State of Illinois or the United States of America. The provisions of this section shall survive the expiration or earlier termination of each approved outdoor seating area, or the renewal thereof.

(4) For new outdoor seating areas approved after March 28, 2017, the permit shall be valid for the same term as the liquor license. The holder of a permit shall re-apply on
an annual basis in conjunction with the renewal of the annual liquor license. There is an initial application fee. Renewals will comprise of submission of the outdoor seating plan.

(5) In the event that the local liquor control commissioner refuses to grant permission for an outdoor seating area, he shall place on file in his office the rejected application and a document setting forth the reasons for his refusal to grant the permit. Copies of the rejected application and the document setting forth the reasons for refusal shall also be served by certified mail upon the licensee at the address stated on the license application.

(6) The rejected applicant may, within ten (10) days from the receipt of said notice of rejection, request a hearing before the local liquor control commissioner, at which time all interested parties shall be heard.

(7) The licensee must comply with all other provisions of this Code.

(Code 1969, § 6-13; Ord. No. 086-5553, § 2, 9-2-86; Ord. No. 087-5622, § 1, 1-17-87; Ord. No. 088-85, § 1, 8-2-88; Ord. No. 089-66, § 1, 7-5-89; Ord. No. 092-120, § 1, 12-15-92; Ord. No. 094-91, § 1, 9-6-94; Ord. No. 002-158, § 5, 12-10-02; Ord. No. 004-43, § 3, 4-27-04; Ord. No. 005-18, § 3, 2-22-05; Ord. No.)
1 008-24, § 2, 3-25-08; Ord. No. 010-030, § 1, 6-8-10; Ord. No.
2 017-014, § 3-28-17; Ord. No. 018-119, § 1(Exh. A), 12-19-18;
3 Ord. No. 019-060, (Exh. A), 9-10-19