

ORDINANCE NO. 80-709

AN ORDINANCE TO AMEND CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF WARREN RELATING TO ALCOHOLIC LIQUORS.

THE CITY OF WARREN ORDAINS:

SECTION 1. That Chapter 4, Sections 4-1 through 4-8, of the Code of Ordinances of the City of Warren, Michigan, **which presently reads as follows:**

Sec. 4-1. - Sale or furnishing to persons under twenty-one (21) prohibited; defenses.

- (a) Alcoholic liquor shall not be sold or furnished to a person unless the person has attained twenty-one (21) years of age. A person who knowingly sells or furnishes alcoholic liquor to a person who is less than twenty-one (21) years of age, or who fails to make diligent inquiry as to whether the person is less than twenty-one (21) years of age, is guilty of a misdemeanor.
- (b) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a person under twenty-one (21) years of age, a motor vehicle operator's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action under this section.

Sec. 4-2. - Reserved.

Sec. 4-3. - Unlawful purchases, consumption or possession by persons under twenty-one (21).

- (a) **A person less than twenty-one (21) years of age shall not purchase, consume, possess alcoholic liquor, or have any bodily alcohol content. A person less than twenty-one (21) years of age who violates this subsection is guilty of a misdemeanor, punishable by the following sanctions:**
 - (1) For a first violation, a fine of not more than one hundred dollars (\$100.00), and may be ordered to perform community service and to undergo substance abuse screening at his or her own expense.
 - (2) For a second violation, by imprisonment for not more than thirty (30) days but only if the minor has been found by the court to have violated an order of probation for that conviction or juvenile adjudication, a fine of not more

than two hundred dollars (\$200.00), or both, and participation in substance abuse prevention services as defined in section 6107 of Act No. 368 of the Public Acts of 1978 (MCL 333.6107). The court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than ninety (90) days or more than one hundred eighty (180) days. The court may order the secretary of state to issue to the person a restricted license after the first thirty (30) days of the period of suspension in a manner provided for in section 319 of Act No. 300 of the Public Acts of 1949, being MCL 257.319. In the case of a person who does not possess an operator's or chauffeur's license, the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.

- (3) For a third or subsequent violation, by imprisonment for not more than sixty (60) days but only if the minor has been found by the court to have violated an order of probation for that conviction or juvenile adjudication, a fine of not more than five hundred dollars (\$500.00), or both, and participation in substance abuse prevention services as defined in section 6107 of Act No. 368 of the Public Acts of 1978 (MCL 333.6107). The court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than one hundred eighty (180) days or more than one (1) year. The court may order the secretary of state to issue to the person a restricted license after the first sixty (60) days of the period of suspension in a manner provided for in section 319 of Act No. 300 of the Public Acts of 1949, being MCL 257.319. In the case of a person who does not possess an operator's or chauffeur's license, the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.
- (b) When an person who has not previously been convicted of a violation of subsection (a) pleads guilty to a violation of subsection (a), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (a)(1) and payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. Upon violation of a term or condition of probation, the court may enter a plea of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications of disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under subsections (a)(2) and (3). There may be only one (1) discharge or dismissal under this subsection as to an individual. The records and identifications division of the department of state police shall retain a nonpublic

record of an arrest and discharge or dismissal under this subsection. This record shall be furnished to either or both of the following:

- (1) To a court, prosecutor, or police agency upon request for the purpose of showing that a defendant in a criminal action under subsection (a) has already once utilized this subsection.
- (2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - (i) At the time of the request, the individual is an employee of the department, the prosecutor, or the law enforcement agency, or an applicant for employment with the department, the prosecutor, or the law enforcement agency.
 - (ii) The record is used by the department, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.
- (c) *Preliminary breath test required.* A peace officer who has reasonable cause to believe a person less than twenty-one (21) years of age has consumed alcoholic liquor or has any bodily alcohol content is authorized to require the person to submit to a preliminary chemical breath analysis. A legal presumption shall be made by the court that the person less than twenty-one (21) years of age has consumed or possessed alcoholic liquor or has any bodily alcohol content if a preliminary chemical breath analysis or other acceptable blood alcohol test indicates the person's blood contained .02 percent or more by weight of alcohol. A person less than twenty-one (21) years of age who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a civil infraction
- (d) *Fraudulent identification.* A person who furnishes fraudulent identification to a person less than twenty-one (21) years of age, or a person less than twenty-one (21) years of age who uses a fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor.
- (e) A law enforcement agency, upon determining that a person less than eighteen (18) years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consumer, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (a) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than forty-

eight (48) hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than eighteen (18) years of age and not emancipated under 1968 PA 293; MCL 722.1 to 722.6. The notice may be made by any means reasonably calculated to give prompt and actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than seventeen (17) years of age is incarcerated for violating subsection (a), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

- (f) *Exceptions.* This section shall not be construed to prohibit a person less than twenty-one (21) years of age from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by the state, by the liquor control commission, or by an agent of the liquor control commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (g) This section shall not be construed to limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this chapter.
- (h) The consumption of alcoholic beverages by a person under twenty-one (21) years of age who is enrolled in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member shall not be prohibited by this chapter if the purpose is solely educational and a necessary ingredient of the course.
- (i) In a criminal prosecution for the violation of subsection (a) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.
- (j) As used in this section, "any bodily alcohol content" means either of the following:
 - (1) An alcohol content of not less than 0.02 grams or more per one hundred (100) milliliters of blood per two hundred ten (210) liters of breath or per sixty-seven (67) milliliters of urine.
 - (2) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

Sec. 4-4. - Children in places where liquor is sold.

A minor child under seventeen (17) years of age shall not be permitted to remain in a dance hall, saloon, barroom or any place where spirituous or intoxicating liquor, wine or

beer, or any beverage liquor or liquors containing spirituous or intoxicating liquor, beer or malt liquor is sold, given away or furnished for a beverage, unless the minor is accompanied by parent or guardian. A proprietor, keeper or manager of any such place who permits a minor child to remain in any such place, and a person who encourages or induces in any way the minor child to enter the place or to remain therein, shall be deemed guilty of a misdemeanor.

Sec. 4-5. - Consumption on unlicensed premises.

A person shall not maintain, operate, lease, or otherwise furnish to any person, any premises or place which is not licensed under the liquor control act (MCL 436.1 et seq.); where the other person may engage in the drinking of alcoholic liquor for any consideration.

Sec. 4-6. - Specific prohibitions on sales premises licensed for on-premises consumption.

No person holding a license pursuant to the liquor control act (MCL 436.1 et seq.) for on-premises consumption shall engage in or permit on the licensed premises any of the following conduct:

- (1) The performance of acts, or simulated acts, of sexual intercourse, fellatio, cunnilingus, masturbation, sodomy, bestiality, flagellation, or any other act by a person involving the touching or contacting of the genitals;
- (2) The erotic caressing or fondling of the breast, buttocks, pubic region or genitals;
- (3) The actual or simulated displaying or exposure of the pubic hair, pubic region, anus, vulva or genitals.

Sec. 4-7. - Questionnaire prerequisite to city council recommendation on liquor control commission dance and/or entertainment permit.

Any person who has applied to the state liquor control commission for a dance and entertainment permit within the city limits shall obtain from the city clerk and answer, a questionnaire form, which form shall be approved by resolution of city council, prerequisite to the city council making recommendation on the state liquor control commission dance and/or entertainment permit. The purpose of the questionnaire information furnished shall be to enable the city council to have the applicable information necessary to properly evaluate and make recommendation to the state liquor control commission. The completed questionnaire shall be filed with the city clerk before the city council makes recommendation to the state liquor control commission. Prior to any recommendation by the city council to the state liquor control commission the city council shall also afford to the person applying and completing and filing the questionnaire the procedural safeguards of notice and hearing before the city council.

Sec. 4-8. - Operating while intoxicated warning signs required.

Any establishment holding a license pursuant to the Michigan Liquor Control Code of 1998, as amended, MCL 436.1101 et seq., for on-premises alcoholic liquor consumption, shall be required to post operating while intoxicated warning signs in compliance with the following regulations:

- (a) *Wall sign near exit.* A wall sign shall be posted in a visible location near each exit, no higher than fifty-four (54) inches measured from the ground, which contains the following two (2) statements:

OPERATING A VEHICLE WHILE INTOXICATED IS AGAINST THE LAW. MCL 257.625

TAXICABS ARE AVAILABLE. THE FOLLOWING IS A LIST OF LICENSED TAXICABS AND TELEPHONE NUMBERS:

- i. *List of taxicabs.* The sign shall include a list of the name and telephone number of all licensed taxicabs in the City of Warren. The name and telephone number of licensed taxicabs is available from the city clerk. The posted list of licensed taxicabs shall be updated by the establishment annually on January 31.
 - ii. *Size.* The size of the operating while intoxicated warning sign shall be a minimum of eight and one-half (8½) inches by eleven (11) inches and the lettering used shall be at least one-half (½) inch in height.
- (b) *Table signs.* A table sign shall be posted at each table in the establishment which contains the following statements:

OPERATING A VEHICLE WHILE INTOXICATED IS AGAINST THE LAW. MCL 257.625

TAXICABS ARE AVAILABLE. A LIST OF TAXICABS AND TELEPHONE NUMBERS ARE POSTED NEAR THE EXIT

- i. *Size.* The size of the operating while intoxicated warning signs posted on each table shall be a minimum of three (3) inches by five (5) inches and the lettering used shall be at least one-quarter (¼) inch in height.
- (c) *Penalty.* The violation of this section is a municipal civil infraction which shall result in the assessment of a fine of not less than one hundred dollars (\$100.00) or not more than one thousand dollars (\$1,000.00) per violation, plus costs and other sanctions for each infraction.

is hereby amended by repealing same, and replacing it with a new Chapter 4,

Sections 4-1 through 4-15, “Alcoholic Liquors,” to read as follows:

ARTICLE I. - IN GENERAL

Section 4-1. - Title.

This chapter shall be known and may be cited as the City of Warren Liquor Ordinance.

Section 4-2. - Purpose.

This purpose of this chapter is to regulate alcoholic liquors and establishments dealing in alcoholic liquors for the public health, safety, and welfare of the City of Warren and persons within its jurisdictional boundaries. This chapter is designed to establish reasonable and uniform regulations to prevent potential adverse impacts relating to alcoholic liquor. The regulations herein, including those provisions relating to the issuance, transfer, renewal, or revocation of liquor licenses and permits, are designed to provide objective and orderly procedures for the administration of this chapter. The Council finds that nudity, partial nudity, and sexualized conduct in alcoholic liquor establishments begets undesirable behavior, including, violations of law and dangers to health, safety, and welfare of the public, and to that end incorporates as analogous and applicable hereto the findings and legislative record contained in Chapter 6, Article X, of the Code as adopted by Ordinance No. 80-689. It is neither the purpose nor effect of this chapter to impose a limitation or restriction on the content or reasonable access to any communicative materials or performances protected by the First Amendment. Where necessary, this chapter shall be construed to comply with all applicable constitutional requirements.

Section 4-3. - Definitions.

For purposes of this chapter, the words and phrases defined hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

- (a) *Alcoholic Liquor* shall mean any beverage or compound containing one-half of one percent or more of alcohol by volume, which is used for human consumption. For purposes of this chapter, the term includes, but is not limited to, beer, wine and spirits.
- (b) *Approval* shall mean the favorable consent of the Warren City Council or the Warren Police Department for any alcoholic liquor-related license or permit that is required by the Michigan Liquor Control Commission and that is sought for an

entity or establishment in the City of Warren. Where the opinion of the City Council or the Police Department is required to be considered, approval shall mean the favorable opinion of the City Council or the Police Department, as applicable. See Michigan Department of Licensing and Regulatory Affairs, Liquor Control Commission (MLCC), Approval Chart (dated 12-21-2012 and as amended from time to time) or other applicable MLCC bulletin.

(c) *Disqualifying Criminal Act* shall mean:

- (1) An offense punishable by death or imprisonment for ninety (90) days or more under any of the following statutes, as amended from time to time, for which less than ten (10) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - (i) Michigan Penal Code (MPC) Chapter IV (Adulterating and Misbranding)
 - (ii) MPC Chapter X (Arson and Burning)
 - (iii) MPC Chapter XI (Assaults)
 - (iv) MPC Chapter XVII (Bribery and Corruption)
 - (v) MPC Chapter XXII (Compounding Offenses)
 - (vi) MPC Chapter XXVA (Criminal Enterprises)
 - (vii) MPC Chapter XXVIII (Disorderly Persons)
 - (viii) MPC Chapter XXXI (Embezzlement)
 - (ix) MPC Chapter XXXIII (Explosives, Bombs, and Harmful Devices)
 - (x) MPC Chapter XXXIV (Extortion)
 - (xi) MPC Chapter XLIII (Frauds and Cheats)
 - (xii) MPC Chapter XLIV (Gambling)
 - (xiii) MPC Chapter XLV (Homicide)
 - (xiv) MPC Chapter XLVIII (Indecency and Immorality)
 - (xv) MPC Chapter LVIII (Mayhem)

- (xvi) MPC Chapter LXVII (Prostitution)
 - (xvii) MPC Chapter LXVIIA (Human Trafficking)
 - (xviii) MPC Chapter LXXVI (Sexual Conduct)
 - (xix) MPC Chapter LXXVIII (Robbery)
 - (xx) MPC Chapter LXXXIII-A (Michigan Anti-Terrorism Act)
 - (xxi) MCL Chapter 333, Part 74 (Controlled Substances – Offenses and Penalties)
 - (xxii) MCL 205.27 (Taxation – Prohibited Acts (including tax evasion))
 - (xxiii) MCL 257.625 (Operating While Intoxicated, Impaired, Controlled Substance or other)
- (2) Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or
 - (3) Any offense enumerated in the city's code which contains the same elements as one (1) of the foregoing state offenses; or
 - (4) Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.
- (d) *Employee* shall mean any person who performs a service on the premises of an alcoholic beverage establishment on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- (e) *Influential Interest* means any of the following: (1) the actual power to operate or control the operation, management, or policies of a current or prospective alcoholic liquor business, (2) ownership of a financial interest of ten percent (10%) or more of a current or prospective alcoholic liquor business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates a current or prospective alcoholic liquor business.
- (f) *License* shall mean a license issued by the Michigan Liquor Control Commission to sell, produce, or warehouse alcoholic liquor for consumption on or off the premises.

- (g) *Licensee* shall mean a person holding a license to sell or store alcoholic liquor for consumption on or off the premises, as well as such person's agents, servants and employees.
- (h) *Licensed Premises* shall mean the location where the licensee is authorized to sell or store alcoholic liquor on or off the premises.
- (i) *Person* shall mean an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.
- (j) *Premises* shall mean the location for which a license has been issued by the Michigan Liquor Control Commission.
- (k) *Related Permit* shall mean any activity permit issued by the Michigan Liquor Control Commission to a licensee for entertainment or other activities at the licensed premises, which legally require such a permit.
- (l) *Sale* shall mean, the exchange, barter, traffic, furnishing, or giving away of alcoholic liquor which is regulated by the Michigan Liquor Control Act and this chapter.
- (m) *SDD* shall mean Specially Designated Distributor which is a person engaged in an established business licensed by the Michigan Liquor Control Commission to distribute spirits and mixed spirit drink in the original package for consumption off the premises.
- (n) *SDM* shall mean Specially Designated Merchant which is a person to whom the Michigan Liquor Control Commission grants a license to sell beer or wine, or both, at retail for consumption off the premises.

ARTICLE II. - REQUIREMENTS; PROHIBITED ACTIVITIES

Sec. 4-4. - Sale or furnishing to persons under twenty-one (21) prohibited; defenses.

- (a) *Misdemeanor.* Alcoholic liquor shall not be sold or furnished to a person unless the person has attained twenty-one (21) years of age. Except as otherwise provided in subsection (b) and subject to subsection (e), a person who knowingly sells or furnishes alcoholic liquor to a person who is less than twenty-one (21) years of age, or who fails to make diligent inquiry as to whether the person is less than twenty-one (21) years of age, is guilty of a misdemeanor.
 - (1) *Diligent inquiry.* A diligent inquiry means a good faith effort to determine the age of a person, which includes at least an examination of an official

Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification which established the identity of a person.

- (b) *Municipal Civil Infraction.* If the violation set forth in subsection (a) is the result of an undercover operation in which the person who is less than twenty-one (21) years of age received alcoholic liquor under the direction of the state police, commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$100.00.
- (c) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee of a licensee shall not be charged with a violation of subsection (a) or (b) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than twenty-one(21) years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.
 - (1) *Corrective action.* Corrective action means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a minor from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the minor and any other person suspected of aiding and abetting the minor.
- (d) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a person who is less than twenty-one (21) years of age, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.
- (e) If the police department is the enforcing agency, a licensee shall not be charged with a violation of subsection (a) or (b) unless all the following occur, if applicable:
 - (1) Enforcement action is taken against the person less than twenty-one (21) years of age who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.
 - (2) Enforcement action is taken under this section against the person 21 years of age or older who is not the retail licensee or the retail licensee's

clerk, agent, or employee who sold or furnished the alcoholic liquor to the person less than twenty-one (21).

- (3) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the person less than twenty-one (21) years of age.
- (f) If a person who is less than twenty-one (21) years of age participates in an undercover operation in which the person is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than 18 years of age.

State law reference: MCL 436.1701

Sec. 4-5. - Unlawful purchases, consumption or possession by persons under twenty-one (21).

- (a) A person less than twenty-one (21) years of age shall not purchase or attempt to purchase, consume or attempt to consume, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content except as provided in this section. A person less than twenty-one (21) years of age who violates this subsection is guilty of a misdemeanor, punishable by the following sanctions and is not subject to the sanctions prescribed in MCL 436.1909:
 - (1) For a first violation, by a fine of not more than one hundred dollars (\$100.00). A court may order a person less than twenty-one (21) years of age under this subdivision to perform community service, participation in substance abuse prevention services or substance abuse treatment and rehabilitation services and/or to undergo substance abuse screening at his or her own expense.
 - (2) For a second violation, by imprisonment for not more than thirty (30) days but only if the person less than twenty-one (21) years of age has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, by a fine of not more than two hundred dollars (\$200.00), or both. The court may order the person under this subdivision to perform community service, participation in substance abuse prevention services or substance abuse treatment and rehabilitation services and/or undergo substance abuse screening and assessment as his or her own expense.
 - (3) For a third or subsequent violation, by imprisonment for not more than sixty (60) days but only if the person less than twenty-one (21) years of age has been found by the court to have violated an order of probation,

failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, by a fine of not more than five hundred dollars (\$500.00), or both. The court may order the person under this subdivision to perform community service, participation in substance abuse prevention services or substance abuse treatment and rehabilitation services and/or undergo substance abuse screening and assessment at his or her own expense.

- (b) When a person who has not previously been convicted of a violation of subsection (a) pleads guilty to a violation of subsection (a), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (a)(1) and payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. Upon violation of a term or condition of probation, the court may enter a plea of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications of disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under subsections (a)(2) and (3). There may be only one (1) discharge or dismissal under this subsection as to an individual. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this subsection. This record shall be furnished to either or both of the following:
- (1) To a court, prosecutor, or police agency upon request for the purpose of showing that a defendant in a criminal action under subsection (a) has already once utilized this subsection.
 - (2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - (i) At the time of the request, the individual is an employee of the department, the prosecutor, or the law enforcement agency, or an applicant for employment with the department, the prosecutor, or the law enforcement agency.
 - (ii) The record is used by the department, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

- (c) A violation of (a) successfully deferred, discharged, and dismissed under subsection (b) is considered a prior violation for the purposes of subsection (a)(2) and (a)(3).
- (d) The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (a) or (f) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.
- (e) *Preliminary breath test requested.* A peace officer who has reasonable cause to believe a person less than twenty-one (21) years of age has consumed alcoholic liquor or has any bodily alcohol content may request the person to submit to a preliminary chemical breath analysis. A police officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor.
- (f) *Fraudulent identification.* A person who furnishes fraudulent identification to a person less than twenty-one (21) years of age, or notwithstanding subsection (a), a person less than twenty-one (21) years of age who uses a fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor.
- (g) A law enforcement agency, upon determining that a person less than eighteen (18) years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (a) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement agency shall notify the parent, guardian, or custodian not later than forty-eight (48) hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than eighteen (18) years of age and not emancipated under 1968 PA 293; MCL 722.1 to 722.6. The law enforcement agency may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt and actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than seventeen (17) years of age is incarcerated for violating subsection (a), his or her parents or legal guardian shall be notified immediately as provided in this subsection.
- (h) *Exceptions.* This section shall not be construed to prohibit a person less than twenty-one (21) years of age from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by the state, by the liquor control commission, or by an agent of the liquor control commission, if the alcoholic liquor is not possessed for his or her personal consumption.

- (i) The following individuals are not considered to be in violation of subsection (a):
 - (1) A person less than twenty-one (21) years of age who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.
 - (2) A person less than twenty-one (21) years of age who accompanies an individual who meets both of the following criteria:
 - (i) Has consumed alcoholic liquor.
 - (ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a person less than twenty-one (21) years of age.
 - (3) A person less than twenty-one (21) years of age who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.
- (j) If a person under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (j), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.
- (k) This section shall not be construed to limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this chapter.
- (l) The consumption of alcoholic beverages by a person under twenty-one (21) years of age who is enrolled in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member shall not be prohibited by this chapter if the purpose is solely educational and a necessary ingredient of the course.
- (m) The consumption by a person less than twenty-one (21) years of age of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this chapter.

- (n) Subsection (a) does not apply to a person less than twenty-one (21) years of age who participates in either or both of the following:
 - (1) An undercover operation in which the person less than twenty-one (21) years of age purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (2) An undercover operation in which the person less than twenty-one (21) years of age purchases or receives alcoholic liquor under the direction of the state police, the commission, the police department as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than twenty-one (21) years of age was not under the direction of the state police, the commission, or the police department and was not part of the undercover operation.
- (o) The state police, the commission, or the police department shall not recruit or attempt to recruit a person less than twenty-one (21) years of age for participation in an undercover operation at the scene of a violation of subsection (a), Section 4-4(a), 4-4(b), MCL 436.1701(1), or MCL 436.1801(2).
- (p) In a criminal prosecution for the violation of subsection (a) concerning a person less than twenty-one (21) years of age having any bodily alcohol content, it is an affirmative defense that the person less than twenty-one (21) years of age consumed the alcoholic liquor in a venue or location where that consumption is legal.
- (q) As used in this section:
 - (1) "ANY bodily alcohol content" means either of the following:
 - (i) An alcohol content of not less than 0.02 grams or more per one hundred (100) milliliters of blood per two hundred ten (210) liters of breath or per sixty-seven (67) milliliters of urine.
 - (ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.
 - (2) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
 - (3) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

State law reference: MCL 436.1703

Sec. 4-6. - Children in places where liquor is sold.

A minor child under seventeen (17) years of age shall not be permitted to remain in a dance hall, saloon, barroom or any place where spirituous or intoxicating liquor, wine or beer, or any beverage liquor or liquors containing spirituous or intoxicating liquor, beer or malt liquor is sold, given away or furnished for a beverage, unless the minor is accompanied by parent or guardian. A proprietor, keeper or manager of any such place who permits a minor child to remain in any such place, and a person who encourages or induces in any way the minor child to enter the place or to remain therein, shall be deemed guilty of a misdemeanor.

State law reference: MCL 750.141

Sec. 4-7. - Consumption on unlicensed premises.

(1) A person shall not do either of the following:

(a) Maintain, operate, or lease, or otherwise furnish to any person, any premises or place that is not licensed under the Liquor Control Code of 1998 (MCL 436.1 et seq.); where the other person may engage in the drinking of alcoholic liquor for consideration.

(b) Obtain by way of lease or rental agreement, and furnish or provide to any other person, any premises or place that is not licensed under the Liquor Control Code of 1998 (MCL 436.1 et seq.) within which any other person may engage in the drinking of alcoholic liquor for consideration.

(2) A person shall not consume alcoholic liquor in a commercial establishment selling food if the commercial establishment is not licensed under the Liquor Control Code of 1998 (MCL 436.1 et seq.). A person owning, operating, or leasing a commercial establishment selling food which is not licensed under the Liquor Control Code of 1998 (MCL 436.1 et seq.) shall not allow the consumption of alcoholic liquor on its premises.

(3) This section shall not apply to any hotel or any licensee under this Liquor Control Code of 1998, MCL 436.201 et. seq.

(4) This section shall not be construed to repeal or amend MCL 436.2019.

(5) As used in this section, "consideration" includes any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the purchasing of any service or item, or combination of service and item; or includes the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food.

State law reference: MCL 436.1913

Sec. 4-8. - Specific prohibitions on premises licensed for on-premises consumption.

No licensee shall knowingly or recklessly engage in or permit on the licensed premises any of the following live conduct:

- (1) Acts of sexual intercourse, fellatio, cunnilingus, masturbation, sodomy, bestiality, or flagellation;
- (2) The engaging in physical contact with, touching, caressing, or fondling, by an employee, of the breast, buttocks, lap, pubic region, or genitals of a patron, whether directly or through clothing or other covering;
- (3) The engaging in physical contact with, touching, caressing, or fondling, by a patron, of the breast, buttocks, lap, pubic region, or genitals of an employee, whether directly or through clothing or other covering; or
- (4) The display or exposure, by an employee, of his or her genitals, pubic hair, pubic region, buttocks, natal cleft, perineum, anus, vulva or any portion of the female breast at or below the areola thereof (excluding any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part) to a patron. This subsection (4) does not apply to conduct in theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception in the previous sentence shall not be construed to apply to any sexually oriented business as defined by applicable law.

The City Council finds that the regulations in this chapter, and in this section specifically, serve the substantial government interest in preventing negative secondary effects associated with nudity and sexualized conduct in establishments serving alcohol, as detailed in Resolution _____. The City Council adopts and incorporates herein its findings and legislative record related to such negative secondary effects.

Sec. 4-9. - Operating while intoxicated warning signs required.

Any establishment holding a license pursuant to the Michigan Liquor Control Code of 1998, as amended, MCL 436.1101 et seq., for on-premises alcoholic liquor consumption, shall be required to post operating while intoxicated warning signs in compliance with the following regulations:

- (a) *Wall sign near exit.* A wall sign shall be posted in a visible location near each exit, no higher than fifty-four (54) inches measured from the ground, which contains the following two (2) statements:

OPERATING A VEHICLE WHILE INTOXICATED IS AGAINST THE LAW. MCL 257.625

TAXICABS ARE AVAILABLE. THE FOLLOWING IS A LIST OF LICENSED TAXICABS AND TELEPHONE NUMBERS:

- (1) *List of taxicabs.* The sign shall include a list of the name and telephone number of all licensed taxicabs in the City of Warren. The name and telephone number of licensed taxicabs is available from the city clerk. The posted list of licensed taxicabs shall be updated by the establishment annually on January 31.
- (2) *Size.* The size of the operating while intoxicated warning sign shall be a minimum of eight and one-half (8½) inches by eleven (11) inches and the lettering used shall be at least one-half (½) inch in height.
- (b) *Table signs.* A table sign shall be posted at each table in the establishment which contains the following statements:

OPERATING A VEHICLE WHILE INTOXICATED IS AGAINST THE LAW. MCL 257.625

TAXICABS ARE AVAILABLE. A LIST OF TAXICABS AND TELEPHONE NUMBERS ARE POSTED NEAR THE EXIT

- (1) *Size.* The size of the operating while intoxicated warning signs posted on each table shall be a minimum of three (3) inches by five (5) inches and the lettering used shall be at least one-quarter (¼) inch in height.
- (c) *Penalty.* The violation of this section is a municipal civil infraction which shall result in the assessment of a fine of not less than one hundred dollars (\$100.00) or not more than one thousand dollars (\$1,000.00) per violation, plus costs and other sanctions for each infraction.

ARTICLE III. - LICENSES, PERMITS, LOCAL APPROVAL

Section 4-10. - Local approval of liquor license and related permit applications.

If an application for local approval of a liquor license also seeks local approval for an MLCC dance, entertainment, or dance-entertainment activity permit, local approval for such permit(s) shall be granted provided that the application meets all of the requirements in this chapter for approval of a liquor license. In such situations, local

approval of the liquor license application shall constitute local approval of the requested activity permit(s). No local approval shall be given for an application for a topless activity permit or for an extended hours permit.

Section 4-11. - Application for local approval required.

- (a) MLCC Application. An applicant for local approval must first submit an application for a liquor license or related permit to the Michigan Liquor Control Commission and receive, upon submission of same, a Request Identification Number (RID) from the MLCC.
- (b) City Application. An applicant for local approval shall file with the City of Warren Police Department Liquor Licensing Division, 29900 Civic Center Drive, Warren, Michigan 48093, a completed application made on a form provided by the Liquor Licensing Division. The application shall be signed by each person with an influential interest in the business for which local approval is sought. The application shall be notarized, and shall contain the following:
 - (1) The applicant's name and business or mailing address. If the applicant is a partnership, corporation, limited liability company, or other legal entity, then all persons with an influential interest in the entity shall be deemed an applicant and shall provide the information required by this chapter.
 - (2) Type of license, permit, or alcoholic liquor-related approval desired.
 - (3) Address and legal description of the property where the license is to be located.
 - (4) A preliminary site plan showing the relationship of the structure or proposed structure for which approval is sought to the property and showing all land uses within 300 feet of the property. The preliminary site plan shall also include photographs or drawings of each of the sides of the structure.
 - (5) The applicant's employment and business history, which shall set forth the number of years, if any, that the applicant has worked in liquor licensed establishment(s) and the position or role that the applicant held in such establishment(s).
 - (6) A set of the applicant's fingerprints. Fingerprinting service shall be provided by the Warren Police Department upon request during normal business hours.
 - (7) A personal financial statement showing:

- (i) The applicant's net worth as a function of assets compared to liabilities;
 - (ii) The applicant's capital investment in the venture for which approval of a liquor license or permit is sought;
 - (iii) Loans or lines of credit that have been secured to meet the obligations and business undertakings related to the venture;
 - (iv) Insurance policies which have been issued related to the venture.
- (8) The applicant's criminal history, including all convictions, guilty pleas, Alford pleas, and pleas of no contest or nolo contendere. For each of these, the applicant shall provide:
- (i) The offense charged;
 - (ii) The date of the offense;
 - (iii) The jurisdiction of the offense;
 - (iv) The date of the conviction, guilty plea, Alford plea, or plea of no contest or nolo contendere;
 - (v) If the applicant was incarcerated for the offense, the date on which the applicant was released from confinement; and
 - (vi) Whether the applicant is still on probation for the offense.
- (9) A receipt showing that the applicant has paid the liquor license application fee in the amount of \$1,728.00 to the City of Warren Treasurer pursuant to the Resolution Revising Liquor License Application Fee adopted by the Warren City Council on September 14, 2010.
- (c) Upon receipt of an application pursuant to subsection 4-11(b), the Liquor Licensing Division will forward the application to the Police Department Investigation Unit, the Division of Buildings and Safety Engineering, the Fire Department, and such other City departments as may be required.
- (d) Within ten (10) days of receipt of an application pursuant to subsection 4-11(b), the Liquor Licensing Division shall mail the applicant(s) a notice indicating that the application is complete, or shall mail the applicant(s) a notice indicating that the application is incomplete, specifying which portion(s) of the application are incomplete. With the notice required by the preceding sentence, the Liquor License Division may request any additional information related to an applicant's personal, employment, or business history, financial condition, and/or criminal

history that relates directly to the applicant's ability to operate an alcoholic liquor-licensed establishment consistent with the public health, safety, and welfare.

- (e) By submitting an application pursuant to subsection 4-11(b), the applicant consents to a background investigation, including, but not limited to an investigation of criminal history, civil actions, investigations by other governmental bodies, penalties imposed by same, moral character, business reputation, or any other background area deemed necessary by the Liquor Licensing Division.

Section 4-12. - Grant or denial of local approval.

- (a) *Local Police.* Within forty-five (45) days of receipt of an application pursuant to subsection (b), the Liquor Licensing Division shall:
 - (i) Issue a decision either approving or disapproving the application, specifying the reasons therefore, pursuant to the standards set forth in section 4-12(c) below; and
 - (ii) Transmit its decision to the City Council for Council's consideration at its next meeting.
- (b) *City Council.* Within forty-five (45) days of the Liquor Licensing Division's issuance of its decision, the City Council shall:
 - (i) Issue a decision either approving or disapproving the application, specifying the reasons therefore, pursuant to the standards set forth in section 4-12(c) below; and
 - (ii) Transmit its decision to the Michigan Liquor Control Commission.
- (c) *Standards for Approval.* The Liquor Licensing Division and the City Council shall approve an application unless:
 - (1) An applicant is less than twenty-one (21) years of age;
 - (2) An applicant has had less than three (3) years management experience in a business that serves the public;
 - (3) An applicant as not paid the liquor license application fee;
 - (4) The subject premises is not in compliance with the Zoning Ordinance;
 - (5) The subject premises lacks a required Certificate of Compliance of Zoning Grant Conditions, where applicable;

- (6) The Buildings and Safety Engineering Department, the Macomb County Health Department or applicable department, or the Fire Department has indicated that there are unpaid fees or uncured violations under its purview related to the subject premises;
- (7) The Warren Treasurer's Office has denied a real estate tax clearance pertaining to the subject premises;
- (8) The business does not own the premises for which a license is sought or does not have a lease therefore for the full period for which the license is sought;
- (9) An applicant has had a liquor license revoked or not renewed for cause in the last ten (10) years under this article or a comparable city or township ordinance or state law, whether in Michigan or otherwise;
- (10) An applicant has been found in violation of regulations promulgated by the Michigan Liquor Control Commission, or a similar agency regulating alcohol or liquor, on more than five (5) occasions in the last ten (10) years.
- (11) An applicant has had an influential interest in a business that has been declared by a court of law to be a nuisance within ten (10) years prior to the filing of the application for local approval, if the conditions creating the nuisance occurred during the time that the applicant had the influential interest in the business;
- (12) An applicant has been convicted of, or pled guilty or nolo contendere to, a disqualifying criminal act, as defined in this chapter;
- (13) The business is not licensed to do business in Michigan or has not obtained a sales tax license;
- (14) An applicant has failed to provide information required by this chapter or has falsely answered a question or has failed to answer a request for information related to the applicant's ability to operate an alcoholic liquor-licensed establishment consistent with the public health, safety, and welfare.
- (15) The Liquor Licensing Division or the City Council finds, based on specified information available to the Division or Council, that issuance of an alcoholic liquor license would have a substantial negative effect upon vehicular traffic, pedestrian traffic, noise, or economic development in the surrounding area;
- (16) The Liquor Licensing Division or the City Council finds, based on specified information available to the Division or Council, that the applicant lacks the

demonstrated ability to operate an alcoholic liquor-licensed establishment consistent with the public health, safety, and welfare.

- (d) *Tolling of Deadline for Decision.* The deadlines for a decision by the Liquor Licensing Division or the City Council under this chapter may be tolled at the request of the applicant for a reasonable period of time as is necessary for the applicant to obtain and present all information requested by the Division or the Council that is related to the applicant's project or the applicant's ability to operate an alcoholic liquor-licensed facility consistent with the public health, safety, and welfare. The deadlines may also be tolled by the City Council, for a period of up to thirty (30) days, to permit the gathering of additional information related to the project or the applicant's ability to operate an alcoholic liquor-licensed facility consistent with the public health, safety, and welfare.
- (e) *Reservation of Authority.* Notwithstanding anything to the contrary in this chapter, no applicant for local approval has a right to the issuance of an alcoholic liquor license to the applicant, and the City hereby reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such a license, based on objective criteria related to concerns of the public health, safety, and welfare as they relate to the project.

Section 4-13. - Transfer of existing licenses.

An application for local approval of a transfer related to any existing alcoholic liquor license, including a transfer of location, shall be subject to the same procedures, standards, and fees contained in this chapter that apply to an application for local approval of a liquor license or related permit. In addition, when submitting the application, the transferee-applicant shall furnish a copy of 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 or previous licensee, or regarding any license(s) in which transferee has or has had a financial interest.

Section 4-14. - Objections to renewal; requests for revocation.

- (a) *Objection.* 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, based on the licensee's failure to comply with the requirements of this chapter or based on the licensee's violation(s) of this chapter.
- (b) *Procedure.* Before filing an objection to the renewal or a request for revocation of a license with the Michigan Liquor Control Commission, the City Council shall provide the licensee with notice and an opportunity to be heard. The council shall serve notice upon the license holder by certified mail, return receipt requested, not less than 20 days prior to the hearing. The notice shall state:
 - (1) The proposed action.

- (2) The specified grounds for the City's proposed action.
 - (3) The date, time, and place of the hearing.
 - (4) A statement that the licensee may present evidence and testimony, may cross-examine witnesses, and may be represented by an attorney.
- (c) *Hearing and Decision.* The hearing shall be conducted by the City Council as a whole and be open to the public. The City Council shall submit to the license holder and the Michigan Liquor Control Commission, a written statement of its findings, determination, and specific grounds therefore.
- (d) *Criteria for Nonrenewal or Revocation.* The City Council may recommend nonrenewal or revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, that:
- (1) The licensee would not meet the standards set forth in section 4-12(c) if the licensee were an applicant for a new license.
 - (2) The licensee has knowingly or recklessly allowed three (3) or more violations of the regulations in this chapter in the preceding calendar year.
 - (3) The licensee has knowingly or recklessly allowed a nuisance to be maintained upon the premises.
 - (4) The subject premises has existing violations of building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes.
 - (5) The operation of the licensed establishment has resulted in a pattern of patron conduct in the neighborhood of the establishment that substantially disturbs the peace, order, and tranquility of the neighborhood.
 - (6) The licensee has failed to maintain the grounds and exterior of the licenses establishment by allowing litter, debris, and/or refuse to unreasonably remain on the property or adjoining properties.

Section 4-15. - Severability.

The provisions of this chapter are hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining provisions and the application of all provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby. It is hereby declared that such provisions would have been passed independently of such provision so known to be

invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

SECTION 2. This Ordinance shall take effect on June 3, 2013.

I HEREBY CERTIFY that the foregoing Ordinance No. 80-709 was adopted by the Council of the City of Warren at its meeting held on May 14, 2013.

PAUL WOJNO
City Clerk

Published: May 29, 2013

WBC/s/alcoholic liquors chapter 4 final Id#48892