

Request for City Council Action

Date: August 11, 2015

Agenda Section: Consent Agenda No. 5	Originating Department: City Clerk's Office
Item: Ordinance Amending Title Two (2) of the Carbondale Revised Code as it Pertains to Transfers or Other Changes in Ownership for a Liquor-Licensed Establishment and Changes in Operation of a Liquor-Licensed Establishment No. 5.10	Approved:

Background:

In response to recent concerns over the Local Liquor Control Commission's inability to review certain changes in liquor establishments, former Liquor Control Chairman Monty requested that the Liquor Advisory Board contemplate revisions to certain sections of the Liquor Code. These Sections 2-4-14, 2-4-16, and 2-4-17 allowed substantial changes of which the Commission is required to be informed, but currently does not provide any approval process. The Liquor Advisory Board reviewed these sections on April 2 and July 2, 2015 and approved the following changes to each section:

2-4-14 - Transfers of Licenses and 2-4-16 - Changes in Interest or Ownership

The Board discussed the inconsistency of a transfer from one sole proprietor to another that would require full approval from the Liquor Advisory Board and Local Liquor Control Commission, but in the event that a limited liability company or corporation were to change ownership, but continue to operate under the same LLC or corporation name, the company was then only required to inform the Commission of the change within ten days. It was recommended that with the exception of the removal of an individual owner or member, any changes in ownership of 5% or more of a non-publicly traded corporation should be approved by the Local Liquor Control Commission.

2-4-17 - Changes in Operation

Liquor Advisory Board members noted that the issue of an establishment receiving approval for their license under specific criteria and subsequently making considerable operational modifications has been a long standing issue that appears to be occurring with greater frequency. Again, the current requirements of the Liquor Code only require notification to the Commission with ten days of such changes. The Board was concerned that the extent of the changes would need to be substantial in nature to require approval and in response to that concern illustrative examples of the changes which would require approval were drafted. Those examples include:

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
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Council Action: Motion by _____ 2nd by _____ to _____

Addition of entertainment to a licensed establishment including a dance floor, runway, platform, entertainment devices such as pool tables, video gaming, live music and/or performances, and amplified sound;

Elimination or substantial reduction of food service or food service hours for Class A licenses;

Any temporary or permanent change in the configuration of an establishment that would facilitate its ability to exceed its authorized occupancy;

Rental of liquor-licensed facilities to outside businesses, organizations, or promoters;

Interior or exterior structural modifications which would result in the change of occupancy or create, remove, or relocate doors and passages;

Changes in operation which would necessitate hiring, contracting, or utilizing security detail; and

Changes that may be or are contrary to the basic rights, restrictions, and nature of the license class under which a licensee operates.

Recommended Action:

It is recommended that the City Council approve an Ordinance Amending Title Two (2) of the Carbondale Revised Code as it Pertains to Transfers of Licenses, Changes in Interest or Ownership, and Changes in Operation.

**CITY OF CARBONDALE, ILLINOIS
ORDINANCE NO. 2015-**

**AN ORDINANCE AMENDING TITLE TWO (2) OF THE CARBONDALE REVISED
CODE AS IT PERTAINS TO LIQUOR LICENSE REQUIREMENTS**

**ADOPTED BY THE CITY COUNCIL
OF THE CITY OF CARBONDALE, ILLINOIS
THE 11TH DAY OF AUGUST, 2015**

**Published in pamphlet form by authority of the City Council of the City of Carbondale,
Jackson County, Illinois, this 12th day of August, 2015.**

CERTIFICATE OF PUBLICATION

**I, Jennifer R. Sorrell, the duly qualified and acting City Clerk of the City of
Carbondale, Illinois, and the official custodian of the records of said City, do hereby certify
that this Ordinance was published in pamphlet form by authority of the City Council on
the 12th day of August, 2015.**

Jennifer R. Sorrell, City Clerk

ORDINANCE NO. 2015-_____

AN ORDINANCE AMENDING TITLE TWO (2) OF THE CARBONDALE REVISED CODE AS IT PERTAINS TO LIQUOR LICENSE REQUIREMENTS

WHEREAS, the City of Carbondale, Illinois is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, Title 2 of the Carbondale Revised Code outlines the liquor license requirements for the retail sale of alcoholic liquors within the City of Carbondale; and

WHEREAS, Title 2, Chapter 4, Section 14 outlines the procedure for transferring a liquor license within the City of Carbondale; and

WHEREAS, Title 2, Chapter 4, Section 16 outlines the requirements for changes in interest or ownership of a licensed premises within the City of Carbondale; and

WHEREAS, Title 2, Chapter 4, Section 17 outlines the procedure for changes in operation of a liquor license within the City of Carbondale; and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City of Carbondale to amend Sections 14, 16, and 17 of Title 2, Chapter 4 of the Carbondale Revised Code as it relates to changes in interest or ownership and changes in operation for a liquor license; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. That Title 2, Chapter 4, Section 14 is hereby amended to read as follows:

2-4-14: TRANSFER OF LICENSE:

A. Not Transferable By Holder: A license shall be a purely personal privilege and shall not constitute property. Nothing in this title shall be construed to grant a right to transfer or accept the transfer of any license. Applicants for the transfer of an existing liquor license shall follow the same procedures as those for the issuance of a new liquor license as contained in this chapter.

B. Commission Discretion: Notwithstanding subsection A of this section, the local liquor control commission, upon receipt of completed transfer application and a transfer fee in the amount of one hundred dollars (\$100.00), may authorize the transfer of any license issued under this chapter.

C. Relocation Of Business: If the applicant seeks to transfer the license to a new location, the proposed location must comply with all rules, regulations, city ordinances and state statutes applicable to the operation and maintenance of a licensed premises.

D. New Ownership: The transfer of a license issued hereunder from one person to another may only be made in the case of a bona fide sale or transfer for valuable consideration of the business, and upon the determination by the local liquor control commission that the purchaser possesses the qualifications as required of an applicant for the original license.

E. In the event the licensee is a Non Publicly Traded corporation, limited liability company, or a partnership, any change in ownership of 5% or more of the licensed corporation, limited liability company, or partnership shall constitute a transfer of the license and shall require the applicant to follow the procedures for issuance of a new liquor license as contained in this chapter, consistent with the requirements of Section 2-4-16.A.

~~E.~~ F. Old License Returned To City: No transfer shall be effective and no new license shall be issued until the former license is submitted to the office of the city clerk and all monies due the city have been paid.

SECTION 2. That Title 2, Chapter 4, Section 16 is hereby amended to read as follows:

2-4-16: CHANGES IN INTEREST OR OWNERSHIP:

Changes in the interest or ownership of any licensed premises are subject to the following requirements:

A. Any changes in partners, officers, directors, persons holding directly or beneficially more than five percent (5%) of the stock or ownership interest, or managers of

establishments licensed under this title, shall be reported in writing to the liquor advisory board and shall require the approval of the local liquor control commission ~~within ten (10) days of the change~~; provided, however, that changes in stock ownership need not be reported where the stock is publicly traded if the stock transfer is less than twenty five percent (25%) of the stock. All such persons shall meet all the requirements of this title and must otherwise qualify to hold a license. A change in ownership that is simply a reduction in the number of owners (i.e. from five (5) owners to four (4) owners) shall require notification to the City, but shall not require the Local Liquor Control Commission's approval.

B. When a license has been issued to a partnership and a change of ownership occurs resulting in a partnership interest by one who is not eligible to hold a liquor license, said license shall terminate effective on the date of said change.

C. When a license has been issued to a corporation or limited liability company and a change has taken place in the officers, directors, managers, members, or shareholders of more than five percent (5%) of the stock or ownership interest resulting in the holding of office or such shares by one who is not eligible for a license, said license shall terminate, effective on the date of said change. (Ord. 2007-38)

SECTION 3. That Title 2, Chapter 4, Section 17 is hereby amended to read as follows:

2-4-17: CHANGES IN OPERATION:

A license issued under the provisions of this title shall permit the sale of alcoholic liquor only within the licensed premises described in the application, the nature of business described in the application and as presented to the Liquor Advisory Board and Local Liquor Control Commission, and under the conditions imposed in this title on the particular class of license described therein. A licensee may not materially or substantially alter the licensed premises without approval by the Local Liquor Control Commission. Examples of such changes which must be reviewed by the Commission include, but are not limited to:

Addition of entertainment to a licensed establishment including a dance floor, runway, platform, entertainment devices such as pool tables, video gaming, live music and/or performances, and amplified sound;

Elimination or substantial reduction of food service or food service hours for Class A licenses;

Any temporary or permanent change in the configuration of an establishment that would facilitate its ability to exceed its authorized occupancy;

Rental of liquor-licensed facilities to outside businesses, organizations, or promoters;

Interior or exterior structural modifications which would result in the change of occupancy or create, remove, or relocate doors and passages;

Changes in operation which would necessitate hiring, contracting, or utilizing security detail; and

Changes that may be or are contrary to the basic rights, restrictions, and nature of the license class under which a licensee operates.

Any change or alteration in the operation of the licensed premises which varies in any manner from that on the date of the issuance of the license shall be reported in writing to the liquor advisory board and shall require the approval of the local liquor control commission ~~within ten (10) days~~. Failure to report the change in operation may result in a suspension or revocation of the license. (Ord. 2007-38)

SECTION 4. All of the remaining sections of Title 2 of the Carbondale Revised Code shall remain in full force and effect.

SECTION 5. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 6. The repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance, insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinance.

SECTION 7. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 8. That the City Council of the City of Carbondale finds that the subject matter of this ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to the provisions of Article VII, Section 6(a) of the 1970 Illinois Constitution.

SECTION 9. That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney