



Illinois Liquor Control
Commission

Local Liquor Commissioner's Handbook

Revised September 2008



PURPOSE OF LOCAL LIQUOR COMMISSIONERS' HANDBOOK

The purpose of this publication is to ensure compliance with the Illinois Liquor Control Act and Rules and Regulations of the Illinois Liquor Control Commission as well as all local liquor ordinances on all levels of government. As the regulatory and licensing agency of the state's alcohol beverage industry, it is the duty of the Illinois Liquor Control Commission to provide local entities with as much support and information as possible.

Through the Commission's Licensing, Investigations, Legal and Industry Education Divisions — including the "Kids Can't Buy 'Em Here" tobacco program, *Beverage Alcohol Sellers and Servers Education and Training* (BASSET) program, and the *Don't Be Sorry* under 21 program — the Commission is committed to promoting responsible sales and services within the industry. By communicating the importance of complying with the law, licensees will remain viable Illinois businesses. By utilizing this Handbook, Local Liquor Commissioners can promote local economy and ensure a safer community.

ILCC MISSION STATEMENT

"To protect the health, safety and welfare of the people of Illinois through careful control and regulation of the manufacture, distribution, and sale of alcoholic liquors and through the development of strategies to reduce youth access to tobacco products."

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SECTION A

Local Control

LOCAL COMMISSIONER AND COMMISSION

1. **Q. Who is the Local Liquor Commissioner?**
A. In an incorporated Illinois city, town or village, the mayor or president of the Board of Trustees is the Local Liquor Commissioner with jurisdiction and full licensing authority within the municipality's corporate limits. In unincorporated areas, the president or chairman of the County Board is the Local Liquor Commissioner. (See The Illinois Liquor Control Act of 1934, 235 Illinois Compiled Statutes (hereafter "ILCS") 5/4-2)
2. **Q. Can the Local Liquor Commissioner appoint assistants, deputies or a board to assist in discharging the duties of Commissioner?**
A. Yes. (235 ILCS 5/4-2)
3. **Q. How should such appointments be made?**
A. The best procedure is to reduce such appointments to writing.

4. **Q. May a Local Liquor Commissioner and any appointed assistants be paid?**
A. Yes, by authority of the local governing body. (235 ILCS 5/4-3)

LOCAL LICENSING/FEEES

5. **Q. May a Local Liquor Commissioner require any segment of the alcoholic liquor industry not engaged in retail sales within the local jurisdiction, such as wholesalers, distributors or manufacturers, to obtain a local liquor license?**
A. No. The State Commission has sole authority over these entities.
6. **Q. How many and what kind of licenses can the local government body issue?**
A. The City Council or Local Board, as the case may be, has the authority to determine by ordinance the number, kind and classification of licenses (e.g., beer or wine only; hours of operation). The authority determine whether a license shall be issued in the case

of a particular applicant is vested in the Local Liquor Commissioner. (235 ILCS 5/4-1)

7. Q. May the City Council, President and Board of Trustees, or County Board, have the power to determine the amount of the local license fee to be paid for the various kinds of licenses to be issued in their political subdivision?

A. The City Council or Local Board may determine by ordinance the fee for the various licenses. (235 ILCS 5/4-1, 5/4-4)

8. Q. May the City Council or Local Board refuse or fail to enact any ordinance establishing numbers, kinds and classifications of licenses?

A. If the City Council or Board refuses to enact any ordinance establishing the numbers, kinds and classifications of licenses, the State Commission may issue a retail license without requiring a local license. *City of Fairfield v. Pappas*, 199 N.E. 292 (1935)

9. Q. What restrictions may the local authority enact by legislative action to regulate the issuance of liquor licenses?

A. The local authority may impose reasonable regulations and restrictions, as the public good and convenience may require, upon the issuance of and operations under local licenses consistent with state law (i.e., license qualifications, number of available licenses, hours of operation).

10. Q. May the Local Liquor Commissioner examine or investigate an applicant of a retail liquor license or a renewal of such a license?

A. Yes. The Local Liquor Commissioner has the authority to examine the books and records of a license applicant or renewal licensee. (235 ILCS 5/4-5)

11. Q. May a Local Liquor Commissioner call upon the local police department to investigate a new applicant for a local retail license or license renewal?

A. Yes, as a license may not be issued to a person who is not of good character and reputation, or to persons who have been convicted of specific crimes, a police investigation is often a necessary part of the license issuance procedure. (235 ILCS 5/4-4(2), 5/4-5, 5/6-2)

12. Q. May the Local Liquor Commissioner require a new or renewal applicant for a liquor license to submit to a fingerprint check?

A. Yes. (235 ILCS 5/4-7)

13. Q. May a fee be charged for purposes of obtaining a fingerprint check?

A. Yes. The Local Liquor Commissioner can collect a fee and forward it to the appropriate policing body, which shall submit the fingerprints, and fee, to the Illinois State Police. (235 ILCS 5/4-7)

LOCAL ORDINANCES – LIMITING AUTHORITY

14. Q. May the City Council or Local Board enact an ordinance declaring an area to be dry?

A. No. In order for an area to be dry, the referendum provisions of Sections 5/9-1 through 5/9-19 of the Illinois Liquor Control Act of 1934 must be followed. (235 ILCS 5/9-1 through 5/9-19)

15. Q. May a Local Liquor Commissioner control the sale of alcoholic liquor on Sunday?

A. Yes, if specifically authorized by general ordinance or resolution of the local governing body, which may restrict the permissible hours of sale. (235 ILCS 5/6-14)

16. Q. May the Local Liquor Commissioner prohibit persons under a specified age from entering the premises of a tavern or other licensed retail establishment?

A. Yes. A local municipality may by ordinance prohibit individuals under the age of 21 from being on the premises of certain licensed establishments. (235 ILCS 5/4-1)

17. Q. May the Local Liquor Commissioner set an age requirement for the serving, mixing or handling of liquor by an employee, waitress or bartender of a liquor licensee?

A. Unless a community passes a law to the contrary, anyone 18 years of age or older can serve, mix or handle alcoholic beverages of all kinds. (235 ILCS 5/4-1 and Rule 100.20; A.G. Op. S-671, 1973; *Tavern Owners Assn. of Lake Co. Illinois, Inc. v. Lake County*, 367 N.E.2d 748 (1977))

HOME RULE AUTHORITY

18. Q. What is a Home Rule municipality?

A. A Home Rule unit is any county which has a Chief Executive officer elected by the electors of the county and any municipality which has a population of more than 25,000. Other municipalities may choose to become Home Rule units by referendum. (Illinois Constitution, Article VII, Sec. 6(a))

19. Q. Can a municipality, whether or not it is a Home Rule unit, amend, alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquor as provided in the Act?

A. No. The establishment of such legal age is an exclusive exercise of State power which may not be exercised concurrently by local authority. (235 ILCS 5/6-18)

RESIDENCY REQUIREMENTS

20. Q. Is a sole proprietor required to reside within the city, village, or county in which his/her licensed premises are located?

A. Yes. A sole proprietor licensee must reside within the city, village, or county of his/her licensed premises. (235 ILCS 5/6-2(a)(1))

21. Q. Is an officer, member, partner, or owner of a corporation, limited liability company, or partnership required to reside within the local jurisdiction?

A. No. (235 ILCS 5/6-2(a)(9) and (a)(10))

22. Q. Can a Local Liquor Commissioner require a liquor establishment to have a licensed manager on premises?

A. Yes, if business operations are conducted primarily by a manager who is not an officer, member, partner, or owner of the business. (235 ILCS 5/4-2)

23. Q. Does the manager need to possess minimum qualifications to hold a liquor license?

A. Yes. The manager must possess the same qualifications required by the officer, member, partner, or owner of the business. (235 ILCS 5/6-2(a)(11))



SECTION B

General Provisions

ILLINOIS DEPARTMENT OF REVENUE

1. **Q.** What jurisdiction does the Illinois Department of Revenue maintain over the issuance, suspension or revocation of licenses?
 - A. The Illinois Department of Revenue may initiate a complaint with the Local Liquor Commissioner or the Illinois Liquor Control Commission to deny the issuance or renewal of a retailer's license, or to suspend or revoke any such license, for violations of the "Retailers' Occupation Tax Act." The state Commission is required to hold a hearing and take appropriate action upon such a complaint being filed. (235 ILCS 5/6-3)

STATE FACILITY LICENSING

2. **Q.** Do the exceptions for specific parks, community centers and State facilities provided in 5/6-15 of the Act constitute an exemption from the local and state licensing requirements?
 - A. Generally, state-owned property is ineligible to receive a liquor license. These exceptions merely make an otherwise ineligible premises eligible for licensing. Section 5/6-15 does not create an exemption from local and state licensing requirements. (A.G. Op. S-1469, 1979)
3. **Q.** Does this differ if the operating entity is the State of Illinois itself (e.g., state university), as opposed to a lessee or concessionaire?
 - A. Yes. The Local Liquor Commissioner may not require the State of Illinois to secure a local license. However, a State license must still be secured. A lessee or concessionaire operating on State property would be required to secure both local and State licenses.

4. Q. Does this differ if the operating entity is a local unit of government itself, such as a park district, concessionaire, or lessee on such property?
- A. No. Any local unit of government, or concessionaire/lessee, on such property must secure both local and State retail licenses to sell liquor in such locations. This applies to the park districts as well. No State license will be granted absent the issuance of a local license. (A.G. Op. S-1469 (1979))

PROXIMITY RESTRICTIONS/ZONING

5. Q. What restrictions are there on the issuance of liquor licenses for premises with close proximity to churches, schools, hospitals and military stations?
- A. In general, no license shall be issued within 100 feet of any church, school (except colleges and universities), hospital, home for the aged, indigent persons or veterans, or any military or naval station. The 100 feet is to be measured from property line to property line in all cases, except that of a church. In the case of a church, the 100 feet shall be measured to the nearest part of any building to be used for worship services or educational programs, and not to property boundaries. The restriction does not apply to restaurants, hotels offering restaurant services, or regularly organized clubs or food shops and other such places where the sale of alcoholic liquors is not the primary business (The Act has some additional requirements for cities with populations over 500,000). Also, the restriction does not apply if the church or school is established after the issuance of the liquor license, but a variance may be required by local zoning ordinance. (235 ILCS 5/6-11)
6. Q. Can a school store have a liquor license?
- A. No retail liquor license shall be issued to any store or other place of business when the majority of customers are minors of school age or when the principal business is the sale of school books and supplies, food, lunches or soft drinks for such minors. (235 ILCS 5/6-12)

SALE OF LIQUOR ON ELECTION DAYS/ POLITICAL CONTRIBUTIONS

7. Q. What restrictions are there on the sale of liquor on election day?
- A. There are none. Liquor may be sold at retail on the day of any national, state, county or municipal election, just as any other day. (The section of the Illinois Liquor Control Act prohibiting this was repealed effective 1972.)
8. Q. May a licensee or its agents contribute to the campaign or expenses of a political party or a candidate for office?
- A. Yes. (The section of the Illinois Liquor Control Act which prohibited this activity was repealed effective June 30, 1978)

SELLER/SERVER TRAINING

9. Q. Is training for bartenders or wait staff mandatory in Illinois?
- A. No, but many local ordinances require training for servers and sellers. Any such program used must be licensed by the State of Illinois. (235 ILCS 5/6- 27)

SIGNAGE – INTERIOR

10. Q. Does the State require a retail licensee to post a pregnancy warning sign? If so, what is the message and what are the reasons for the warning?
- A. Due to the need for public information about the risk of birth defects, specifically Fetal Alcohol Syndrome (FAS), when women consume alcoholic liquor during pregnancy, the State of Illinois requires every holder of a retail liquor license to frame and hang in plain view a “birth defects” warning sign. The FAS sign reads “Government Warning: According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.” (235 ILCS 5/6 - 24(a))

11. Q. Is smoking prohibited in all liquor licensed establishments?

A. Yes. The Smoke-free Illinois Act prohibits smoking in all Illinois-licensed liquor establishments, including private clubs. Additionally, signage is required to be posted to be in compliance with the law. Visit the Illinois Department of Public Health's website www.smoke-free.illinois.gov to review this law and download the required signage.

12. Q. What other signs are required if tobacco is sold in the establishment?

A. In an establishment that sells tobacco products, two signs must be posted which read: "Surgeon General's Warning: Smoking by Pregnant Women may result in fetal injury, premature birth, and low birth weight. Sale of tobacco in any of its forms to minors under the age of 18 is against Illinois law." and "Sale of tobacco accessories and smoking herbs to persons under eighteen years of age or the misrepresentation of age to procure such a sale is prohibited by law. Sale of tobacco in any of its forms to minors under the age of 18 is against Illinois law." (410 ILCS 85/4; 85/5; 720 ILCS 675/1; 720 ILCS 685/4; and 720 ILCS 675/1)



SECTION C

Licenses

RENEWALS

1. **Q. Does a licensee have an absolute right to the renewal of a liquor license from year to year?**
A. No. License renewal is not such a vested right as may prevent a local authority from decreasing the number of licenses to be issued within its jurisdiction. However, the renewal may not be arbitrarily refused, and the license must be reissued if the licensee continues to be qualified, and if there has been no reduction in the number of licenses. (235 ILCS 5/6-1-2(8))
2. **Q. Can a Local Liquor Commissioner revoke a license by denying renewal?**
A. A Local Liquor Commissioner cannot avoid the procedural revocation requirements by waiting for a license to expire and then refusing to renew. A Local Liquor Commissioner must hold a hearing if a license will not be renewed. (City of Wyoming v. ILCC, 362 N.E.2d 1080 (1977))

TRANSFER OF LICENSE(S)

3. **Q. May a licensee transfer a liquor license to a different premises?**
A. The Local Liquor Commissioner must authorize any transfer to a different licensed location. A license may be removed to another location if application is made and permission is granted by the Local Liquor Commissioner and the State Commission. (235 ILCS 5/7-14)
4. **Q. May a licensee transfer a license to another person?**
A. No licensee may be transferred to another person without that person being determined eligible to hold a license by the Local Liquor Commissioner. (235 ILCS 5/6-1)
5. **Q. In a case where a licensee dies, what is the status of the license?**
A. The executor and/or administrator of the estate may, under court order, continue operating the establishment under the issued license for six months or until the license expires, whichever is less. The license cannot

be transferred to another person by means of a will without that person being determined eligible to hold a license by the Local Liquor Commissioner. (235 ILCS 5/6-1)

6. **Q. If an establishment declares bankruptcy, may the business continue selling alcoholic liquor?**
- A. Under order of the appropriate court, the trustee may exercise the privileges of the bankrupt licensee until the expiration of the license or for six months, whichever is less. (235 ILCS 5/6-1)

LICENSE ISSUANCE

7. **Q. Who may be denied a license?**
- A. Persons ineligible to be licensed as set forth in Sections 5/6-2, 5/6-11, 5/6-12 and 5/6-25 of the Liquor Control Act including non-residents (sole proprietors only), convicted felons, non-filers of State tax returns, licensees whose license has been revoked for cause, etc. Case authority also suggests that a Local Liquor Commissioner has discretion to consider other matters not specifically enumerated in these sections of the Act when determining whether or not to issue a license. (Palmer v. Illinois Liquor Control Commission, 33 Ill. Des. 100, 396 N.E. 2d 325, 1979, Ace Produce, Inc. v. St. of Ill. Liq. Cont. Comm., Ill. Des. 812, 417 N.E.2d 214, 1981)
8. **Q. Can a church or private school be issued a liquor license?**
- A. Churches or private schools may receive retail liquor licenses regardless of the distance involved if sales of alcoholic liquors are limited to periods when groups are assembled for some common purpose, other than for the sale or consumption of alcoholic liquors. (235 ILCS 5/6-12)

RESIDENCY

9. **Q. Must a licensee be a resident of the particular locality?**
- A. Sole proprietors must be residents. Partners need not be residents unless local ordinance(s) requires. (235 ILCS 5/6-2(1)(9)(11))
10. **Q. What about a corporation and its officers, directors, shareholders and managers?**
- A. The residency requirement does not apply to corporations, or to their officers, directors, shareholders

or managers, unless the municipality has enacted an ordinance requiring that a manager or agent be a resident of the municipality. (235 ILCS 5/6-2(10); (235 ILCS 5/6-2(11)); (See Aurora Pizza Hut, Inc. v. Hayter, 398 N.E. 2d 1150 (1979)

ADDITIONAL LICENSING REQUIREMENTS

11. **Q. What licenses or permits are required to operate a retail liquor business of any type?**
- A. * A local retail liquor license
* A State retail liquor license
* An Illinois Business Tax #
* A Federal Employer Identification Number (FEIN)
* Any other locally required licenses or permits (235 ILCS 5/7-1)
12. **Q. Must all legally required licenses and permits of State or local issuance be plainly displayed at all times on the licensed premises?**
- A. Yes. The Act requires all licenses to be framed and hung in a conspicuous place on the licensed premises. (235 ILCS 5/6-24)
13. **Q. Is liquor liability insurance required for establishments with an “on-premise” consumption license?**
- A. Yes. “Dram shop” insurance is required for liquor establishments that sell alcohol by the drink (bars, restaurants, etc.) (235 ICLS 5/6-2 (a) (18))

AIRPLANES, TRAINS AND RIVER BOATS

14. **Q. Does an airplane, train or boat require a local liquor license or only a state liquor license?**
- A. Airplanes, trains, and boats require a state liquor license only. If a boat has a land-based facility, then both a local and state license are required for that facility. If the boat regularly operates as a common carrier on navigable waters, or is a permanently moored barge with a public dining area or restaurant then only a State license is required. (235 ILCS 5/7-13)

REVOCATIONS

15. Q. May a new local license be issued to a premise within one year of a revocation?

A. No, unless the ILCC, the Local Liquor Commissioner and the Illinois Department of Revenue have approved such issue and, the revocation was vacated, or the revocation was issued against the licensee only and the new licensee is not related to the revoked licensee.

SPECIAL EVENTS

16. Q. How is a special event retailer defined?

A. A special event retailer is an educational, fraternal, political, civic, religious or non-profit organization that sells or offers for sale alcohol for consumption at the location and on the dates designated by a special event retailer license. (235 ILCS 5/1-3.17.1)

17. Q. What procedure must be followed for a special event retail licensee (not-for profit) to sell alcohol at one of its functions?

A. A qualified entity can receive a state special event retail liquor license for its event; however, it must show proof of dram shop insurance and that the Local Liquor Commissioner has approved the event. (235 ILCS 5/1-3.17.1 and 235 ILCS 5/5-1(e))

18. Q. May a special event retail licensee (not-for profit) purchase alcoholic liquor from another retail licensee?

A. Yes, up to \$500 worth. (235 ILCS 5/1 (e))

SPECIAL USE PERMITS

19. Q. What if a current retail licensee wants to sell alcohol at a location other than at the current place of business (such as a picnic)?

A. A licensee may receive a state Special Use Permit license which allows the licensee to sell alcohol up to 15 days per off-site location per year. However, it must show proof of dram shop insurance and that the Local Liquor Commissioner has approved the event(s). (235 ILCS 5/1-3.35 and 235 ILCS 5/5-1(q))



SECTION D

Violations

UNDERAGE SALES/SALES TO INTOXICATED PERSONS

- 1. Q. Is it a crime to sell alcoholic liquor to minors?**
A. It is a criminal offense to sell, give or otherwise deliver alcoholic liquor to anyone under 21 years of age. (235 ILCS 5/6-16)
- 2. Q. Is it a crime to sell alcoholic liquor to intoxicated individuals?**
A. It is a criminal offense to sell, give or otherwise deliver alcoholic liquor to anyone who is intoxicated. (235 ILCS 5/6-16)
- 3. Q. What is the legal age in Illinois at which an individual may purchase, consume or possess alcoholic liquor?**
A. An individual must be 21 years of age to purchase, consume or possess alcoholic liquor. The term “alcoholic liquor” includes beer, wine and spirits. (235 ILCS 5/6-16) This minimum age limit cannot be changed by Home Rule Units.

SELLING WITHOUT A LICENSE

- 4. Q. Is it a criminal offense to sell liquor without a current license?**
A. Yes. (235 ILCS 5/10-1(a))

ACCESS TO LIVING QUARTERS

- 5. Q. Can patrons be allowed access to living quarters from the licensed premise?**
A. No alcoholic liquor shall be sold on any premises that has access from the premises to any part of the same building used for living or lodging and kept accessible for use by the public. Exceptions include hotels and clubs, or where the access from the licensed premises leads to living quarters of the licensee and is restricted to their and their guests’ personal use. (235 ILCS 5/6-13)

EMPLOYEES

6. Q. Is a licensee responsible for a bartender's or server's actions?
- A. Every act or omission constituting a violation of the Liquor Control Act by any officer, employee or agent of the licensee is the responsibility of the licensee and subjects them to punishment as if the act were done personally by them. (235 ILCS 5/10-3)

PREMISE OPERATIONS

7. Q. Must bars have one ounce shot glasses?
- A. Unmixed alcoholic liquor may not be sold at retail for consumption on the premises except in containers having a capacity of at least one fluid ounce and which at the time of the sale contain one fluid ounce of the beverage being sold. (235 ILCS 5/6-26)
8. Q. What does "refilling" mean?
- A. It is unlawful for any person to fill or refill, in whole or in part, any original package of alcoholic liquor with the same or different kind or quality of alcoholic liquor, and it shall be unlawful for any licensee to have possession of such bottles of alcoholic liquor for retail sale. (235 ILCS 5/6-22 and Rule 100.290)
9. Q. Is it a violation for a licensee to have on the licensed premises alcoholic liquors which contain any deleterious, contaminated, filthy or putrid substance or insects?
- A. Yes. (Rule 100.290(c))

INSPECTIONS

10. Q. Is a search warrant necessary in order to cause an the examination of the licensed premises?
- A. No. Any law enforcing officer of the local authority or the state Liquor Control Special Agent is specifically authorized by the Illinois Liquor Control Act to enter any licensed premises and to examine the premises of the licensee in connection there with. (235 ILCS 5/3-12(a)(5), 235 ILCS 5/4-4 and 235 ILCS 5/10-8; Daley v. Berzanskis, 269 N.E.2d 716 (1971), cert. den., 402 U.S. 999)

HAPPY HOUR REGULATIONS

11. Q. What is the "Happy Hour" law?
- A. The Happy Hour law, effective August 31, 1989, is set out in Section 5/6-28 of the Illinois Liquor Control Act. This law generally prohibits promotions which encourage over-consumption of alcohol, including, but not limited to:
- * 2-for-1 drinks
 - * unlimited drinks for a fixed price
 - * reduced price drinks during specified time periods
 - * increased volume of drinks without a proportionate price increase
 - * games which involve the drinking of alcohol or have alcohol drinks of prizes
- (235 ILCS 5/6-28)
12. Q. Can one person buy more than one drink at a time?
- A. No. Serving two or more drinks to one person for consumption by that person is illegal. (235 ILCS 5/6-28 (b) (1))
13. Q. What about pitchers of beer that serve more than one person?
- A. Selling pitchers, or the equivalent, including but not limited to buckets, carafes or bottles of alcoholic liquor, customarily sold in that manner and delivered to two or more persons, is allowable. (235 ILCS 5/6-28 (c) (6))
14. Q. Can a licensee sell a "shot and a beer?"
- A. Yes, "boilermakers," or a shot and a beer are considered to be one drink.
15. Q. Can a licensee serve unlimited numbers of drinks during a specific time of the day?
- A. Serving an unlimited number of drinks during a set time for a fixed price is prohibited. Prices for all drinks for all customers must be the same during the normal course of the business day; i.e., "half-price drinks all day." (235 ILCS 5/6-28(b) (2))
16. Q. Can drink size, or alcohol content, increase during the course of a business day?
- A. The Happy Hour law prohibits increasing the volume of alcoholic liquor contained in a drink or the size of a drink, without proportionally increasing the price regularly charged for that drink on that given day. (235 ILCS 5/6-28 (b) (4))

17. **Q. Can a licensee advertise illegal promotions at their establishment?**
- A. As it is illegal to provide Happy Hour-type promotions at any licensed establishment, it is also illegal to advertise such promotions. Any promotion which is advertised must be valid during the course of one business day, held during normal business hours. (235 ILCS 5/6-28 (b) (6))
18. **Q. What kind of games or prizes can a licensee offer involving alcohol?**
- A. None. Any game or contest which involves drinking alcoholic liquor or awarding drinks as prizes is illegal. (235 ILCS 5/6-28 (b) (5))
19. **Q. Can free food or entertainment be provided to customers as a promotion?**
- A. Yes. However, free drinks, reduced drink prices, etc., cannot be offered in conjunction with this promotion. (235 ILCS 5/6-28 (c) (1))
20. **Q. Can drink prices be increased in lieu of a cover charge?**
- A. Yes. Drink prices can be raised to offset the cost of entertainment not regularly scheduled. This exception does not apply to house bands or any other regularly scheduled entertainment. (235 ILCS 5/6-28 (c) (7))
21. **Q. Restaurants will frequently offer wine or drinks in the price of a meal. Is that legal?**
- A. Alcoholic beverages can be included in the price of a meal package. (235 ILCS 5/6-28 (c) (2))
22. **Q. How are private functions, such as weddings, fund raisers, etc., handled regarding the Happy Hour law?**
- A. As defined by statute, a private function means a prearranged private party, function or event for a specific social or business occasion, either by invitation or reservation and not open to the general public. Guests in attendance are served in a room(s) designated and used exclusively for the private party, function or event. Additionally, guest list charges for access to the event cannot be paid or collected by the licensee. (235 ILCS 5/1-3.36)
23. **Q. Can a retail licensee charge one price for a drink in the restaurant and another price for the same drink in the adjoining lounge?**
- A. No. Retailers may not charge different prices in different rooms. (235 ILCS 5/6-28(c)(4))
24. **Q. Do licensees have to post the prices of all drinks?**
- A. No, however, price lists must be maintained and kept on premises. Prices that are stored within an electronic cash register, and can be retrieved on demand, satisfy this requirement. (235 ILCS 5/6-28 (c) (4))
25. **Q. What is the penalty for violating the Happy Hour law?**
- A. Violation of this law is a “Class B” misdemeanor; further, the liquor licensee may be fined or have its license suspended or revoked. (235 ILCS 5/6-28 (d))



SECTION E

Fines, Hearings, Appeals, Revocations

HEARINGS

1. **Q.** May a local liquor licensee be fined, suspended, revoked or denied renewal without a hearing?
 - A. In general, no licensee may be fined, suspended, revoked or denied renewal without an opportunity to be heard upon a minimum of three (3) days written notice to the licensee. It is important to note that the courts have interpreted all notice and hearing requirements of 235 ILCS 5/7-5 as applicable to denials of renewals as well as suspensions and revocations. However, if the Local Liquor Commissioner has reason to believe that the continued operation of the licensed premises will immediately threaten the welfare of the community, the issuance of a written order, stating the reason for such conclusion and without notice of hearing, can order the licensed premises closed for not more than seven (7) days, giving the licensee an opportunity to be heard during that period. (235 ILCS 5/7-5, City of Wyoming v. Liquor Control Commission, 362 N.E. 2d 1080 (1977))

LICENSEE CONVICTIONS

2. **Q.** What happens if a court convicts a licensee or any officer, director, manager or other employee in a position of authority, of violating the liquor statutes?
 - A. A retail license holder convicted by any court of any violation of the State Liquor Control Act is subject to revocation proceedings, but revocation is discretionary. If the license is revoked, the licensee shall forfeit state and local licenses and the sums paid for them. (235 ILCS 5/10-3, 235 ILCS 5/10-4)
3. **Q.** Does a finding of “not guilty” in a criminal prosecution of a licensee or agent of a licensee preclude an action to fine, suspend, revoke or deny renewal of a State or local license?
 - A. No. See *Nechi v. Daley*, 188 N.E. 2d 243 (1963); *Legones v. Lic. Appeal Comm.*, 241 N.E. 2d 499 (1968)

LOCAL HEARINGS

4. Q. What is the minimum notice for a hearing?
- A. At least three (3) days written notice in every case before the Local Liquor Commissioner, and it must spell out for the licensee what the charge is, and state the particular provisions of the law alleged to have been violated. (235 ILCS 5/7-5) Actions taken by the ILCC require ten (10) days notice before a hearing. (Rule 100.180)
5. Q. How should hearings on liquor license violations be conducted by the Local Liquor Commissioner?
- A. The best procedure is to hold a public hearing before a certified court reporter or certified shorthand reporter. (235 ILCS 5/7-9)
6. Q. Can private citizens initiate proceedings against a licensee?
- A. Any five (5) residents of the particular municipality or county may file a complaint against a license holder. The complaint must be in writing in the form prescribed by the Local Liquor Commissioner and shall be signed and sworn to by the parties complaining. The complaint must specify the law or regulation alleged to have been violated and state the detailed facts upon which belief of the alleged violation is based. (235 ILCS 5/7-7)
7. Q. When a citizen's complaint is lodged with the Local Liquor Commissioner, must the Local Liquor Commissioner institute action against the licensee named?
- A. Not unless the Commissioner determines that, from the facts alleged, there is reasonable cause to believe a violation exists. (235 ILCS 5/7-7)
8. Q. If the Local Liquor Commissioner determines that there is no reasonable cause to believe a violation exists or makes no determination on a complaint, may this action be appealed to the Illinois Liquor Control Commission?
- A. Yes, interested persons or citizen groups may appeal and the same procedures apply for appealing a suspension, revocation or denial of a renewal. (235 ILCS 5/7-9) (See below Q. No. 9 & 10)

9. Q. If the Local Liquor Commissioner determines after a hearing that the license should be revoked, suspended, denied renewal or the licensee fined, within what period of time must the decision be rendered?
- A. Within five (5) days after a hearing, the Local Liquor Commissioner shall state the reasons for any determination in a written order and shall serve a copy of such order upon the licensee. (235 ILCS 5/7-5)

SUSPENSION

10. Q. May a Local Liquor Commissioner suspend a license for more than 30 days?
- A. No. The Local Liquor Commissioner is not authorized to suspend a license for more than 30 days. (235 ILCS 5/4-4(1))
11. Q. If a local retail liquor license is ordered suspended from a premises that also houses other business operations, are those also covered by the suspension order?
- A. No, only the sale of alcohol must be suspended. (235 ILCS 5/1-3.05)

FINES

12. Q. May any Local Liquor Commissioner impose a fine against a licensee and are there any limits upon the fines which may be assessed against a licensee by the Local Liquor Commissioner?
- A. Yes, to both questions. Any Local Liquor Commissioner may impose a fine upon, or fine and suspend, a licensee. Any fine imposed shall not exceed ONE THOUSAND DOLLARS (\$1,000) per violation, nor more than FIFTEEN THOUSAND DOLLAR (\$15,000) maximum in total fines, against any licensee during the period of the license. (235 ILCS 5/7-5)

APPEALS OF LOCAL ORDERS

13. Q. What provisions are there for a licensee to appeal a decision of the Local Liquor Commissioner in refusing to grant a license; revoking, suspending, or denying the renewal or transfer of a license; or imposing a fine?

A. Except in cases of appeals from the Liquor Commissioner of the City of Chicago, a licensee may, within 20 days after notice of the order or action, appeal to the State Commission. After twenty (20) days, the local order becomes final and there is no further recourse. Hearings before the State Commission are de novo (a new trial), except for communities which have adopted a resolution requiring that review be of the official record of the proceeding before the Local Commissioner. (235 ILCS 5/7-9)

14. Q. What effect does a licensee appeal have upon their duty to pay a fine, serve a suspension or ability to operate in the event of a revocation imposed by the Local Liquor Commissioner pending the outcome of the appeal hearing?

A. Generally, an appeal operates as a stay of the decision of the Local Liquor Commissioner, and the fine need not be paid, suspension served, nor business operation be closed as a result of revocation. However, whenever a licensee appeals a suspension or revocation that is the second or subsequent suspension or revocation within the preceding 12 months, the suspension or revocation shall be effective until the State Commission has made a determination on the appeal. (235 ILCS 5/7-9 and Rule and Regulation 100.230)

15. Q. When does the stay become effective?

A. Upon notice to the Local Liquor Commissioner that an appeal has been accepted, the stay becomes effective, when applicable. While the Commission tries to provide this notice in writing, when time constraints present a problem, it may be done by fax or even telephone. (235 ILCS 5/7-9 and Rules and Regulation 100.350(d))

REVOCAION

16. Q. What constitutes grounds for revocation of a liquor license?

A. A liquor license may be revoked for cause. This may include a violation of the Illinois Liquor Control Act and/or the Rules and Regulations of the ILCC; a violation of a municipal ordinance or established rule of the Local Liquor Commissioner; or a violation of any other State or Federal law pertaining to the operation of a dram shop. However, Illinois courts have generally upheld only revocations for licensees that have had repeat violations (e.g., sales to minors) or where the licensee or its employees are directly involved in criminal or quasi-criminal activity (e.g., gambling, drug sales, prostitution). (235 ILCS 5/4-4, 235 ILCS 5/7-5; Rule 100.30)

STATE APPEALS

17. Q. What provisions are there for judicial review of the state Commission's decision?

A. The proceedings of the state Commission are subject to judicial review pursuant to the provisions of the Administrative Review Law (735 ILCS 5/3-101, et seq.). No action for judicial review may be allowed unless the appellant has first filed a petition for re-hearing and the Commission has acted on the petition. (235 ILCS 5/7-10, 235 ILCS 5/7-11)



SECTION F

Definitions

ALCOHOL “Alcohol” means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol. It does not include denatured alcohol or wood alcohol. (235 ILCS 5/1-3.01)

ALCOHOLIC LIQUOR “Alcoholic liquor” includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being. The provisions of this Act shall not apply to alcohol used in the manufacture of denatured alcohol produced in accordance with Acts of Congress and regulations promulgated thereunder, nor to any liquid or solid containing one-half of one per cent, or less, of alcohol by volume. No tax provided for in Article VIII of this Act shall apply to wine intended for use and used by any church or religious organization for sacramental purposes, provided that such wine shall be purchased from a licensed manufacturer or importing distributor under this Act. (235 ILCS 5/1-3.05)

AUCTION “Auction liquor license” means a person who obtains prior written approval from the State Commission to sell or offer for sale at auction, on a specified date, wine or spirits for private use or consumption, or for resale by an Illinois liquor licensee in accordance with the provisions of this Act. (235 ILCS 5/1-3.32)

BEER “Beer” means a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like. (235 ILCS 5/1-3.04)

BREW PUB “Brew Pub” means a person who manufactures beer only at a designated premises to make sales to importing distributors, distributors, and to non-licensees for use and consumption only, who stores beer at the designated premises, and who is allowed to sell at retail from the licensed premises, provided that a brew pub licensee shall not sell for off-premises consumption more than 50,000 gallons per year. (235 ILCS 5/1-3.33)

CATERER RETAILER “Caterer retailer” means a person who serves alcoholic liquors for consumption, either on-site or off-site, whether the location is licensed or unlicensed, as an incidental part of food service. Prepared meals and alcoholic liquors are sold at a package price agreed upon under contract. (235 ILCS 5/1-3.34)

CLUB “Club” means a corporation organized under the laws of this State, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, kept, used and maintained by its members through the payment of annual dues, and owning, hiring or leasing a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servants and employees for cooking, preparing and serving food and meals for its members and their guests; provided, that such club files with the local liquor control commissioner at the time of its application for a license under this Act two copies of a list of names and residences of its members, and similarly files within 10 days of the election of any additional member his or her name and address; and, provided further, that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting and that no member or any officer, agent, or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club. (235 ILCS 5/1-3.24)

CORPORATION “Corporation” means any corporation, domestic or foreign, qualified to do business in the State of Illinois under the “Business Corporation Act” of Illinois. (Rule 100.10)

DISTILLED SPIRITS (See Spirits)

EVENT “Event” means a single theme. (Rules and Regulations 100.10)

HOTEL “Hotel” means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping

accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which twenty-five (25) or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or buildings in connection therewith and such building or buildings, structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity. (235 ILCS 5/1-3.25)

LIQUOR (See Alcoholic Liquor)

MANAGER “Manager” or “Agent” means any individual employed by any licensed place of business, provided said individual possesses the same qualifications required of the licensee. Satisfactory evidence of such employment will be furnished to the Commission in the form and manner as such Commission shall from time to time prescribe. (Rule 100.10(f))

MEAL “Meal” means food that is prepared and served on the licensed premises and excludes the serving of snacks. (Rules and Regulations 100.10)

ORIGINAL PACKAGE “Original package” means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container, whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. (235 ILCS 5/1-3.06)

PARTNER “Partner” is any individual who is a member of a co-partnership. “Co-partnership” means an association of two or more persons to carry on as co-owners of a business for profit. (Rules and Regulations 100.10)

PREMISES/PLACE OF BUSINESS “Premises” or “Place of Business” means the place or location where alcoholic beverages are manufactured, stored, displayed, offered for sale or where drinks containing alcoholic beverages are mixed, concocted and served for consumption. Not included are sidewalks, streets, parking areas and grounds adjacent to any such place or location. (Rules and Regulations 100.10)

PRIVATE FUNCTION “Private function” means a prearranged private party, function, or event for a specific social or business occasion, either by invitation or reservation and not open to the general public, where the guests in attendance are served in a room or rooms designated and used exclusively for the private party, function, or event. (235 ILCS 5/1-3.36)

RESIDENT “Resident” means any person (other than a corporation) who has resided and maintained a bona fide residence in the State of Illinois for at least one year and in the city, village and county in which the premises covered by the license are located for at least 90 days prior to making application for such license. (Rules and Regulations 100.10)

RESTAURANT “Restaurant” means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. (235 ILCS 5/1-3.23)

RETAILER “Retailer” means a person who sells, or offers for sale, alcoholic liquor for use or consumption and not for resale in any form. (235 ILCS 5/1-3.17)

SALE “Sale” means any transfer, exchange or barter in any manner, or by any means whatsoever, including the transfer of alcoholic liquors by and through the transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. The term “sale” includes any transfer of alcoholic liquor from a foreign importer’s license to an importing distributor’s license even if both licenses are held by the same person. (235 ILCS 5/1-3.21)

SELL AT RETAIL “Sell at retail” and “sale at retail” refer to and mean sales for use or consumption and not for resale in any form. (235 ILCS 5/1-3.18)

SERVICE BAR “Service Bar” means a place or location not within view of the general public where beer and wine may be poured and served through a draught system. A service bar may only be located in a kitchen, food preparation area, or wait or server station area of a retail licensee who primarily serves meals. (Rules and Regulations 100.10)

SPECIAL EVENT “Special event” means an event conducted by an educational, fraternal, political, civic, religious or non-profit organization. (235 ILCS 5/1-3.30)

SPECIAL EVENT RETAILER “Special event retailer” means an educational, fraternal, political, civic, religious, or non-profit organization which sells or offers for sale beer or

wine, or both, only for consumption at the location and on the dates designated by a special event retail license. (235 ILCS 5/1-3.17.1)

SPECIAL USE PERMIT “Special use permit license” means a license for use by a retailer to allow for the transfer of alcoholic beverages from an existing licensed retail premises to a designated site for a specific event. (235 ILCS 5/1-3.35)

SPIRITS “Spirits” means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances. (235 ILCS 5/1-3.02)

TASTING “Tasting” means a supervised presentation of alcoholic products to the public at an off-premise licensed retailer for the purpose of disseminating product information and education, with consumption of alcoholic products being an incidental part of the presentation. Only products registered with the Commission may be tasted in the following amounts: Distilled Spirits 1/4 oz., Wine 1 oz., and Beer 2 oz.; notice of the tasting may be given. Tasting must be done by a licensee and/or a registered tasting representative in accordance with Section 100.40. (Rules and Regulations 100.10)

TEST MARKETING “Test Marketing” means to test new products or products unfamiliar to the sampler through a marketing firm or the like. (Rules and Regulations 100.10)

TO SELL “To sell” includes to keep or expose for sale and to keep with intent to sell. (235 ILCS 5/1-3.22)

WINE “Wine” means any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits, as above defined. (235 ILCS 5/1-3.03)



APPENDIX

The below items are included for your review on the following pages:

APPENDIX I

Example of Citation

APPENDIX II

Example of Order of Suspension

APPENDIX III

Sample Application

APPENDIX IV

Affidavit

APPENDIX V

Resolution to Establish Review of Liquor Hearings
On the Record to be Adopted by City Council or
Board of Trustees as Applicable

APPENDIX VI

Attorney's Summary of Relevant Case Law

APPENDIX I
SAMPLE OF CITATION AND NOTICE OF HEARING

TO: Thomas Martin, President
Printers, Inc.
10 South Main Street
Matte, Illinois 00000

You are hereby notified, pursuant to Section 5/7-5 of the Illinois Liquor Control Act and Section _____ of the City Code of _____ and as the holder of Class B liquor License No. 13 of the City of Matte, Illinois, that the undersigned shall hold a public hearing, at _____ .m. on the ____ day of _____, 20____, in the City Council Room, Matte City Hall, to determine whether your said liquor license should be fined, suspended or revoked by reason of an alleged sale of alcoholic liquor, to wit: two glasses of beer, by your agent or employee John Jones, on or about _____, to a person under the age of 21 years, Carol Smith, in violation of Section 5/6-16 of Chapter 235 of the Illinois Compiled Statutes, and _____ of the City Code of the City of Matte, Illinois, at which time you shall be given the opportunity to appear and defend against such charge. Please take notice that at said hearing you may be represented by an attorney and you may call witnesses on your own behalf.

Mary Kanen
Liquor Control Commissioner
City of Matte, Illinois

Date: _____

Certificate of Service: _____ The undersigned does hereby certify that the foregoing Citation and Notice of Hearing was served upon the licensee on _____ by _____
(Personal Service or Certified Mail)

Signature of Serving Agent

APPENDIX II
SAMPLE OF ORDER OF SUSPENSION

ORDER OF SUSPENSION

In the Matter of
Thomas Martin, President
Printers, Inc.
10 South Main Street
Matte, Illinois 000000

This matter having come on to be heard upon Citation and Notice directing Printers, Inc., 10 South Main Street, Matte, Illinois, to appear before the Liquor Control Commissioner of the City of Matte, Illinois to show cause why this Commissioner should not fine (**suspend or revoke**) its City Retail Liquor License No. 13 by reason of an alleged sale of alcoholic liquor, to wit: two glasses of beer, by its agent or employee John Jones on or about December 10, 1988, to a person under the age of 21 years, namely, Carol Smith, in violation of the Statutes of the State of Illinois and City Code of the City of Matte, Illinois, and this Commissioner having heard and considered the evidence, for and against, the allegations contained in said Notice at the hearing held on December 31, 1988, a copy of which was served upon the respondent licensee, and, being fully advised herein, FINDS:

- 1) That notice of aforesaid charges was given in writing upon all parties entitled thereto at least 3 days prior to said public hearing and in the manner as provided for by law.
- 2) That at the hearing held herein on December 31, 1988, the respondent licensee was represented by James East, an attorney, and the City of Matte, Illinois, was represented by its attorney, Jane West.
- 3) That all witnesses were duly sworn and all testimony was received under oath. That all parties were given the opportunity to cross examine all witnesses. Said hearing was held in all respects according to law.
- 4) That on December 10, 1988, John Jones was employed as an authorized agent of the licensee herein, and was acting in said capacity.
- 5) That John Jones did sell alcoholic liquor, to wit: 2 glasses of beer to Carol Smith, a person under the age of 21, having been born on January 4, 1968.
- 6) That the sale of alcoholic liquor is a violation of section 5/6-16 of Chapter 235, Illinois Compiled Statutes, and Section _____ of the City Code of the City of Matte, Illinois.

NOW, THEREFORE, IT IS HEREBY ORDERED that the City of Matte, Illinois, Class B Liquor License No. 13 of Printers, Inc. covering the premises at 10 South Main Street, Matte, Illinois, be, and the same is hereby SUSPENDED for a period of _____ days to commence at _____ a.m. on _____ and to terminate at _____ a.m. on _____

Dated: _____
Mary Kanen, Liquor Control Commission
City of Matte, Illinois 00000

Certification of Service:

The undersigned does hereby certify that the foregoing Order of Suspension was served upon the licensee on _____ by _____.
(Personal Service of Certified Mail)

Signature of Serving Agent

APPENDIX III
SAMPLE APPLICATION

APPLICATION FOR CITY LIQUOR RETAILER'S LICENSE

TO: Thomas Martin, President
Printers, Inc.
10 South Main Street
Matte, Illinois 00000

The undersigned hereby make(s) application for the issuance of a city retailer's license for the sale of alcoholic liquor for the term beginning _____, 20_____, and ending _____, 20_____, and hereby certify(ies) to the following facts:

- 1) Applicant's full name (If a partnership or corporation give names of all owners of more than 5%)
Name under which business is to be conducted: _____
- 2) Location of place of business for which license is sought:
(A) _____
Exact address by street and number/zip code
(B) _____
(Full description of location, place or premises, specifying floor, room, etc.)
- 3) State principal kind of business _____
- 4) Class of license applied for _____
- 5) Does applicant seek a license to sell alcoholic liquor upon the premises as a restaurant? _____
If so, are premises:
(A) Maintained and held out to the public as a place where meals are actually and regularly served? _____
(B) Provided with adequate and sanitary kitchen and dining room equipment and capacity with sufficient employees to prepare, cook and serve suitable food? _____
- 6) Does applicant own premises for which this license is sought? _____
- 7) Has applicant a lease on such premises covering the full period for which the license is sought? _____
If so, attach copy.
- 8) Is applicant licensed as a food dispenser? _____
- 9) Is the location of applicant's business for which license is sought within 100 feet property line to property line, of any school, hospital, home for aged or indigent persons, or for veterans, their wives or children, or any military or naval station, or 100 feet building to building from a church? _____
- 10) Is any law enforcing public official, mayor, alderman, member of the city council or commission, or any president or member of a county board directly interested in the business for which this license is sought? _____

- 11) Has any manufacturer, importing distributor or distributor directly or indirectly paid or agreed to pay for this license, advanced money or anything of value, or any credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days), or is such person directly or indirectly interested in the ownership, conduct or operation of the place of business? _____
- 12) Is the applicant or any affiliate, associate, subsidiary, officer, director or other agent engaged in the manufacture of alcoholic liquors? _____
If so, at what location or locations? _____
- 13) Is the applicant engaged in the business of an importing distributor or distributor of alcoholic liquors? _____
If so, at what location or locations? _____
- 14) Will the business be conducted by a manager or agent? _____
If so, give name and residence address of such manager or agent
Name _____
Address _____
- 15) Do you hold any other current business licenses issued by the City? _____
If so, what type of license do you currently hold and what is the address of the licensed premises?
Type _____
Address _____

Individual Applicant:

- 16) (a) Name _____
Date of birth (Month/Day/Year) _____
- (b) Residence address (give street and number) _____
Telephone number _____
- (c) Place of birth _____
- (d) Are you a citizen of the United States? _____
If a naturalized citizen, when naturalized? (Month/Day/Year) _____
Where naturalized? (City and State) _____
Court in which (or law under which) naturalized _____
- (e) Have you ever been convicted of any felony under any Federal or State law? _____
If so, give date and state offense _____
- (f) Have you ever been convicted of being the keeper of a house of ill fame; or of pandering or other crime or misdemeanor opposed to decency and morality? _____
If so, give dates and state offense _____
- (g) Have you ever been convicted of a violation of a Federal or State liquor law since February 1, 1934? _____
If so, give dates and state offense _____

- (h) Have you ever permitted an appearance bond forfeiture for any of the violations mentioned in? _____
- (g) Have you ever been convicted of a violation of a Federal or State liquor law since February 1, 1934? _____
- (i) Have you made application for other similar license for premises other than described in this application? _____
If so, give date, location of premises and disposition of application _____
- (j) Has any license previously issued to you by State, Federal or local authorities been revoked, suspended or fined? _____
If so state reasons therefor and date(s) _____

Co-partnership/Corporate Applicant:

- 17) (a) Name of partner, or corporate officers and directors and shareholders, if any: (attach separate sheet if necessary)
Date of birth (Month/Day/Year) _____
- (b) Residence address (City and State) _____
Telephone number _____
- (c) Place of birth (Month/Day/Year) _____
- (d) Are you a citizen of the United States? _____
If a naturalized citizen, when naturalized? _____
Where naturalized? (City and State) _____
Court in which (or law under which) naturalized _____
- (e) Have you ever been convicted of any felony under and Federal or State law? _____
If so, give date and state offense _____
- (f) Have you ever been convicted of being the keeper of a house of ill fame; or of pandering or other crime or misdemeanor or opposed to decency and morality? _____

APPENDIX IV

AFFIDAVIT

STATE OF ILLINOIS)
)SS
COUNTY OF _____)

I (or we) swear (or affirm) that I (or we) will not violate any of the ordinances of the City of _____ or the laws of the State of Illinois or the laws of the United States of America, in the conduct of the place of business described herein and that the statements contained in this application are true and correct to the best of my (our) knowledge and belief.

Subscribed and Sworn to before me this day of _____, 20_____.

(Signature of Applicant)

APPENDIX V

RESOLUTION (TO ESTABLISH REVIEW OF LIQUOR HEARINGS ON THE RECORD TO BE ADOPTED BY CITY COUNCIL OR BOARD OF TRUSTEES AS APPLICABLE)

WHEREAS, the City of Matte, Illinois, is a municipal corporation of the State of Illinois; and

WHEREAS, Illinois Compiled Statutes, Chapter 235, Section 5/7-8, provides that:

Any appeal to the Illinois Liquor Control Commission shall be limited to a review of the official record of the proceedings of such local liquor control commissioner if the city council or board of trustees or county board, as the case may be, has adopted a resolution requiring that such review be on the record.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MATTE, ILLINOIS, that effective upon the passage of this resolution, all review or appeal of the actions or orders of the local liquor control commissioner of the City of Matte, Illinois, shall be made by the Illinois Liquor Control Commission on the official record made before the local liquor control commissioner. All resolutions or parts thereof in conflict with the provisions of this resolution are hereby repealed.

Dated: _____

APPENDIX VI

ATTORNEY'S SUMMARY OF RELEVANT CASE LAW

General

Under the Act, the authority to regulate the issuance of retail liquor licenses has been delegated to the local commissioners, who are considered to have been given considerable discretion in granting or denying licenses. **Jager v. Illinois Liquor Control Commission**, 74 Ill.App. 3d 33, 29 Ill. Dec. 619, 392 N.E.2d 176 (1979); **Goode v. Thomas**, 31 Ill. App. 3d 674, 334 N.E.2d 300 (1975). The local commissioner has the power to grant or revoke for cause liquor licenses, and it is clear that the local commissioner is vested with discretionary power in making these determinations. **Daley v. License Appeal Commission**, 11 Ill.App. 2d 421, 138 N.E.2d 73 (1956). There is no statutory requirement as to the form or character of the evidence upon which a local liquor control commissioner may rely in determining whether to grant or deny an application and local liquor control commissioner is not required to consider only matters which would be admissible in a court of law. **Daley v. License Appeal Commission**, 11 Ill.App.2d 421, 138 N.E.2d 73 (1957).

Applicants for liquor licenses are entitled to fair treatment by the licensing authority, and regulation of the liquor industry must be pursuant to a legitimate exercise of state and municipal police power. **Goode v. Thomas**, supra. Regulation must be pursuant to legitimate exercise of state and local police power; person entitled to sell liquor is entitled to fair treatment when granting, denying, suspending or revoking. The exercise of the police power in the regulation of the liquor industry must be reasonable, and not arbitrary or discriminatory. While the local commissioner is vested with considerable discretionary power, such power must not be abused, and good cause must be shown for the denial of an application. **McCray v. Daley**, 133 Ill.App.2d 67, 272 N.E.2d 815 (1971); **Local Liquor Control Commission v. Illinois Liquor Control Commission**, 59 Ill.App.3d 1, 16 Ill. Dec. 420, 374 N.E.2d 1298 (2 Dist. 1978). A local liquor control commissioner is not liable to the licensee for his official acts in revoking or refusing to reissue a license; the rule of liability applying to judges applies alike to all officers exercising quasi-judicial powers, and they are exempt from liability for error or mistake of judgment in the exercise of their duty in the absence of corrupt or malicious motives, even though the Liquor Control Act does not prescribe procedures to be followed. **Reed v. Village of Shorewood**, 704 F.2d 943 (1983); **Paoli v. Mason**, 325 Ill. App. 197, 59 N.E.2d 499 (1945).

The limitations on issuance of liquor licenses contained in the Illinois Liquor Control Act were not exclusive, and did not prohibit the local liquor control commissioner from exercising power to deny a license for genuine reasons related to public

health, safety and morals. **Ace Produce, Inc. v. State of Illinois Liquor Control Commission**, 93 Ill.App.3d 381, 417 N.E.2d 214, 48 Ill.Dec. 812 (1981). The power to grant or refuse licensure is vested in the local commissioner by the Illinois Liquor Control Act, and is not dependent upon validation by local ordinance. **Ace Produce**, supra.

The power to pass upon the qualifications of an applicant for a local liquor license is vested in the Local Liquor Control Commissioner. **People ex rel. Cairo Turf Club v. Taylor**, 350 Ill.App. 446, 113 N.E.2d 212, appeal dismissed 2 Ill.2d 160, 116 N.E.2d 880 (1953). Under 235 ILCS 5/6-10 and 235 ILCS 5/7-5, the local commissioner, upon determining that licensee had not produced requested documents after he was given a fair amount of time to comply, had the authority to revoke dram shop license. **Vintage '76, Inc. v. Illinois Liquor Control Commission**, 78 Ill. App. 3d 463, 33 Ill. Dec. 833, 397 N.E.2d 166 (1979). When local authority discovers false statements in application or other previously unknown grounds which would justify denial or revocation prior to actual execution and delivery of license certificate, mandamus action does not properly lie to require issuance. **Stevens v. Lake County**, 24 Ill. App.3d 51, 320 N.E.2d 263 (1974). Photographs of dangerous parking lot and intersection admissible in hearing on issuance of license. **Ace Produce, Inc. v. State of Illinois Liquor Control Commission**, supra. Local liquor control commissioner has authority to refuse to issue on public safety grounds by power given under LCA, regardless of validation by local ordinance. Limitations in LCA not exclusive; does not deny power to local liquor control commissioner to deny license for genuine reasons related to public health, safety and welfare. **Ace Produce, Inc. v. State of Illinois Liquor Control Commission**, supra. Sec. 5/4-1 only limits the legislative action which the local legislative governmental entity can enact and does not limit the discretion of the local commissioner from considering other factors in the exercise of his authority in the licensing of local premises, including the consideration of traffic congestion which would result. **Palmer v. Liquor Control Commission**, 77 Ill.App.3d 725, 396 N.E.2d 325, 33 Ill.Dec. 100 (1979). Issuance of license may properly be conditioned on applicants satisfaction of zoning requirements. **Tollway North Office Center Central Nat. Bank in Chicago v. Streicker**, 83 Ill.App.3d 239, 403 N.E.2d 1246, 38 Ill.Dec. 642 (1980). A local liquor control commission may not presume that they have given sufficient competent evidence to defeat a potential licensee's claim. **Bowler's Inc. v. Illinois Liquor Control Commission**, 97 Ill. App. 2d 403, 240 N.E.2d 369 (1 Dist. 1968).

Provisions of LCA which refer to premises sought to be licensed indicated that legislature contemplated that having an established place of business was prerequisite to issuance of a liquor license. **Goode v. Thomas**, supra. The Commissioner cannot allow a license to simply “expire” or to just fail to renew the license, and thereby to cause a “passive” or “constructive” revocation. (5/6-1, APA100/10-65) The Commissioner cannot fail to renew a license without a hearing. The term “revocation” includes the refusal to issue a renewal license. **City of Wyoming v. Illinois Liquor Control Commission**, 48 Ill. App. 3d 404, 6 Ill. Dec. 258, 362 N.E.2d 1080 (3 Dist. 1977). Under LCA if locals waited for license to expire and then refused to renew, licensee is entitled to all projections, procedural and substantive, of a revocation process, making licensee’s interest in the renewal process a property right for constitutional purposes; but did not prevent the decrease in the number of licenses. **Reed v. Village of Shorewood**, supra, **City of Wyoming v. Liquor Control Commissioner**, supra. Local liquor control commissioner’s decision to deny renewal is analyzed same as decision to revoke; thus decision may not be disturbed for lack of evidence if there is any record evidence to support it. **Womack v. Local Liquor Control Commissioner**, 229 Ill.App.3d 402, 593 N.E.2d 1102, 171 Ill.Dec. 282 (1992). Evidence supported local liquor control commissioner’s refusal to renew where licensees suffered or permitted illegal drug activity, inside and in close physical connection with the premises, and licensee’s conduct in informing employees to call police less frequently without regard to level of drug activity after city advised number of police calls had to be reduced. **Womack v. Local Liquor Control Commissioner**, supra.

Licensee’s rejection of attempt by authorities to control number of altercations on premises, with patrons being seriously injured, and failure to call police or sign complaints constituted knowing permission for such conduct and grounds for denial of renewal. **Jager v. Illinois Liquor Control Commission**, supra.

Since a local liquor commission must consider the same factors in allowing a license to be transferred to a new premises as it did in initially granting the license, and the actual effect was the granting of a new license, then a transfer of license fell within the meaning of granting or refusing to grant a license, and the Illinois Liquor Control Commission had jurisdiction to hear the appeal of a transfer of a liquor license. **Wood v. Illinois Liquor Control Commission**, 55 Ill. App. 3d 228, 13 Ill. Dec. 443, 371 N.E.2d 138 (2 Dist. 1977).

Other Situations

In **City of Fairfield v. Pappas**, 362 Ill. 80, 199 N.E. 292 (1935) it was held that if the City Council or Village Board refuses to enact any ordinance establishing the numbers, kinds and classifications of licenses, the State Commission may issue a retail license without requiring a local license number.

Home Rule

Village did not violate order which granted defendant a Class AA license and specified hours of operation when the village subsequently amended ordinance thereby reducing the hours of operation for all Class AA licenses, because the village did not agree nor was it empowered to agree to perpetual license rights and because the village had the authority to amend the ordinance that regulated and restricted liquor licenses for the public’s welfare. **County of Cook v. Kontos**, 206 Ill. App. 3d 1085, 152 Ill. Dec. 7, 565 N.E.2d 249 (1 Dist. 1990), cert. denied, 137 Ill. 2d 664, 156 Ill. Dec. 560, 571 N.E.2d 147 (1991).

Where plaintiffs failed to establish that they had a clearly ascertained right which needed protection or that they were likely to succeed on the merits of their case, plaintiffs’ motion for temporary restraining order to prevent defendants from enforcing ordinance which modified the hours of operation for liquor licensees was denied. **Two Kats, Inc. v. Village of Chicago Ridge**, 147 Ill. App. 3d 440, 101 Ill. Dec. 1, 497 N.E.2d 1314 (1 Dist. 1986). County authority. This section authorizes counties to adopt liquor control legislation either by resolution or by ordinance. **Cheetah Enterprises, Inc. v. County of Lake**, 22 Ill. App. 3d 306, 317 N.E.2d 129 (2 Dist. 1974).

Binder v. Illinois Liquor Control Commission, 45 Ill. App. 2d 354; 195 N.E.2d 450 (1963), citing Schreiber favorably but proceeded to decide case foregoing a simple finding of mootness.

Estoppel

Local liquor control commissioner’s issuance of license on finding that licensee was qualified and premises was suitable does not estop him from denying the licensees were qualified or from revoking because of appearances prior to renewal of license. **Lambrecht v. Illinois Liquor Control Commission**, 5 Ill.App.2d 481, 126 N.E.2d 38 (1955).

Bec-N-Call, Inc. v. Village of Steger, 75 Ill.App.3d 957, 394 N.E.2d 728, 31 Ill.Dec. 526 (1979). Injunctive proceeding to prevent village officials from enforcing amendment to liquor

ordinance barring sale from 2:00 a.m. to 9:00a.m. Case notes the distinction between the local liquor control commissioner and the local municipal body; also notes that local liquor control commissioner does not have any authority to set, reduce or increase the hours during which an establishment may sell alcoholic beverages. Claim is that a reduction of hours by 20% was tantamount to a revocation.

Concerning the motivation behind an amendment to the ordinance, burden is on challenging party to prove the invalidity, and the motives which may have activated those in authority to make the amendment are not subject to judicial investigation. **Oak Park National Bank v. Village of Broadview**, 27 Ill.2d 151, 188 N.E.2d 679 (1963).

The mere questioning of the reasoning of the local authorities is insufficient. **Pence v. Village of Rantoul**, 12 Ill.App.3d 446, 298 N.E. 2d 775 (1973).

Bias

Under the law of administrative review, an administrative hearing is required to provide due process. **Seul's Inc. v. Liquor Control Commission**, 240 Ill.App.3d 828, 608 N.E.2d 530, 181 Ill. Dec. 457 (1992). A fundamental principle of due process, applicable to administrative agencies and commissions, is that no person who has a personal interest in the subject matter of a suit may sit in judgment on that case. In re Heirich, 10 Ill.2d 357, 104 N.E.2d 825 (1956). A personal interest or bias can be pecuniary, of any other interest that may have an effect on the impartiality of the decision-maker. **City of Naperville v. Wehrle**, 340 Ill. 579, 173 N.E. 165 (1930); **Huff v. Rock Island County Sheriff's Merit Commission**, Ill. App. 3d, 689 N.E.2d 1159, 228 Ill.Dec. 738 (1998)

To prove bias, the plaintiff must overcome a presumption of honesty by showing in the record that the administrative proceedings were either tainted by dishonesty or contained an unacceptable risk of bias. **Caliendo v. Martin**, 250 Ill.App.3d 409, 620 N.E.2d 1318, 190 Ill.Dec. 57 (1993). Without a showing to the contrary, state officials are assumed to be men of conscience and intellect capable of judging the particular controversy fairly on the basis of its own circumstances. **Scott v. Department of Commerce and Community Affairs**, 84 Ill.2d 42, 416 N.E.2d 1082, 48 Ill.Dec. 560 (1981).

As there are no specific requirements in the Liquor Control Act, or the Administrative Procedures Act, concerning a separation of the obligations of the fact finder and the individual inquiring of the witnesses, unless specific prejudice or a predisposition toward bias against the licensee appears in the record, same will

not be presumed. See **Ladenheim v. Union County Hospital**, 76 Ill.App.3d 90, 31 Ill.Dec. 568 (1979). In **Gigger v. Board of Fire and Police Commissioners of the City of East St. Louis**, 23 Ill.App.2d 433, 163 N.E.2d 541 (1959) a disciplinary hearing was conducted "entirely" by the Board's attorney, who presented, interrogated and cross-examined the witnesses; ruled on all questions of law and evidence; made other discretionary rulings; argued with and interrupted witnesses; and failed to acknowledge the respondent's attorney's objections. It appeared that the prosecuting attorney in that case ran roughshod over the entire fact finding process and usurped the power given to the Board.

Subterfuge

It was contrary to law for lessee tavern operator to operate tavern under the liquor license issued to the lessor; defendant owner could not escape liability under this Act by allowing tavern to operate with defendant's liquor license. **Woodward v. Pro Del Corp.**, 64 Ill. App. 3d 684, 21 Ill. Dec. 520, 381 N.E.2d 847 (5 Dist. 1978).

A liquor licensee cannot, by leasing dram shop and allowing his lessee to operate the dram shop under lessor's liquor license, an act which is contrary to law, divest himself of the obligation to properly control the operation of the dram shop. Thus, defendant, irrespective of any agreement with lessee, was under a duty to control dram shop so long as it was operated under defendant's liquor license with his specific sanction. **Hix v. Amato**, 50 Ill. App. 3d 761, 8 Ill. Dec. 762, 365 N.E.2d 1148 (3 Dist. 1977).

In rejecting a local liquor control commission's denial of a license in which the commission improperly held that the applicant was a front for one who could not receive a license, inconsistencies in testimony were given an innocent construction where a time span of 25 years had intervened to cloud the witness' memory of her prior application, she had volunteered information of her ownership of a similar liquor establishment in Indiana, and she had no motive to falsify her ownership, nor were irregularities suggested relative to her earlier liquor ventures. **Bowler's Inc. v. Illinois Liquor Control Commission**, 97 Ill. App. 2d 403, 240 N.E.2d 369 (1 Dist. 1968).

5/6-2. Persons Ineligible to be Licensed

Issuance of licenses to certain persons prohibited.

- a) Except as otherwise provided in subsection (b), no license of any kind issued by the State Commission or any local commission shall be issued to:

- (13) A person who does not beneficially own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is to be issued;
- (15) A person who is not a beneficial owner of the business to be operated by the licensee;

See also, **Tanner v. Illinois Liquor Control Commission**, 16 Ill. 2d 517, 158 N.E.2d 636 (1959); **Bowler's, v. Illinois Liquor Control Commission**, 97 Ill. App. 2d 403, 240 N.E.2d 369 (1968); **McCray v. Daley**, 133 Ill. App. 2d 67, 272 N.E.2d 815 (1971); **Russell v. License Appeal Commission**, 133 Ill. App. 2d 594, 273 N.E.2d 650 (1971); **Woodward v. Pro Del Corp.**, 64 Ill. App. 3d 684, 381 N.E.2d 847, 21 Ill. Dec. 520 (1978); **Haggerty v. License Appeal Commission**, 71 Ill. App. 3d 767, 390 N.E.2d 89, 28 Ill. Dec. 107 (1979)

Local Legislative Power over Liquor Licenses

Village did not violate order which granted defendant a Class A license and specified hours of operation when the village subsequently amended ordinance thereby reducing the hours of operation for all Class A licenses, because the village did not agree nor was it empowered to agree to perpetual license rights and because the village had the authority to amend the ordinance that regulated and restricted liquor licenses for the public's welfare. **County of Cook v. Kontos**, 206 Ill. App. 3d 1085, 152 Ill. Dec. 7, 565 N.E.2d 249 (1 Dist. 1990), cert. denied, 137 Ill. 2d 664, 156 Ill. Dec. 560, 571 N.E.2d 147 (1991).

Where village had reduced the number of licenses following suspension, so that the particular license could not be reinstated by the appellate court, that licensee had an important interest in appeal because she could never obtain another liquor license in the State of Illinois if the license in question were to stand revoked, and thus such appeal was not moot. **Binder v. Illinois Liquor Control Commission**, 45 Ill. App. 2d 354, 195 N.E.2d 450 (1 Dist. 1963).

The Act gives a village the authority to regulate tavern hours. **County of Cook v. Kontos**, 206 Ill. App. 3d 1085, 152 Ill. Dec. 7, 565 N.E.2d 249 (1 Dist. 1990), cert. denied, 137 Ill. 2d 664, 156 Ill. Dec. 560, 571 N.E.2d 147 (1991).

Mandamus

Where there was an amendment which, if valid, superseded city ordinance denying the right to issue retail liquor licenses to stores wherein commodities other than alcoholic liquor were

sold, which ordinance was challenged by appellant's association of retail liquor dealers, before appellants could be entitled to a writ of mandamus, it must be made to appear that the duty resting upon the defendants was clear. **Retail Liquor Dealers Protective Ass'n v. Schreiber**, 382 Ill. 454, 47 N.E.2d 462 (1943).

General liquor control ordinance adopted by the city which provided for closing hours of 1:00 A.M. on certain nights and 2:00 A.M. on other nights, was a valid exercise of the power delegated to it by the state. **Maywood-Proviso State Bank v. City of Oakbrook Terrace**, 67 Ill. App. 2d 280, 214 N.E.2d 582 (2 Dist. 1966).

The municipality may decrease the number of licenses to be issued whether a renewal or an original application for a liquor license is involved. **Pence v. Village of Rantoul**, 12 Ill. App. 3d 446, 298 N.E.2d 775 (4 Dist. 1973).

Any purported attempt by a municipality to grant special privileges or rights relative to a certain liquor licensee is of no effect. **Maywood-Proviso State Bank v. City of Oakbrook Terrace**, 67 Ill. App. 2d 280, 214 N.E.2d 582 (2 Dist. 1966).

Findings of the State Commission that the applicant was of good character and was entitled to renewal of license were not contrary to the manifest weight of the evidence. **City of Galesburg v. Spilios**, 58 Ill. App. 2d 187, 206 N.E.2d 264 (3 Dist. 1965).

Since a local liquor commission must consider the same factors in allowing a license to be transferred to a new premises as it did in initially granting the license, and the actual effect was the granting of a new license, then a transfer of license fell within the meaning of granting or refusing to grant a license, and the Illinois Liquor Control Commission had jurisdiction to hear the appeal of a transfer of a liquor license. **Wood v. Illinois Liquor Control Commission**, 55 Ill. App. 3d 228, 13 Ill. Dec. 443, 371 N.E.2d 138 (2 Dist. 1977).

Where it appeared that no application was ever filed with the village president in accordance with the ordinance requirements of the village, that a letter was merely a letter of inquiry and request and not an application in fact, and that no reviewable order was entered by the local liquor commissioner, there being no application of any kind for a license, there could be no order of denial for review by the State Liquor Control Commission. **Tanner v. Illinois Liquor Control Commission**, 16 Ill. 2d 517, 158 N.E.2d 636 (1959).

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