

# Request for City Council Action

Date: June 7, 2011

<b>Agenda Section:</b> General Business  <b>No. 5</b>	<b>Originating Department:</b> Legal
<b>Item: An Ordinance Amending Title Two (2) Chapter Two (2) of the Carbondale Revised Code as it relates to the Local Liquor Control Commission</b>  <b>No. 5.1</b>	<b>Approved:</b>

**Background:**

Title Two (2) Chapter Two (2) of the City of Carbondale Code sets out that the Mayor and City Council shall serve as the Local Liquor Control Commission and sets up the procedures for enforcing violations by liquor licensees. In May 2005, by Ordinance 2005-33, the Code was amended to abolish the position of Hearing Officer and to assign those duties to the Chairman of the Local Liquor Control Commission. Currently the Chairman presides over hearings and has the authority to enter fines and letters of reprimand.

Mayor Fritzler has requested that the position of Hearing Officer be re-established for hearings before the Local Liquor Control Commission. Under the proposed changes, the City Manager of the City of Carbondale will serve as the Hearing Officer. The duties of the Officer are outlined in Section 2-2-3 of the proposed changes. After all hearings, the Officer shall make a report and recommendation to the Commission. The Commission would review the report and recommendation as well as the record, and then either accept or reject the report and recommendation in whole or in part. The Local Liquor Control Commission will retain full authority to punish violations of the liquor code by licensees.

**Recommended Action:**

The City Council is requested to adopt the amendment to the Carbondale Revised Code as it relates to the Local Liquor Control Commission.

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 \_\_\_\_\_

**CITY OF CARBONDALE, ILLINOIS**

**ORDINANCE NO. 2011-**

**AN ORDINANCE AMENDING TITLE TWO (2) CHAPTER TWO (2) OF THE  
CARBONDALE REVISED CODE AS IT RELATES TO THE LOCAL LIQUOR  
CONTROL COMMISSION**

**ADOPTED BY THE CITY COUNCIL**

**OF THE CITY OF CARBONDALE, ILLINOIS**

**THIS 7<sup>TH</sup> DAY OF JUNE, 2011**

**Published in pamphlet form by authority of the City Council of the City of Carbondale,  
Jackson County, Illinois, this 8<sup>th</sup> day of June, 2011.**

**CERTIFICATE OF PUBLICATION**

**I, Rachael Keehn, the duly qualified 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 8th day of June,  
2011.**

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**Rachael Keehn, City Clerk**

**ORDINANCE NO. 2011-\_\_\_\_**

**AN ORDINANCE AMENDING TITLE TWO (2) CHAPTER TWO (2) OF THE CARBONDALE REVISED CODE AS IT RELATES TO THE LOCAL LIQUOR CONTROL COMMISSION**

**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 Two (2) Chapter Two (2) of the Carbondale Revised Code establishes the local liquor control commission and procedures for hearings before the Local Liquor Control Commission; and

**WHEREAS**, updating and amending Titles of the Carbondale Revised Code is necessary periodically to remain current with State law and to adopt new programs which may be beneficial to the community; and

**WHEREAS**, the City Council of the City of Carbondale recognizes the need to amend Title Two (2) Chapter (2) to provide for a hearing officer for hearings conducted on behalf of the Local Liquor Control Commission; and

**WHEREAS**, the City Council of the City of Carbondale finds it in the best interest of the City of Carbondale to amend Title Two (2) Chapter (2) as set out herein.

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

**SECTION 1.** That Title Two (2) Chapter (2) of the Carbondale Revised Code is hereby amended as follows:

**2-2-1: LOCAL LIQUOR CONTROL COMMISSION:**

The Mayor and the City Council shall be the local liquor control commission for the city, and are charged with the administration of the applicable provisions of the Illinois liquor control act, and ordinances, resolutions, rules, and regulations relating to alcoholic liquor as may be adopted by the mayor and city council. The local liquor control commission shall have the following powers and duties:

- A. Act On Applications: To receive applications, investigate applicants, and grant, renew, or deny liquor licenses.
- B. On Site Inspection: To enter, or to authorize any law enforcing officer to enter, at any time, upon any premises licensed under this title in order to enforce the ordinances of the city, laws of the state, or the Illinois liquor control act, or any rules or regulations adopted by the local liquor control commission to determine whether any such laws are being violated and at such time to examine the premises of the licensee in connection herewith.
- C. Respond To Complaints: To receive complaints from any citizen of the city that any of the provisions of this title or any rules or regulations adopted pursuant thereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided.
- D. Collect Fees: To receive local license fees and pay the same forthwith to the city treasurer.
- E. Examine All Pertinent Information: To examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee under this title upon whom notice of suspension or revocation of license has been served; to examine, or cause to be examined, the books and records of any applicant or licensee under this title; to authorize any law enforcing officer to require any applicant or licensee to furnish said officer with a complete, current list of all employees of said applicant or licensee including the names and addresses of all employees; and to hear testimony and take proof for their information in the performance of their duties and for such purposes to issue subpoenas. For the purpose of obtaining any of the information desired by the local liquor control commission under this section, it may authorize its agent to act in its behalf.
- F. Impose Penalties: To impose penalties as provided in Chapter 5 of this title.
- G. Hearing Officer: The City Manager for the City of Carbondale shall serve as the hearing officer for the local liquor control commission, and in his absence may appoint a special hearing officer.

H. Chairman: The Mayor of the City of Carbondale shall serve as the Chairman for the local liquor control commission.

## **2-2-2: RECORDS:**

The local liquor control commission shall maintain or cause to be maintained a complete record of all liquor licenses issued pursuant to this title. A copy of each license shall be maintained in the office of the city clerk. The city clerk shall maintain all original documents pertaining to Carbondale liquor licenses.

## **2-2-3: HEARINGS:**

- A. Imposition Of Penalties; Hearing To Precede Action: ~~The chairman~~ hearing officer of the local liquor control commission may issue a dismissal, ~~a letter of reprimand, or levy a fine on a licensee~~ or finding of not guilty without further action from the commission. If the hearing officer determines that the licensee has violated the provisions of this title, the hearing officer shall prepare a report and recommendation for the violation of any provision of this title as provided in section 2-5-2 of this title. In addition, ~~the chairman~~ hearing officer may request that the local liquor control commission issue a letter of reprimand, a fine, or to suspend or revoke a liquor license issued pursuant to this title. Except as provided in subsection B of this section, no licensee shall receive a written reprimand or be fined and no license shall be suspended or revoked prior to an evidentiary hearing before the hearing officer pursuant to this section. The licensee shall be given written notice of the charge or charges against it not less than three (3) days prior to such hearing. The licensee may, if it so chooses be represented at its own expense by legal counsel at the evidentiary hearing.
- B. Exceptions; Summary Action: A licensed premises may be closed for not more than seven (7) days without notice or hearing, upon the issuance of a written order stating the reason(s) for closing if the chairman of the local liquor control commission has reason to believe that the continued operation of the specific licensed premises will or does threaten the welfare of the community. Upon being presented with reliable evidence of a violation of this code which the chairman of the local liquor control commission reasonably believes poses a danger or threat to the health, safety or welfare of the community, the chairman of the local liquor control commission may take action to summarily suspend a liquor license without full local liquor control commission action. An evidentiary hearing before the hearing officer shall be held within seven (7) days from the date of suspension, giving the licensee the opportunity to be heard on the matter.
- C. Duty Of ~~Chairman~~ Hearing Officer: The evidentiary hearing shall be presided over by the ~~chairman~~ hearing officer of the local liquor control commission. The ~~chairman~~ hearing officer shall have the right to issue subpoenas for witnesses, to place witnesses under oath, to rule on objections, to dismiss charges before the local liquor control commission, to conduct the evidentiary hearing in an efficient manner, and to issue a ~~letter of reprimand or levy a fine~~ report and recommendation as provided in section 2-5-2 of this title for any violation of this title. The ~~chairman~~ hearing officer shall be responsible for securing the services of a certified court reporter at the evidentiary hearing. The initial costs and fees of the court reporter shall be paid by the city, subject to subsection 2-5-2A of this title.
- D. Procedure: The city attorney's offices shall draft the charging documents on behalf of the local liquor control commission, and shall represent the city before the commission in all hearings. The city shall have the burden of proving by a preponderance of the evidence the charges

alleged against the licensee. After the city has presented its evidence, the licensee may present evidence in its defense. After the licensee has presented its evidence, if any, the city shall have the right to present rebuttal evidence, if it so chooses. The evidentiary hearing shall be informal and strict rules of evidence shall not apply. All motions shall be filed with the City Clerk and in writing no later than three days before the scheduled hearing. Any motion not filed in accordance with this section may be denied without hearing.

- E. Order/Report And Recommendation By ~~Chairman~~ Hearing Officer: ~~If the chairman~~ If the hearing officer of the local liquor control commission determines that the licensee should be found not guilty no further action of the commission shall be necessary, ~~or found guilty but and penalized in the manner of a letter of reprimand or a fine, or that charges against the licensee should be dismissed, the chairman, after the close of the evidentiary hearing, the chairman shall issue an order which shall include findings of fact, conclusions of law, and the penalty to be imposed against the licensee, if any. That order shall be appealable to the local liquor control commission, at the cost of the licensee.~~ If the chairman If the hearing officer determines that the licensee is guilty of the violation and that a penalty should be entered as provided in section 2-5-2 of this title, suspension or revocation of a liquor license is the appropriate penalty, he shall prepare a report and recommendation to the local liquor control commission. The report and recommendation shall include the ~~chairman's~~ hearing officer's findings of fact and conclusions of law and shall include a recommended penalty for the violation. The ~~chairman~~ hearing officer shall also make available a copy of the transcript of the evidentiary hearing to the local liquor control commission. Attorneys for the city and the licensee shall receive a copy of the hearing officer's report and recommendation.
- F. Decision Of Commission: The local liquor control commission shall consider the ~~chairman's~~ hearing officer's report and recommendation at a public meeting. The city and the licensee shall have the opportunity to present any evidence in aggravation or mitigation of the recommended penalty. However, no new or additional evidence regarding the charges shall be presented to the local liquor control commission. After reviewing the report and recommendation and any objections, the local liquor control commission may by majority vote impose a penalty against the licensee as provided in section 2-5-2 of this title.
- G. Determination Criteria: In making the determination regarding the appropriate penalty, the ~~chairman~~ hearing officer and local liquor control commission may consider the nature of the violation, past violations of the licensee, and the facts and circumstances surrounding the violation as presented at the evidentiary hearing.
- H. Order To Be Served: One copy of the order shall be served upon the licensee within seven (7) days of its signing by the chairman of the commission. Service may be made by placing the order in the United States mail, postage prepaid. The chairman shall also send a copy of the order to each member of the local liquor control commission. If a fine is imposed, the licensee shall pay the fine within thirty (30) days after the date of the order, unless the order specifically states otherwise in which case the licensee shall pay the fine by the date provided in the order. If such fine and costs are not paid within the required time period, the chairman of the local liquor control commission may summarily suspend the license until such time as the fine and costs are paid.
- I. Review By State; Cost: Any review by the state liquor control commission of the proceedings before the ~~chairman~~ hearing officer or the local liquor control commission shall be limited to a review of the official record of the proceedings. No new or additional evidence shall be admitted or considered. All costs of preparing and transcribing an official record on appeal to the state liquor control commission shall be borne by the licensee requesting the review of the official

proceedings. If a fine is assessed, and the licensee requests an appeal before the state liquor control commission, the licensee shall post a bond in the amount of the fines and cost assessed with the City Clerk.

- J. Appeal From Commissioner's Or Commission Decision To Suspend, Revoke or Non-Renewal: ~~Within three (3) days of receipt of the commissioner's order, the licensee may appeal the decision by written request to the local liquor control commission. A public hearing will then be held at a regularly scheduled city council meeting, at the cost of the licensee. At such time, the liquor control commission will review the entire record of the previous hearing, no new evidence shall be reviewed. The local liquor control commission will then either affirm the commissioner's order or impose a new penalty. The licensee may request an appeal before the state liquor control commission as provided in 235 ILCS 5/7-9, as amended, except as provided in this section.~~ In any case in which a licensee appeals to the state liquor control commission a suspension or revocation by the local liquor control commission that is the second or subsequent suspension or revocation placed on that licensee within the preceding twelve (12) month period, the licensee shall consider the suspension or revocation to be in effect until a reversal of the local liquor control commission's decision has been issued by the state liquor control commission and shall cease all activity otherwise authorized by the license. In any case in which a licensee appeals to the state liquor control commission the non-renewal of a license and the licensee has had any liquor license suspended or revoked in the preceding twelve months, the licensee shall cease all activity otherwise authorized by the license.

**SECTION 2.** That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

**SECTION 3.** That 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 ordinances.

**SECTION 4.** 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 5.** 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 authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

**SECTION 6.** That this Ordinance shall be known as Ordinance No. 2011-\_\_\_ of the Ordinances of the City of Carbondale, Illinois, and shall be in full force and effect from and after its passage, approval, recording and publication in accordance with law.

APPROVED: \_\_\_\_\_  
Joel Fritzler, Mayor

FOR: \_\_\_\_\_  
AGAINST: \_\_\_\_\_  
PASSED: \_\_\_\_\_  
APPROVED: \_\_\_\_\_  
RECORDED: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Rachael Keehn, City Clerk

APPROVED AS TO LEGALITY AND FORM:

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P. Michael Kimmel, City Attorney