

GAINES CHARTER TOWNSHIP

KENT COUNTY, MICHIGAN

Ordinance No. 2021-07

At a regular meeting of the Township Board for Gaines Charter Township held at the Township offices within the Township on May 10, 2021 at 7:00 p.m., the following Ordinance/amending ordinance was offered for adoption by Township Board Member VanderStel and was seconded by Township Board Member Terpstra:

AMENDMENTS TO THE GAINES CHARTER TOWNSHIP CODE OF ORDINANCES REGARDING THE LICENSING AND CONTROL OF ESTABLISHMENTS SERVING LIQUOR IN GAINES CHARTER TOWNSHIP.

Article 1. Chapter 4 Alcoholic Liquors, Article II Licensing and Control, is hereby amended to include provisions enabling and pertaining to the regulation and licensure of "Movie Theater Complex". More Specifically; Sec. 4-19 Definitions is amended by the insertion of definitions terms not defined in the article; Section 4-22 "Movie Theater Complex means a motion-picture complex comprised of not less than (10) screens, total seating for not less than 1,000 patrons and a minimum of 50,000 square feet of indoor space. Section 4-23 – License criteria and restrictions paragraphs (b) (3), (4) to establish liquor license requirements pertaining to "Movie Theatre Complex", and paragraph(c) (2) Movie Theater Complex licensees compliance requirements, and amendments to existing sections for clarification.

As hereby amended, Chapter 4 of the Gaines charter Township Code shall read in its entirety as follows:

Chapter 4 - ALCOHOLIC LIQUORS

FOOTNOTE(S): -- (1) ---

Editor's note— Ord. No. 14-04, § 1, adopted April 14, 2014, amended former Ch. 4, Arts. I— III, in its entirety to read as herein set out. Former Ch. 14 pertained to similar subject matter and derived from the following: Ord. No. 93-00-01-LQ, §§ 1—4, 10-25-1993; Ord. No. 05-FEB-14-SUP1, §§ 2—16, 3-14-2005; Ord. No. 10-04, § 1, 6-14-2010.

State Law reference— Michigan liquor control code of 1998, MCL 436.1101 et seq.

ARTICLE I. - IN GENERAL

Secs. 4-1—4-18. - Reserved.

ARTICLE II. - LICENSING AND CONTROL

Sec. 4-19. - Definitions.

- (a) Terms not defined in this Article will be defined pursuant to the Michigan Liquor Control Code, PA 58 of 1998 (MCL 436.1101 et seq.), as amended.
- (b) Terms not defined in this Article or in the Michigan Liquor Control Code will be defined pursuant to the administrative rules promulgated by the state of Michigan

Department of Licensing and Regulatory Affairs Michigan Liquor Control Commission or its successor agency.

(c) For the purpose of this Article, the following definitions will apply unless the context clearly indicates or requires otherwise:

- (1) *Alcohol* means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but the term "alcohol does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.
- (2) *Alcoholic liquor* means any spirituous, vinous, malt or fermented liquor, liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (0.005) or more of alcohol by volume which is fit for use for beverage purposes.
- (3) *Alcohol service area* means the portion of an establishment which is licensed to sell alcoholic liquor for on premises consumption and where persons are permitted to consume such alcoholic liquor.
- (4) *Applicant* means any person who seeks approval from the Township Board to sell alcoholic liquor.
- (5) *Beer* means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.
- (6) *Banquet/event facility* means a building or any portion of a building used for functions such as meetings, conferences, lectures, seminars, live speaking engagements, weddings, receptions and banquets, which as determined by the Township Board may be eligible for a Banquet/event facility license as provided herein.
- (7) *Banquet/event facility license* means a license issued to an on-premise licensee for use in a Banquet/event facility.
- (8) *Bona Fide restaurant* shall mean a restaurant meeting the following standards:
 - a. The restaurant serves complete meals selected by a patron from a menu that includes a choice of appetizer, salad, entrée (entrées shall include a variety of meat, poultry and/or fish dishes), vegetable, bread, dessert and beverages served by a wait staff and prepared on-premises;
 - b. Seventy-five percent of the gross receipts of the restaurant inclusive of receipts for alcoholic liquors are derived from the sale of food and beverages other than alcoholic liquors;
 - c. The restaurant provides separate restrooms on-premises for both men and women for the exclusive use of restaurant patrons;

- d. Except as provided below for a tavern license, if the restaurant provides counter space (i.e. a bar) for the purpose of dispensing alcoholic liquors, the counter space shall be separated from the dining area by a suitable partition, the size of the counter space shall be limited to provide seating space for a total number of patrons equal to or less than 20 percent of the restaurant's dining room capacity, and such counter space seating capacity shall be included in the calculation of 15 square feet per patron. However, in the case of a restaurant holding a Tavern License, the term "bona fide restaurant" shall not include any restaurant providing additional counter space (i.e., bar) for the dispensing of alcoholic liquor;
 - e. The restaurant has no standing room at a counter space except for the use of wait staff in serving food and beverages;
 - f. The term "bona fide restaurant" shall not include any restaurant serving food and beverages with a "drive up" window or a "drive through" to provide service to a patron in a motor vehicle or any restaurant serving food and beverages in or on disposable plates or disposable baskets or disposable cups or with disposable utensils; and
 - g. The term "bona fide restaurant" shall include a restaurant providing for the sale of food on a "take out" basis if the restaurant meets all other standards above for a "bona fide restaurant".
- (9) *Brandy manufacturer* means the term "brandy manufacturer" as defined in the Liquor Code and the administrative rules of the MLCC.
 - (10) *Brewer* means the term "brewer" as defined in the Liquor Code and the administrative rules of the MLCC.
 - (11) *Brewpub* means the term "brewpub" as defined in the Liquor Code and the administrative rules of the MLCC.
 - (12) *Class A license* means a license for a hotel or motel authorizing the retail sale of beer and wine for consumption on the premises.
 - (13) *Class B license* means a license for a hotel or motel authorizing the retail sale of beer, wine and spirits for consumption on the premises.
 - (14) *Class C license* means a license for any place, other than a hotel or motel, authorizing the retail sale of beer, wine and spirits for consumption on the premises.
 - (15) *Dining area* means the room or section of a premises intended for the sole purpose of seating patrons to consume food and/or drink. The dining area does not include hallways, restrooms or entry ways.
 - (16) *Distiller* means the term "distiller" as defined in the Liquor Code and the administrative rules of the MLCC.
 - (17) *Liquor Code* means Michigan Liquor Control Code, PA 58 of 1998 (MCL 436.1101 et seq.), as amended.

- (18) *Manufacturer* means the term "manufacturer" as defined in the Liquor Code and the administrative rules of the MLCC.
- (19) *Manufacturer license* means any license issued by the MLCC to a manufacturer that requires approval by the local legislative body under the Liquor Code or the administrative rules of the MLCC. The term "manufacturer license" includes, but is not limited to, a brandy manufacturer, brewer, distiller, microbrewer, small distiller, small wine maker, and wine maker.
- (20) *Microbrewer* means the term "microbrewer" as defined in the Liquor Code and the administrative rules of the MLCC.
- (21) *MLCC* means the Michigan Liquor Control Commission or successor agency.
- (22) *Movie Theater Complex* means a motion-picture complex comprised of not less than ten (10) screens, total seating for not less than 1,000 patrons and a minimum of 50,000 square feet of indoor space.
- (23) *Movie Theater License* means a license issued to an on-premises licensee for use in a Movie Theater Complex.
- (24) *Person* means any legal entity, including an individual, firm, partnership, association, corporation, limited liability company, trust, business trust, club, or lodge.
- (25) *Sacramental wine* means wine containing not more than 24 percent of alcohol by volume which is used for sacramental purposes.
- (26) *Sale* includes exchange, barter, traffic or furnishing or giving away any alcoholic liquor.
- (27) *Small distiller* means the term "small distiller" as defined in the Liquor Code and the administrative rules of the MLCC or successor agency.
- (28) *Small wine maker* means the term "small wine maker" as defined in the Liquor Code and the administrative rules of the MLCC.
- (29) *Spirits* means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcohol content of more than 21 percent by volume, except sacramental wine.
- (30) *Suitable partition* means a physical separation of a counter space from table seating areas. The suitable partition shall provide a separation designed to provide a buffer between counter space and table seating areas and to provide privacy for diners seated in table seating areas. The partition may consist of any physical separation which is determined by the Township Board in its reasonable discretion to meet this definition, and may consist, for example, of a wall or a partial wall completed to the ceiling with frosted or stained glass, lattice work, wine cabinets, decorative hangings, or a combination thereof.
- (31) *Tavern License* means a license for any place, other than a hotel or motel, authorizing the retail sale of beer and wine for consumption on the premises.

- (32) *Wine* means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21 percent of alcohol by volume, including fermented fruit juices other than grapes, and mixed wine drinks.
- (33) *Wine maker* means the term "wine maker" as defined in the Liquor Code and the administrative rules of the MLCC.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-20. - Approval required

- (a) Unless specifically authorized under this Article, the sale of alcoholic liquor within the Township for on-premise consumption is prohibited.
- (b) Unless specifically authorized under this Article the manufacturing of alcoholic liquor within the Township is prohibited
- (c) No person shall sell alcoholic liquor for on-premise consumption without Township Board approval and a valid liquor license issued by the Michigan Liquor Control Commission or its successor agency.
- (d) No person shall manufacture alcoholic liquor without Township Board approval and a valid liquor license issued by the Michigan Liquor Control Commission or its successor agency

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-21. - Application times and procedures.

- (a) *Application form and submission.* A person seeking any license under this Article shall make application for approval by the Township. Two copies of such application for approval shall be filed, one with the Township Clerk for processing as described in this section, and one with the Township supervisor for the purpose of monitoring competing applications that have been filed. Applications shall be made upon forms to be provided by the Township Clerk or, if no such forms shall be available from the Township Clerk, duplicate copies of the application to be made to the MLCC may be used along with a letter directed to the Township requesting approval.

The Township Board shall not consider or act upon any request and/or any application or any matter related to a request and/or an application until a completed application and the application fee have been received by the Township.

- (b) *Application fee.* A fee as prescribed by resolution of the Township Board shall accompany all applications for a new license and all applications for license renewals made pursuant to this article.

- (c) *Preliminary review.* Upon receipt of a completed application and the application fee the Township Clerk shall transmit the application to the Township Treasurer who shall endorse thereon a statement as to whether the applicant is in default to the Township in connection with the payment of any taxes or other obligations. Following endorsement by the Township Treasurer, the Township Clerk shall transmit the application to the Township Board for consideration at the next scheduled Township Board meeting.
- (d) *License hearings.* The Township Board shall grant a public hearing on applications submitted in compliance with the requirements of this article, provided that such applications are complete, the application fee required by this article has been paid, and all preliminary review required by this article has been completed. Following the public hearing, the Township Board shall adopt a resolution setting forth its findings and determinations and approving or denying the application, or taking other action consistent with this article. In no event shall an application be approved without satisfactory compliance with all applicable restrictions set forth in this Article.
- (e) *Reservation of authority.* No applicant for a liquor license has the right to the issuance of such license to them, and the Township Board reserves the right to exercise reasonable discretion to determine who, if anyone shall be entitled to the issuance of such license.
- (f) *Term of license.* Approval of a license shall be for a period of one year subject to annual renewal by the Township Board upon continued compliance with the regulations of this article. Approval of a license shall be with the understanding that any necessary remodeling or new construction for the use of the license shall be commenced within six months of the action of the Township Board and of the MLCC approving such license, whichever last occurs. Any unusual delay in the completion of such remodeling or construction shall subject the license to revocation.
- (g) *Renewals.* On or before February 1 after the first full year of licensure, and on or before February 1 of each year thereafter, each licensee licensed under this article shall prepare and submit an application for renewal of his license on the same forms and containing the same information as required for the issuance of a new license, along with the applicable fee. Such applications shall be considered by the Township Board within 60 days thereafter to determine whether the license should be renewed.
- (h) *On-premises license quota.* For licenses subject to the quota under Section 31 of the Liquor Code (MCL 436.1531), only one on-premises license for each 2,873 persons of population within the Township (as determined according to the latest decennial census) shall be issued or considered for issuance pursuant to the provisions of this article.
- (i) *Compliance.* The applicant bears the burden of establishing compliance with all requirements of this article.

- (j) *Privilege.* A license issued under this Article is a revocable privilege granted by the Township and is not a property right. The application for or granting of a Township license under this Article does not create or vest any right, title, franchise, or other property interest.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-22. - Application contents for licenses.

- (a) *Information to be submitted.* Applications for any license under this Article shall be in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof, if a partnership or corporation, verified by oath or affidavit, and shall contain all of the following statements and information:
- (1) The name, age and address of the applicant in the case of an individual; or, in the case of a co- partnership, the persons entitled to share in the profits thereof in the case of a corporation, the objects for which organized, the names and addresses of the officers and directors, and, if a majority interest in the stock of such corporation is owned by one person or his nominee, the name and address of such person.
 - (2) In the case of an individual, the citizenship and place of birth of the applicant and, if a naturalized citizen, the time and place of his naturalization.
 - (3) The character of business of the applicant, and in the case of a corporation, the object for which it was formed.
 - (4) The length of time said applicant has been in business of that character, or in the case of a corporation, the date when its charter was issued.
 - (5) The location and description of the premises or place of business which is to be operated under such license.
 - (6) A statement whether applicant has made application for a similar or other license on premises other than described in this application, and the disposition of such application.
 - (7) A statement that applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this Article or the laws of the state.
 - (8) A statement that the applicant will not violate any of the laws of the state or of the United States or any ordinances of the Township in the conduct of its business.
 - (9) The application shall be accompanied by building and site plans showing the entire structure and premises and, in particular, the specific areas where the license is to be utilized. The plans shall demonstrate adequate off-street parking, lighting, refuse disposal facilities and where appropriate, adequate plans for screening and noise control.

- (10) For premises pending or under construction, evidence of the financial capability of the applicant to satisfactorily complete the development and construction of the premises.
- (b) *Additional information.* The applicant shall also provide such other information as requested by the Township Board in connection with its review of an application.
- (Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-23. – License criteria and restrictions.

- (a) *Prohibited Licensees.* Except to the extent that the Township Board issues a variance as permitted in subsection (g) of this Section, no license (including, but not limited to, class A, class B, class C, tavern, brewpub, or manufacturer licenses) may be issued or transferred to:
- (1) A person whose license, under this Article, has been revoked for cause.
 - (2) A person who, at the time of application or renewal of any license issued hereunder, would not be eligible for such license upon a first application.
 - (3) A co-partnership, unless all of the members of such co-partnership shall qualify to obtain a license.
 - (4) A corporation, if any officer, manager or director thereof or a stock owner or stockholders owning in the aggregate more than five percent of the stock of such corporation, would not be eligible to receive a license hereunder for any reason.
 - (5) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same character qualifications required of the licensee.
 - (6) A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession or sale of alcoholic liquor or a controlled substance.
 - (7) A person who does not own the premises for which a license is sought or does not have a lease therefore for the full period for which the license is issued.
 - (8) A person who has knowingly made any false statement in his application, or who has failed to fully complete the application.
 - (9) Any law enforcing public official covered by MCL 436.1523.
 - (10) Any premises where there exists a violation of the applicable building, electrical, mechanical, plumbing, or fire codes, applicable zoning regulations, applicable public health regulations, or any other applicable Township ordinance.

- (11) Any premises where it is determined by a majority of the Township Board that the premises do not or will not reasonably soon after commencement of operations, have adequate off-street parking, lighting, refuse disposal facilities, screening, noise, or nuisance control or where a nuisance does or will exist.
 - (12) Any premises which the Township Board determines, by majority vote, to be inappropriate considering the desirability of establishing a location in developed, commercial areas, in preference to isolated, undeveloped areas; the attitude of adjacent residents and property owners; traffic safety; accessibility to the site from abutting roads, capability of abutting roads to accommodate the commercial activity; distance from public or private schools for minors; effect on adjacent properties; and accessibility from primary roads or statehighways.
 - (13) Any premises where the proposed use for the licensed premises would not fully comply with the applicable zoning ordinance provisions (including the proper zoning district) or other Township ordinances.
 - (14) Any person who has not demonstrated sufficient financial assets:
 - a. To carry on or maintain the licensed business;
 - b. If the specific areas where the license is to be utilized are part of a new premises, to complete construction of the new premises according to the site plan and building plans filed with the Township; and
 - c. To otherwise comply with the requirements of this article.
 - (15) Any premises which shares a common wall, hallway, or restroom with another premises, excluding an establishment holding a tavern license, manufacturer license or Banquet/event facility license which meets the following criteria:
 - a. The establishment shall provide separate on-premises private restroom facilities for men and for women. Restrooms located in common areas of a premises are not acceptable to meet this requirement unless the entire facility is under the control of the licensee.
 - b. No more than two establishments with a liquor license permitting on-premises consumption of alcohol shall be located within the same multi-tenant building or strip mall unless the multi-tenant building or "strip mall" has less than 6,500 square feet of total space in which case only one establishment with a liquor license for on-premises consumption may be located in the multi-tenant building or "strip mall."
- (b) *On-premise Licenses.* Except to the extent that the Township Board issues a variance as permitted in subsection (g) of this Section, a license for on-premise consumption (including, but not limited to, class A, class B, class C, and tavern) will only be issued or transferred as follows:
- (1) Class A license (including a brewpub with a Class A license): The licensed premises must contain at least 40 guestrooms and a bona fide restaurant and utilizes the license only in conjunction with the operation of the hotel/motel

and bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than 4,290 square feet, and dining capacity of at least 150 patrons at a ratio of not less than 15 square feet of dining area for each patron.

- (2) Class B license (including a brewpub with a class B license): The licensed premises must contain at least 50 guestrooms and a bona fide restaurant and utilizes the license only in conjunction with the operation of the hotel/motel and bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than 5,000 square feet, and dining capacity of at least 175 patrons at a ratio of not less than 15 square feet of dining area for each patron.
 - (3) Class C license (including a brewpub with a class C license):
 - a. The licensed premises must contain a bona fide restaurant and utilizes the license only in conjunction with the operation of the bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than 5,000 square feet, and dining capacity of at least 175 patrons at a ratio of not less than 15 square feet of dining area for each patron;
 - b. The licensed premise is a Banquet/event facility; or
 - c. The licensed premise is a Movie Theatre Complex.
 - (4) Tavern License (including a brewpub with a tavern license):
 - a. The licensed premises must contain a bona fide restaurant and utilizes the license only in conjunction with the operation of the bona fide restaurant and, in addition, unless the bona fide restaurant has a total area of not less than 1,000 square feet, and dining capacity of at least 65 patrons at a ratio of not less than 15 square feet of dining area for each patron;
 - b. The licensed premise is a Banquet/event facility; or
 - c. The licensed premise is a Movie Theatre Complex.
- (c) *Additional On-Premise Criteria:* Except to the extent that the Township Board issues a variance as permitted in subsection (g) of this section, the following criteria must be met for the below listed license types:
- (1) Banquet/event facility: All Banquet/ event facility licensees must comply with the following:
 - a. The licensed premises must be a physically defined building or portion of a building but the entire facility must be controlled by the licensee.
 - b. The facility shall provide separate on-premises private restroom facilities for men and for women. Restrooms located in unlicensed areas of a premises are not acceptable to meet this requirement unless the entire facility is controlled by the licensee.

- c. The event facility shall provide food service for the patrons of the banquet/event facility during all times that alcoholic beverages are available to patrons, whether the food is provided free of charge or made available for purchase. Food service may be prepared on-premises or may be provided through a vendor or vendors that prepare the food off-premises but deliver it to the premises for on-premises consumption.
 - d. Specially designated licensed premises areas, as such areas may be modified from time to time by the licensee within the licensed premises, shall be used for specially scheduled functions and events such as meetings, conferences, lectures, seminars, live speaking engagements, weddings, receptions and banquets when alcoholic beverages are served,
 - e. Less than 50 percent of the gross receipts of the event facility must be derived from sales of alcoholic liquor;
 - f. If a bar or counter space is provided in the facility for the dispensing and sale of alcoholic liquor, such bar or counter space may occupy not more than ten percent of the area of the licensed premises;
 - g. The seating and/or table configuration at the licensed premises must be transitory; and
 - h. The defined event facility premises shall provide a minimum approved occupancy of at least 100 persons.
- (2) Movie Theater Complex: All Movie Theater Complex licensees must comply with the following:
- a. The licensed premises must be a physically defined building or portion of a building, but the entire facility must be controlled by the licensee.
 - b. The facility shall provide separate on-premises private restroom facilities for men and for women. Restrooms located in unlicensed areas of a premises are not acceptable to meet this requirement unless the entire facility is controlled by the licensee.
 - c. The movie theater facility shall provide food service for the patrons of the Movie Theater Complex during all times that alcoholic beverages are available to patrons. Food service may be prepared on-premises or may be provided through a vendor or vendors that prepare the food off-premises but deliver it to the premises for on-premises consumption.
 - d. Less than twenty percent of the gross receipts of the Movie Theater Complex may be derived from sales of alcoholic liquor.
 - e. If a bar or counter space is provided in the facility for the dispensing and sale of alcoholic liquor, such bar or counter space may occupy not more than five percent of the area of the licensed premises.

(d) *Manufacturer licenses.* Manufacturer licenses are issued by the MLCC upon local legislative body approval. A person applying for or holding a manufacturer license, as applicable, shall comply with the following requirements:

- (1) An applicant for a Manufacturer license shall submit to the Township Clerk the MLCC resolution along with a detailed description of their request.
 - (2) An applicant for a manufacturer license shall submit the location where they intend to manufacture alcohol and demonstrate that all Township zoning ordinance requirements are met by the applicant.
 - (3) A person holding a manufacturer license shall provide separate restrooms on-premises for both men and women for the exclusive use of the patrons being served.
 - (4) A person holding a manufacturer license shall provide food service for the patrons of the manufacturer for consumption on the premises during all hours of operation, whether the food is provided free of charge or made available for purchase. Food service may be provided on- premises or may be provided through a vendor or vendors that prepare the food off- premises but deliver it to the premises for on-premises consumption. For purposes of this section only, "food service" means the availability of any food including deli-style food or pre-packaged snack foods.
 - (5) A person holding a manufacturer license shall have a dining area or tap room or tasting room that is a minimum of 750 square feet and shall have seating capacity for a minimum of 50 patrons with 15 square feet of area for each patron in the dining area, tap room, or tasting room.
 - (6) If a counter space (i.e., a bar) is provided for dispensing and selling alcoholic liquors, the size of the counter space on the premises of a person holding a manufacturing license shall be limited to provide seating space for a total number of patrons equal to or less than 20 percent of the total seating capacity of the dining area/tap room/tasting room.
 - (7) A person holding a manufacturer license shall comply with all other applicable requirements of this Article.
- (e) *All licensed persons:* All persons licensed under this Article must comply the terms of this Article, applicable Township ordinances, and all state and federal laws, standards, rules, and regulations. In addition to the other requirements imposed under this Article, all licensed persons must comply with all other conditions or requirements imposed by the Township Board as a condition of approval and licensure. Such conditions or requirements may be imposed as a term of licensure and/ or through a separate agreement between the Township and the licensed person.
- (f) *Continued compliance.* Following the issuance of a license under this Article, the Township Board may suspend or revoke its approval pursuant to section 4-26 should any licensee or licensed premises at any time cease to meet the requirements of this section or other provisions of this Article, or violate the requirements of the Liquor Code, administrative rules of the MLCC, or other applicable state and federal laws, statutes, rules, and regulations, and the continued sale of liquor for consumption on the premises shall constitute a violation

of this article. All licensees that are required to operate a bona fide restaurant on the licensed premises shall maintain accurate records of receipts and disbursements in such a manner that receipts from food and beverages other than alcoholic liquors can be readily distinguished from receipts for alcoholic liquors. Such records shall be available for inspection by the Township or its agent from time to time during normal business hours.

(g) Variances.

- (1) In connection with the issuance, transfer or renewal of a license, the Township Board, in its sole discretion, may allow a variance from the strict requirements of this article where it is shown by the applicant that it would be impossible or very difficult for the applicant to comply with the strict requirements of this article (financial hardship alone shall not satisfy this requirement);
 - a. The variance provides for adequate alternate means of ensuring that the spirit and intent of this article is maintained;
 - b. The variance sought is sufficient to protect the health, safety and general welfare of the Township and its residents;
 - c. The variance sought will not contradict other applicable laws, rules or regulations.
- (2) In connection with the grant of a variance, the Township Board may impose other requirements to ensure that the spirit and intent of this Article is maintained and that the health, safety and general welfare of the Township and its residents is protected.
- (3) A variance granted pursuant to this section is not transferable to another licensee or location.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-24. - Reserved

Sec. 4-25. - Competing applications.

Where there are competing applications for an available liquor license, the Township Board shall use criteria including but not limited to the following in determining which application, if any, should be granted:

- (1) Zoning and use of the parcel and adjacent parcels.
- (2) Availability of utilities.
- (3) What uses will be conducted with the license.
- (4) Traffic on adjacent streets and the existence of any traffic hazards in the area or produced by the applicant's proposed use.
- (5) Economic backing of the applicant sufficient to conduct such a use.
- (6) The design and layout of improvements of the applicant for his proposed use.

- (7) Effect upon existing adjacent uses and uses in the vicinity.
- (8) The location of any licensed establishments as relates to potential traffic effects or hazards.
- (9) Any information contained in the application or requirements of this Article.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-26. - Objections to renewal and request for revocation.

(a) Procedure.

- (1) Before filing an objection to renewal or request for revocation of any license with the MLCC, the Township Board shall hold a hearing and shall serve the license holder, by first class mail, mailed not less than ten days prior to the hearing with notice of the hearing, which notice shall contain the following:
 - a. Notice of proposed action.
 - b. Reasons for the proposed action.
 - c. Date, time and place of the hearing.
 - d. A statement that the license holder may present evidence and testimony and confront adverse witnesses.
- (2) Following the hearing, the Township Board shall submit to the license holder and the MLCC, a written statement of its findings and determination.

(b) Criteria for nonrenewal or revocation. The Township Board shall recommend nonrenewal or revocation of a license upon a determination by it that, based upon a preponderance of the evidence presented at the hearing, any of the following exist:

- (1) Violation of any provision of this Article.
- (2) Maintenance of a nuisance (defined as any violation of this article, or any other Township ordinance, or any state or federal law, rule or regulation, or the maintenance of any common law nuisance) upon the premises.
- (3) Fraudulent information provided upon original application or application for renewal.
- (4) The consumption of spirits on the premises, if it is licensed to sell only beer or wine, or both beer and wine.
- (5) Dancing or live entertainment open to the public, with or without an admission charge, unless holding a valid dance or dancing entertainment permit.
- (6) Any disorderly conduct or action which disturbs the peace and good order of the neighborhood.
- (7) Any incidents of prostitution, solicitation for prostitution, or larceny.
- (8) Any gambling activity or the placing or using of any gambling apparatus or paraphernalia therein.

- (9) Any unlawful possession, sale or use of any controlled substance.
 - (10) Use of interior lighting which is insufficient to enable a person with average vision to clearly see all persons within the premises.
 - (11) Any violation of any other provision of any Township ordinance, or any violation of any law, rule, regulation or lawful order or directive which is designed to protect the public health, safety or welfare.
 - (12) Any violation of the Liquor Code or any administrative rule or regulation promulgated by the MLCC.
 - (13) Nonpayment of any federal, state or local tax or special assessment.
 - (14) Nonpayment or repeated delinquency payment of utility or other bills outstanding and owing to the Township.
 - (15) Any failure by the licensee, or the licensee's agent or employee to fully cooperate with any federal, state, county or Township official.
 - (16) Any failure by the licensee, or the licensee's agent or employee to fully cooperate with any law enforcement officer.
 - (17) Any license that has been placed into escrow for 180 days or more.
- (c) *Existing license renewals.* Existing licenses shall be subject to annual renewal by the Township Board. (Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-27. - Nudity prohibited.

- (a) *Definitions.* The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (1) *Licensee* means a person or entity having a license to sell alcohol (including, but not limited to, class A, class B, class C, tavern, brewpub, and manufacturer licenses), and the owners, officers, agents, and employees of such person or entity.
 - (2) *Nudity* means a state of undress so as to expose to the view of another person the following body parts without any covering or with less than a fully opaque covering:
 - a. The whole or part of the pubic region;
 - b. The whole or part of the anus;
 - c. The whole or part of the buttocks;
 - d. The whole or part of the genitals; or
 - e. Any portion of the female breast below the top of the areola.

A woman's breast feeding of a baby does not constitute nudity irrespective of whether or not the nipple is covered during or incidental to the feeding.

- (b) *Licensee responsibilities.*

- (1) *Nudity on premises.* A licensee shall not allow in or upon the licensed premises any person in a state of nudity.
 - (2) *Hiring.* A licensee shall not hire, employ, or procure a person to appear in or upon the licensed premises in a state of nudity.
 - (3) *Films, slides, etc., depicting nudity; exception.* A licensee shall not allow in or upon the licensed premises the showing of films, television, slides, or other electronic reproductions which depict scenes wherein any person appears in a state of nudity. This prohibition does not apply to any public broadcast television transmission from a federally licensed station or movies unless the Motion Picture Association of America, or the equivalent, assign an X rating or higher, or another equivalent rating to the film.
- (c) *Persons appearing on premises.* No person shall appear in or upon premises licensed for the sale of alcoholic liquor in a state of nudity.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-28. - Christmas, Sundays; prohibited sales.

Pursuant to Section 1113 of the Liquor Code:

- (1) No person shall sell alcoholic liquor on any premises within the Township between 11:59 p.m. on December 24 and 11:59 p.m. on December 25 (Christmas).
- (2) No person shall sell spirits or mixed spirit drink (as defined in the Liquor Code) for off-premises consumption on Sundays between the hours of 2:00 a.m. and 12:00 noon.
- (3) No person shall sell alcoholic liquor for on-premises consumption on Sundays between the hours of 2:00 a.m. and 12:00 noon.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-29. - Issuance or renewal not required.

Nothing in this article shall be construed to require the Township or the Township Board to renew a license or to issue or approve the issuance of a license that may be available due to the population. Whether a license should be issued or renewed shall be determined in the sole discretion of the Township Board.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-30. - Enforcement.

For the purpose of the enforcement of the Liquor Code within the Township, there is hereby established a Liquor Control Enforcement Department with full power, authority, and duty to see that the provisions of the Liquor Code and the administrative rules and regulations of the MLCC are enforced within said Township. Such department shall consist of not less than one constable or deputy sheriff appointed by the Township Board and such other personnel as the Township Board may, in its discretion, appoint. The personnel of such department shall be entitled to such compensation as the Township

Board may determine. Such department or a member thereof shall be reasonably available to investigate complaints received under this article and enforce the provisions hereof.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-31. - Inspection.

- (a) The Township liquor control enforcement department shall periodically inspect all liquor establishments in the Township licensed under the Liquor Code and report the results of all inspections promptly to the Township Board. The Township liquor control enforcement department shall further promptly investigate all complaints received by it concerning violations of the Liquor Code or improper operations and practices concerning alcoholic liquor traffic within the Township and report the same to the Township Board and, where appropriate under the Liquor Code, to the MLCC for appropriate proceedings against the violator.
- (b) All inspectors shall carry appropriate cards issued by the Township Clerk clearly identifying them as Township liquor control inspectors and shall present said cards to the owner or manager of every place inspected by them when making an inspection upon demand for identification by such owner or manager.
- (c) Inspectors shall have the right to inspect any place in the Township where alcoholic liquor is manufactured, sold, offered for sale, kept for sale, possessed or transported, or where the inspector suspects the same is being thus manufactured, sold, offered for sale, kept for sale, possessed or transported. Whenever possible, all inspection reports shall be made on liquor law enforcement forms furnished by the MLCC or on similar forms otherwise obtained by the Township liquor control enforcement department.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-32. - Appropriations.

For the purpose of carrying out the provisions of this article and establishing the liquor control enforcement department herein provided for, the Township Board may appropriate reasonable monies for such use, and is hereby authorized and directed to annually appropriate such an amount as will, in its discretion, be sufficient to maintain and operate such liquor control enforcement department for the ensuing fiscal year of the Township.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-33. - Violation a misdemeanor.

- (a) Any person violating this article shall be guilty of a misdemeanor, punishable as provided in Section 1-11 entitled "General penalty; continuing violations," of Chapter 1 entitled "General Provisions", of the Gaines Charter Township Code of Ordinances.
- (b) It is the intent of the Township Board that the court, in imposing punishment under the provisions of this article, should discriminate between causal or slight violations

and habitual sales of alcoholic liquor or attempts to commercialize violations of this article or any of the administrative rules or regulations of the MLCC promulgated under the Liquor Code.

(Ord. No. 14-04, § 1, 4-14-2014)

Sec. 4-34. - Existing licenses.

As of the effective date of the ordinance from which this article is derived, there exists one licensee within the Township subject to local approval under this article (Briarwood Golf Course), the premises of which would not qualify for the issuance of a new or renewal license under the terms of this article. In recognition of the property interest of that existing licensee in its licensed premises, the Township Board acknowledges that such licensed premises shall be grandfathered with regard to, and exempt from, the zoning and bona fide restaurant requirements set forth in this article such that the continued use of the premises as currently configured and operated shall be permitted.

(Ord. No. 14-04, § 1, 4-14-2014)

Article 2. *The remainder of the Gaines Charter Township Code of Ordinances is Unaffected. Except as expressly amended by this Ordinance/ordinance amendment, the rest of the Gaines Charter Township Code of Ordinances remains unchanged and in full force and effect.*

Article 3. *Severability. Should a court of competent jurisdiction determine that any portion of this Ordinance/ordinance amendment is invalid or unconstitutional, that shall not affect the balance of this Ordinance/Ordinance amendment, which shall remain in full force and effect.*

Article 4. *Effective Date. This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment or a summary thereof appears in the newspaper as provided by law.*

The vote to adopt this ordinance/ordinance amendment was as follows:

YEAS: Haagsma, Lemke, Terpstra, Vander Stel, Brew, DeWard

NAYS: None

ABSENT: Fryling

THIS ORDINANCE/ORDINANCE AMENDMENT IS DECLARED DULY ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/Ordinance amendment adopted by the Township Board for Gaines Charter Township at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: Michael Alex Brew

Michael Alex Brew

Gaines Charter Township Clerk