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SO2011-6726

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City Council Document Tracking Sheet

<b>Meeting Date:</b>	7/28/2011
<b>Sponsor(s):</b>	Graham, Deborah L. (29)
<b>Type:</b>	Ordinance
<b>Title:</b>	Amendment of Chapters 4-4 and 4-60 of Municipal Code regarding suspension or revocation of business license due to illegal activities on premises
<b>Committee(s) Assignment:</b>	Committee on License and Consumer Protection

1/17/2012

02011-6726

**SUBSTITUTE  
ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** Title 4 of the Municipal Code of Chicago is amended by deleting the language struck through and adding the language underscored, and by adding a new Section 4-4-289, as follows:

**4-4-289 Effect of revocation.**

(a) Except as provided in subsection (d) of this section, any person whose license is revoked under this Title 4 shall be ineligible for the issuance of any new license pursuant to this title for a period of one year following the date that the revocation became effective.

(b) Except as provided in subsection (d) of this section, any person who has a substantial ownership or controlling interest in an entity whose license is revoked under this Title 4 shall be ineligible for the issuance of any new license pursuant to this Title 4 for a period of one year following the date that the revocation became effective. This ineligibility also shall apply to the issuance of a new license to any other entity in which the disqualified person has a substantial ownership or controlling interest. As used in this section, "substantial ownership or controlling interest" means: (1) ownership of 25% or more of the entity, or ownership of 25% or more voting shares of stock if the entity is a corporation; or (2) holding a position as a principal officer or serving on the board of directors or as a manager of the entity.

(c) The parent, child, sibling, spouse or domestic partner of a person who is ineligible for the issuance of a license under subsection (a) or (b) shall, during that period of ineligibility, be ineligible for the issuance of a new license under this Title 4 for any premises that are at the same location as the licensed premises that were subject to the revocation that caused the ineligibility under subsection (a) or (b).

(d) If any provision of this Code imposes a longer period of ineligibility for the issuance of any license, that longer period shall apply.

**4-4-313 Restriction on hours of operation; Businesses that are or cause a nuisance.**

(a) ~~Except for those businesses listed in subsection (c) of this section, the operation of a business requiring a license under this code between the hours of 12:00 midnight and 5:00 a.m. shall be considered a severable privilege under the applicable license. That privilege may be suspended or terminated, in the same manner and pursuant to the same procedures applicable to revocation and suspension of licenses, if the A license may be suspended or revoked if a licensee's business is or creates a nuisance during the hours between 12:00 midnight and 5:00 a.m. A licensed business is or creates a nuisance during those hours if: (i) within any consecutive 12 months, not less than three separate incidents occur on the licensed premises, on or in the licensed premises' parking facility, or on the public way adjacent to the licensed premises, between the hours of 12:00 midnight and 5:00 a.m. adjacent property, involving acts that violate any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons; or (ii) the licensee has failed to take reasonable steps to correct objectionable conditions existing between the hours of 12:00 Midnight and 5:00 A.M. on the licensed premises or on adjacent~~

property or occurring while the licensed premises is open for business or within one hour of the time the establishment is opened or closed for business. The licenses of any business that is or creates a nuisance under clause (i) of this subsection (a) shall be subject to suspension or revocation pursuant to Section 4-4-280. The licenses of any business that is or creates a nuisance under clause (ii) of this subsection (a) shall be subject to suspension or revocation pursuant to the procedures set forth in subsection (b) of this Section.

(b) Any person may file with the commissioner of business affairs and consumer protection a complaint that a licensee's business is a public nuisance because the licensee has failed to take reasonable steps to correct objectionable conditions existing ~~between the hours of 12:00 Midnight and 5:00 A.M.~~ on the licensed premises, on or in the licensed premises' parking facility or on adjacent property. The commissioner of business affairs and consumer protection may notify the licensee to appear before the commissioner, in the presence of the complaining persons when the commissioner considers such presence appropriate, to define, discuss and seek resolution of problems giving rise to the complaint. The commissioner may also order subsequent meetings to review progress toward resolution of the problems. The failure of a licensee to appear in response to a notice, or to attend subsequent meetings as ordered by the commissioner, shall be grounds for the imposition of a fine or the suspension or revocation of a license. ~~and the~~ The progress made in resolving the problems identified in the complaint and meeting process, shall be considered in any proceeding to suspend or revoke ~~the privilege to operate a business between the hours of 12:00 Midnight and 5:00 A.M.~~ a license under the section.

After the commissioner determines that the complaint and meeting process has been completed, the commissioner may institute a hearing based upon his or her reasonable belief that the operation of the business is a public nuisance. Notice of a hearing scheduled under this section shall be given to the alderman of the ward in which the licensed premises is located. At the conclusion of the hearing, if the commissioner determines by a preponderance of evidence that the operation of the licensee's business is a public nuisance because the licensee has failed to take reasonable steps to correct objectionable conditions occurring on the licensed premises or adjacent property, the commissioner shall enter an order suspending or revoking the applicable license.

Notwithstanding any other provision of this section, if a licensee has provided satisfactory proof to the commissioner that the licensee has devised a plan of operation that will provide reasonable assurance that operation of the business will not cause a public nuisance, the commissioner may suspend the effectiveness of the suspension or revocation order for a period of six months while that plan is in effect. Such a plan must be submitted within 20 days after a suspension or revocation order is issued under this section, and the commissioner shall postpone enforcement of the order pending his or her review of the plan. If no plan is submitted within 20 days after the issuance of a suspension or revocation order under this section, or if the commissioner rejects the plan, the suspension or revocation order shall become final. If the commissioner approves the plan, he or she shall continue the hearing to a specified date prior to the expiration of the six month period. The plan may include conditions upon the licensee's operation of the premises that are useful or necessary to mitigate a public nuisance, including but not limited to: providing security personnel, restricted hours of operation, providing outdoor lighting, the display of signs, providing trash pickup services, or any other reasonable restrictions on business practices. After a continued hearing at which interested persons shall have the opportunity to be heard, the commissioner may: (1) reimpose the suspension or revocation order if the commissioner determines that the licensee has failed to adhere to the written plan of operation; (2) order the modification of

the plan of operation, including the addition or removal of conditions on the operation of the premises; (3) vacate the suspension or revocation order if commissioner determines that the order is no longer necessary to prevent a public nuisance; and/or (4) continue the hearing for an additional six months, during which the effectiveness of the suspension or revocation order may continue to be suspended pending further evaluation of the licensee's efforts to correct objectionable conditions.

Any order issued under this section, other than a final order imposing a suspension or revocation or vacating such sanction, shall not be considered a final order for purposes of appeal.

A licensee's failure to adhere to a written plan of operation approved by the commissioner pursuant to this section, through either the complaint and meeting procedures or upon the licensee's submission, shall constitute a basis to impose a fine and to suspend or revoke the licenses held by such licensee, as appropriate.

(c) (b) For purposes of this subsection, the term "illegal acts" means any conduct or activity that violates any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons. In a proceeding to suspend or revoke the privilege of operating between the hours of 12:00 midnight and 5:00 a.m. the license(s) of a business that is or creates a nuisance under subsection (a) of this section:

(1) it shall not be relevant a defense that the licensee or the licensee's employees or agents were not personally involved in the commission of the illegal acts or personally directly responsible for the objectionable conditions except as provided otherwise in paragraph (2) of this subsection (c) (b); and

(2) for purposes of determining whether three or more illegal acts occurred during a 12-month period, illegal acts occurring on the public way shall be limited to acts of the licensee, its employees, agents or patrons or otherwise involving circumstances having a nexus to the operation of the business; and

(3) the occurrence of the illegal acts or objectionable conditions may be proved by preponderance of the evidence only must occur or exist while the licensed premises is open for business or within one hour of the time the establishment is opened or closed for business; and

(4) any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the commissioner may rely upon official written reports, affidavits and other business records submitted by police officers or other authorized city officials or employees charged with inspection or enforcement responsibilities to determine whether such illegal acts or objectionable conditions occurred. If during any 12 month period three separate incidents of illegal acts occur on the licensed premises, on or in the licensed premises parking facility, or on adjacent property, a rebuttable presumption shall exist that the licensed business is or creates a nuisance in violation of this section.

(5) A licensee may offer evidence of mitigating factors in any license disciplinary hearing where it is alleged that the licensed business is or creates a nuisance based upon the occurrence of three or more illegal acts in any twelve month period. Mitigating factors may include evidence of the licensee's reasonable efforts to deter or discourage illegal acts from occurring on the licensed premises or adjacent property such as: the use of strategically placed recording cameras, employment of trained security personnel, and a practice of promptly notifying the police when illegal activity occurs or appears imminent and cooperating with police investigations. When reviewing any evidence of mitigating factors, the commissioner of business affairs and

consumer protection may consider factors related to the unique circumstances of the nature of the business as well as the relative frequency of the occurrence of illegal acts in the surrounding community.

~~(c) The provisions of subsection (a) of this section shall not apply to any of the following businesses:~~

- ~~(1) a retail liquor establishment licensed under Chapter 4-60 of this Code;~~
- ~~(2) a coin laundry licensed under Chapter 4-220 of this Code;~~
- ~~(3) a hospital licensed under Chapter 4-84 of this Code;~~
- ~~(4) any public passenger vehicle licensed under Chapter 9-112 of this Code;~~
- ~~(5) any ambulance licensed under Chapter 4-68 of this code;~~
- ~~(6) any business licensed under this code and providing emergency services such as board up or repairs to buildings;~~
- ~~(7) a veterinary hospital licensed under Chapter 4-384 of this Code;~~
- ~~(8) a hotel, motel, bed and breakfast inn, single-room-occupancy building or other lodging properly licensed under this Code;~~
- ~~(9) a retail food establishment licensed under Chapter 4-8 of this Code, whose indoor merchandise area is more than 12,000 square feet in area;~~
- ~~(10) a home for the aged, sheltered care home or other residential care facility licensed under Chapter 4-96 of this Code;~~
- ~~(11) a day care facility licensed under Chapter 4-72 of this Code;~~
- ~~(12) a funeral home;~~
- ~~(13) a pharmacy;~~
- ~~(14) a public utility;~~
- ~~(15) a manufacturing establishment licensed under Chapter 4-224 of this Code;~~
- ~~(16) any other type of business whose operation between 12:00 midnight and 5:00 a.m. is determined by the commissioner of business affairs and consumer protection to be necessary to the public health, safety and welfare.~~

~~(d) Nothing in this section authorizes any business to operate between the hours of 12:00 midnight and 5:00 a.m. To the extent that any provision of this Code, or a special zoning use, or a court order restricts or prohibits operation of that business during those hours, or during any portion of those hours.~~

~~(e)~~(d) For purposes of this section:

- (1) Adjacent property means:
  - (A) any private property that is owned, leased, or rented by the licensee and that is located next to the business premises;
  - (B) any public way located next to the business premises; or
  - (C) any private property which is owned, leased, or rented by the licensee which is located next to such portion of the public way described in paragraph (B) of this definition. For the purposes of this definition, the term public way has the meaning ascribed to the term in Section 1-4-090 of this code.
- (2) Objectionable conditions include but are not limited to disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.
- (3) "Reasonable steps" includes, but is not limited to, the following:
  - (A) Calling the police department. Timely calls to the police department via 911 that are placed by the licensee, or his or her agents or employees,

shall not, in and of themselves, be construed by the commissioner of business affairs and consumer protection as evidence of objectionable conditions that constitute a nuisance.

(B) Directing those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, reasonably believe that their personal safety would be threatened in making that such direction. Directions of this nature may be provided orally or in writing.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture.

(D) ~~Attending, C.A.P. S. meetings, beat meetings or other similar city-sponsored informative meetings and educational opportunities to improve the awareness of the licensee and its employees of problems related to the operation of the business and to promote remediation of such objectionable conditions.~~

(4) When determining what constitutes reasonable steps, the commissioner of business affairs and consumer protection; shall consider site configuration constraints and other factors related to the unique circumstances of the nature of the business as well as the frequency of complaints of objectionable conditions and the manner in which the licensee has sought to address such conditions.

(e) This section does not apply to a retail liquor establishment licensed under Chapter 4-60 of this Code.

#### **4-60-142 Responsibilities of licensee.**

(a) A licensee is responsible to the community surrounding the licensed premises. A city liquor dealer's license issued or renewed after the effective date of this section shall be subject to suspension or revocation if the licensee's business becomes or creates a nuisance under this section or if it causes a public nuisance under Section 4-60-195. A licensed business is or creates a nuisance under this section if within any consecutive 12 months not less than ~~five~~ three separate incidents occur, before, on or after the effective date of this 2011 amendatory ordinance, on the licensed premises, on or in the licensed premises' parking facility or on adjacent property, while the business establishment is open for business or within one hour of the time the establishment is opened or closed for business, involving acts that violate any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons. It is not a defense to a charge of violating this section that the licensee or the licensee's employees or agents were not personally involved in the commission of the illegal acts except as provided otherwise in paragraph (1) of subsection (c).

(b) For purposes of this section:

(1) the term "adjacent property" shall have the same meaning set forth in Section 4-60-190(c).

(2) the term "illegal acts" means any conduct or activity that violates any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons.

(c) In a proceeding to suspend or revoke a license under this section:

(1) for purposes of determining whether three or more illegal acts occurred during a 12-month period, illegal acts occurring on the public way shall be limited to acts of the licensee, its employees, agents or patrons or otherwise involving circumstances having a nexus to the operation of the business; and

(2) the illegal acts or must occur or exist while the licensed premises is open for business of within one hour of the time the establishment is opened or closed for business; and

(3) any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the commissioner may rely upon official written reports, affidavits and other business records submitted by police officers or other authorized city officials or employees charged with inspection or enforcement responsibilities to determine whether such illegal acts occurred. If during any 12 month period three separate incidents of illegal acts occur on the licensed premises, on or in the licensed premises parking facility, or on adjacent property, a rebuttable presumption shall exist that the licensed business is or creates a nuisance in violation of this section.

(4) A licensee may offer evidence of mitigating factors in any license disciplinary hearing where it is alleged that the licensed business is or creates a nuisance in violation of this section. Mitigating factors may include evidence of the licensee's reasonable efforts to deter or discourage illegal acts from occurring on the licensed premises or adjacent property such as: the use of strategically placed recording cameras, employment of trained security personnel, and a practice of promptly notifying the police when illegal activity occurs or appears imminent and cooperating with police investigations. When reviewing any evidence of mitigating factors, the local liquor control commissioner may consider factors related to the unique circumstances of the nature of the business as well as the relative frequency of the occurrence of illegal acts in the surrounding community.

#### **4-60-185 Effect of revocation.**

(a) Any person whose city retailer's license for the sale of alcoholic liquor is revoked shall be thereafter be ineligible for the issuance of any new city liquor license pursuant to this chapter.

(b) Any person who has significant ownership interest in or control of an entity whose liquor license is revoked shall thereafter be ineligible for the issuance of any new city liquor license pursuant to this chapter. This ineligibility also shall apply to the issuance of a new license to any other entity in which the disqualified person has significant ownership or control. As used in this section, "significant ownership or control" means: (1) ownership of more than 5% of the entity, or ownership of more than 5% voting shares of stock if the entity is a corporation; or (2) holding a position as a principal officer or serving on the board of directors or as a manager of the entity.

(c) The parent, child, sibling, spouse or domestic partner of a person who is ineligible for the issuance of a license under subsection (a) or (b) shall be ineligible for the issuance of a new liquor license under this chapter for any premises that are at the same location as the licensed premises that were subject to the revocation that caused the ineligibility under subsection (a) or (b) of the section for the period of one year following the date that the order of revocation became effective.

#### **4-60-195 Public nuisance.**

Whenever any of the complaint procedures described in subsection (b) of Section 4-60-190 have been initiated against a business licensed under this chapter, and at least 50 legal voters reside at locations within 500 feet (measured from the nearest exterior walls of each applicable building) of the premises of that business, any of those legal voters may file a petition with the local liquor control commissioner: (i) stating that, in the opinion of the signatories local liquor control commissioner, the complaint procedures initiated pursuant to subsection (b) of Section 4-60-190 have not resulted in a successful outcome, the local liquor control commissioner may initiate a license disciplinary hearing to determine whether the sale of liquor by the licensee has caused a public nuisance, and the sale of liquor at the licensee's place of business is a public nuisance because the licensee has failed to take reasonable steps to correct objectionable conditions occurring on the licensed premises or on adjacent property while the premise is open for business and within one hour of the time the establishment is opened or closed for business; and (ii) requesting that the liquor license at the premises be suspended or revoked. The petition shall set forth specific allegations why the premises has caused a public nuisance and shall describe the complaint procedures that have been initiated under subsection (b) of Section 4-60-190 and the results of such procedures. The signatures appearing on the petition shall be obtained no more than 60 days prior to the filing of the petition. If such a petition containing the signatures of a majority of the legal voters residing within 500 feet (measured from the nearest exterior walls of each applicable building) of the premises named in the petition is filed, a hearing shall be scheduled on the question of whether the license shall be suspended or revoked. Notice of the hearing shall be given to the licensee and all signatories to the petition by first class mail. If there are not at least 50 legal voters residing at locations within 500 feet (measured from the nearest exterior walls of each applicable building) of a premises holding a license issued pursuant to this chapter, a hearing may be convened at the request of the local liquor control commissioner based upon his or her reasonable belief that the sale of liquor at the particular location has caused a public nuisance. Notice of a hearing scheduled under this section shall be given to the alderman of the ward in which the licensed premises is located. No hearing pursuant to this section shall be convened if no legal voters reside at a location within 500 feet (measured from the nearest exterior walls of each applicable building) of the licensed premises.

The hearing shall be held before a hearing officer designated by the mayor in accordance with Section 4-4-280. If the hearing has been convened on petition, signatories to the petition The licensee and all interested parties shall have the right to testify. At the conclusion of the hearing, if the hearing officer finds by a preponderance of the evidence that the licensee's sale of liquor at the licensed premises is a public nuisance because a the licensee has failed to take reasonable steps to correct objectionable conditions on the licensed premises or on adjacent property during business hours and within one hour before and one hour after such business hours, the local liquor control commissioner shall enter an order suspending or revoking the license. In the event that the licensee holds other city licenses in addition to the liquor license for the subject premises, the order of suspension or revocation may be applied to all licenses held by the licensee for such premises.

Notwithstanding any other provision of this section, if a licensee has provided satisfactory proof to the local liquor control commissioner that the licensee has devised a plan of operation that will provide reasonable assurance that operation of the business at which liquor is sold will not cause a public nuisance, the local liquor control commissioner may suspend the effectiveness of the suspension or revocation order for a period of six months while that plan is in effect. Such a plan must be submitted within 20

days after a suspension or revocation order is issued under this section, and the local liquor control commissioner shall postpone enforcement of the order pending his or her review of the plan such an order shall be stayed for 35 days from the date the plan is submitted. If no plan is submitted within 20 days after the issuance of a suspension or revocation order under this section, or if the local liquor control commissioner rejects the plan, the suspension or revocation order shall become final. If the local liquor control commissioner approves the plan, he or she shall continue the hearing to a specified date prior to the expiration of the six month period. The plan may include conditions upon the licensee's operation of the premises that are useful or necessary to mitigate a public nuisance, including but not limited to: providing security personnel, restricted hours of operation, providing outdoor lighting, the display of sign, providing trash pickup services, or any other reasonable restrictions on business practices. After a continued hearing at which interested persons shall have the opportunity to be heard, the local liquor control commissioner may: (1) reimpose the suspension or revocation order if the local liquor control commissioner determines that the licensee has failed to adhere to the written plan of operation; (2) order the modification of the plan of operation, including the addition or removal of conditions on the operation of the premises; (3) vacate the suspension or revocation order if the local liquor control commissioner determines that the order is no longer necessary to prevent a public nuisance; and/or (4) continue the hearing for an additional six months, during which the effectiveness of the suspension or revocation order may continue to be suspended pending further evaluation of the licensee's efforts to correct objectionable conditions.

Any order issued under this section, other than a final order imposing a suspension or revocation or vacating such sanction, shall not be considered a final order for purposes of appeal.

A licensee's failure to adhere to a written plan of operation approved by the local liquor control commissioner pursuant to this section or the complaint procedures described in subsection (b) of Section 4-60-190 shall constitute a basis to impose a fine and to suspend or revoke the liquor license and other licenses held by such licensee, as appropriate.

#### **4-60-200 Violation – Penalty.**

Any person violating any of the provisions of this chapter shall be fined not less than \$300.00 nor more than ~~\$1,000.00~~ \$5,000.00 for each offense, except where otherwise specifically provided. A separate and distinct offense shall be held to have been committed each day any person continues to violate any of the provisions hereof.

**SECTION 2.** This ordinance shall take effect 30 days after its passage and publication, and the changes to Section 4-60-195 shall apply retroactively to complaint procedures pending on, or filed on or after, July 1, 2011.

Chicago, January 18, 2012

To the President and Members of the City Council:

Your Committee on License and Consumer Protection, having under consideration a substitute ordinance introduced by Aldermen Graham, Mitts and others (which was referred on July 28, 2011), to amend the Municipal Code of Chicago regarding license suspension or revocation for illegal activities, begs leave to recommend that Your Honorable Body *p a s s* the substitute ordinance which is transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee on January 17, 2012.

Respectfully submitted,

A handwritten signature in cursive script that reads "Emma Mitts". The signature is written in dark ink and is positioned above the printed name and title.

EMMA MITTS  
CHAIRMAN, COMMITTEE ON  
LICENSE AND CONSUMER  
PROTECTION