

DEBRA A. WALLING
dwalling@rsjalaw.com

27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331
P 248.489.4100 | F 248.489.1726
rsjalaw.com



ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

TO: Honorable Mayor Bryant and City Council

FROM: Debra A. Walling, City Attorney

RE: Chapter 4, Alcoholic Liquors, Proposed Amendment to Sec. 4-19 and Sec. 4-21

DATE: April 13, 2023

Chapter 4, Article II, Section 4-19 prohibits the City Council from making a favorable recommendation for the issuance of any additional tavern or Class C liquor license when there are eleven (11) already issued or approved in the City. Currently, two separate applications for Class C liquor licenses are pending and being reviewed in accordance with the provisions of Chapter 4 of the City Code.

The Michigan Liquor Control Commission (“MLCC”) establishes a certain number of liquor licenses for each local governmental unit based on its population. These are commonly known as “quota” licenses. The number of quota liquor licenses assigned to the City of Grosse Pointe Woods is eleven (11). However, state law also allows the MLCC to approve the transfer of liquor licenses from one city to another, regardless of the number of quota licenses.¹ In fact, a license was transferred from Lincoln Park to Grosse Pointe Woods for Garrido’s Bistro, 19605 Mack Avenue.

The present number of active quota licenses in the City is nine (9) according to the MLCC, but the total number of Class C/Tavern licenses is ten (10) when the one transferred from Lincoln Park is included in the count, as required by Sec. 4-19.

One applicant, Pendency’s, has applied to transfer the escrowed quota license from Trattoria Serventi, which will make eleven (11) active Class C/Tavern licenses. There would be one quota license available for Crispelli’s, but the total number of Class C/Tavern licenses would be twelve (12). If the ordinance cap of eleven (11) Class C/Tavern licenses is not changed or removed, the City Council cannot recommend approval of this remaining quota license to Crispelli’s, or any other applicant.

By way of background, Sec. 4-19 was approved by the voters at an election held on August 3, 2004. The section numbering was different, but the ballot question was whether to raise the allowable number of Class C/Tavern licenses from seven (7) to eleven (11). The ballot question

¹ MCL 436.1501

and vote totals are attached. There were no other documents located which explain why the ordinance amendment was presented as a ballot question rather than adopted by the City Council like other ordinance amendments.

Since 2004, there have been many changes to state law which recognize liquor licenses as an important economic tool. For example, in response to the pandemic, legislation was enacted to allow legislative bodies to designate “social districts,” which have special liquor licenses for consumption in designated common areas.²

As mentioned above, the MLCC allows and approves transfers of Class C/Tavern licenses from one community to another. Because of the transfers that are occurring, coupled with the fact that there is only one remaining quota license available in the City, I have prepared the attached agreement for the Council’s consideration. The agreement requires prior Council approval for a transfer of the quota license. It also requires the return of the quota license to the MLCC as an available quota license in the City if the business ceases operation for 90 consecutive days. The agreement is designed to protect the City’s ability to keep that last quota license in the City of Grosse Pointe Woods. Similar agreements have been used in other communities for the same purpose.

The proposed amendment to Sec. 4-19 removes the limitation on the number of Class C/Tavern liquor licenses. The proposed amendment to Sec. 4-21 is needed if Sec. 4-19 is adopted, because the statement contained therein would no longer be accurate. Both amendments are recommended for adoption.

Respectfully submitted,



Debra A. Walling
City Attorney

cc: Frank Schulte, City Administrator
Sue Como, Assistant City Administrator
Paul Antolin, City Clerk

² MCL 436.1551

ORDINANCE # _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF GROSSE POINTE WOODS, CHAPTER 4, ALCOHOLIC LIQUORS, ARTICLE II, LIQUOR AND TAVERN LICENSES; SECTIONS 4-19 AND 4-21 TO REMOVE THE LIMITATION OF ELEVEN (11) CLASS C/TAVERN LIQUOR LICENSES

THE CITY OF GROSSE POINTE WOODS ORDAINS:

Section 1. Ordinance Amendment.

Chapter 4, Alcoholic Liquors, Article II, Liquor and Tavern Licenses; Sections 4-19 and 4-21 are hereby amended to read as follows:

Chapter 4 - ALCOHOLIC LIQUORS

ARTICLE II. - LIQUOR AND TAVERN LICENSES

Sec. 4-19. - Restrictions on city council authority to signify approval of class C/tavern liquor licenses.

The city council shall not signify approval to the state liquor control commission of the issuance of any class C/tavern liquor license for use within the city when the application fails to meet the application process requirements or review criteria set forth in Sec. 4-24. ~~number of class C/tavern liquor licenses issued or approved for use within the city are eleven in number. The term "issued or approved for use within the city" shall include applications for class C/tavern licenses which have been recommended for issuance by the city council, but have not been acted upon by the state liquor control commission, and shall include class C/tavern liquor licenses in escrow as provided by the rules of the state liquor control commission.~~

Sec. 4-21. - ~~Effective date; approved by voters. Reserved.~~

~~The provisions of this article became effective when they were approved by a majority of the electors of the city voting in an election held August 3, 2004.~~

~~(Code 1975, § 4-4-5; Code 1997, § 50-5; Ord. No. 797, 8-3-2004; Ord. No. 801, 1-17-2005)~~

Section 2 of Ordinance. Repealer.

All ordinances, parts of ordinances, or sections of the City Code in conflict with this Ordinance are repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3 of Ordinance. Severability.

Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4 of Ordinance. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 5 of Ordinance. Effective Date.

This ordinance shall be effective upon publication as required by law.

CERTIFICATION OF CLERK

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the City Council of the City of Grosse Pointe Woods, County of Wayne, State of Michigan, at a regular meeting of the City Council duly called and held on _____ day of _____, 2023.

Paul Antolin, City Clerk

First Reading:

Second Reading:

Published in GPN:

Adopted:

Effective:

Date Posted:

*8/3/04 Election
file*

**OFFICIAL CANVASS OF THE RETURNS OF THE STATE PRIMARY ELECTION
HELD ON TUESDAY, AUGUST 3, 2004, IN THE CITY OF GROSSE POINTE
WOODS, WAYNE COUNTY, MICHIGAN.**

The Board of Canvassers of the City of Grosse Pointe Woods, Wayne County, Michigan, convened on Thursday, August 5, 2004, at 5:00 p.m. o'clock in the Conference Room of the Municipal Building, 20025 Mack Plaza, Grosse Pointe Woods, Michigan, to canvass the returns of the State Primary Election held on August 3, 2004.

Members present: Nicholas P. Kondak
 Leland P. Allcut, Jr.
 Fred Motney
 Gustave Rener

Also present: City Attorney Don Berschback
 City Clerk Warnke
 Elections Clerk Brown
 Election Commission rep. Council member Granger

Motion by Motney, seconded by Rener, that Kondak be nominated as Chair of the Board of Canvassers and that nominations be closed and that the Clerk cast unanimous ballots for such officer and that Kondak abstain from the vote.

Motion carried by the following vote:

Yes: Motney, Rener, Allcut
No: None
Absent: None
Abstain: Kondak

Motion by Allcut , seconded by Motney, that Rener be nominated as Vice Chair of the Board of Canvassers and that the nominations be closed and that the Clerk cast unanimous ballots for such officer and that Rener abstain from the vote.

Motion carried by the following vote:

Yes: Motney, Allcut, Kondak
No: None
Absent: None
Abstain: Rener

**BOARD OF CANVASSERS
08-05-04 – 2**

The following envelopes from all regular six precincts and the AV-7 precinct (representing the absentee voting counting board), were presented by the City Clerk to the Board of Canvassers and the City Attorney:

Envelope #1 - City Clerk
Envelope #4 - City Attorney
Envelope #5 - Board of Canvassers

The Chair stated for the record that all envelopes received from the election inspectors containing the Statement of Votes (Optical Scan) cast on Tuesday, August 3, 2004, were properly signed and sealed. This was confirmed by the City Attorney.

The Board of Canvassers, the City Attorney and City Clerk then commenced a verbal canvass of the tally tape attached to the Statement of Votes Cast (Optical Scan), as found in the respective Envelopes # 1, 4 and 5.

Motion by Motney, seconded by Kondak, to ADOPT the following resolution:

WHEREAS, at the General City Election held in the City of Grosse Pointe Woods, Wayne County, Michigan, on August 3, 2004, between the hours of 7:00 a.m. and 8:00 p.m., a local proposal hereinafter set forth was submitted, and

WHEREAS, returns from voting precincts at said election have been filed with the City Clerk and have been presented to and examined by the Board of Canvassers;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Upon the canvass of the returns of votes cast in the respective election precincts, as certified to this Board of Canvassers by the Inspectors of Elections, the vote was as follows for the Local Proposal:

Proposed Amendment to the Grosse Pointe Woods City of Grosse Pointe Woods City Code, Chapter 50, entitled Liquor and Tavern Licenses: to increase the number of Class C/Tavern Licenses available for distribution in Grosse Pointe Woods from Seven to Eleven: The Grosse Pointe Woods City Council has proposed an amendment to Chapter 50 which controls the issuance of Class C/Tavern Licenses. Section 50-

**BOARD OF CANVASSER
08-05-04 - 3**

2 currently states that no more than six (6) Class C Licenses can be issued or approved for use. Section 50-3 states that no more than one (1) tavern license can be issued or approved for use. Accordingly, the ordinance currently allows a total of seven (7) Class C/Tavern Licenses to be issued or approved for use. All seven are currently in use. Should Sections 50-2 and 50-3 be combined into one new Section 50-2 to allow for a total of eleven (11) Class C/Tavern Licenses to be issued or approved for use?

Yes () No ()

Precinct	YES	NO
1	172	99
2	154	95
3	188	73
4	132	70
5	189	81
6	171	86
CB-7	825	832
TOTAL:	1831	1336

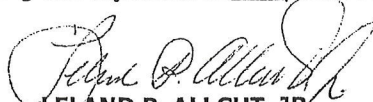
NOW, THEREFORE, it being determined that a majority of the qualified electors of the City of Grosse Pointe Woods voted at said election have voted **IN FAVOR** of the question, it is hereby determined that the foregoing question as **PASSED**.


Motion carried by the following vote:
 Yes: Motney, Allcut, Kondak, Renner
 No: None
 Absent: None

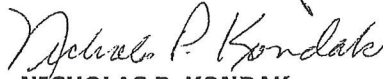
Motion by Allcut, seconded by Kondak, that the minutes be immediately certified.
PASSED UNANIMOUSLY.

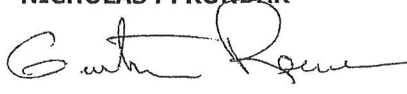
**BOARD OF CANVASSERS
08-05-04 - 4**

Upon proper motion, the meeting was adjourned at 5:15 p.m. PASSED UNANIMOUSLY.

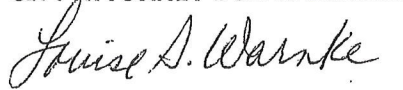

LELAND P. ALLCUT, JR.


FRED MOTNEY


NICHOLAS P. KONDAK


GUSTAVE RENER


CITY ATTORNEY DON R. BERSCHBACK


CITY CLERK LOUISE S. WARNKE

ORDINANCE 797

Chapter 50

LIQUOR AND TAVERN LICENSES*

* **Cross References:** Administration, ch. 2; businesses, ch. 14.
State Law References: Liquor control act, MCL 436.1 et seq., MSA 18.971 et seq.

- Sec. 50-1. Title of chapter.
- Sec. 50-2. Restrictions on city council authority to signify approval of class C/TAVERN liquor licenses.
- ~~Sec. 50-3. Restrictions on city council authority to signify approval of tavern licenses.~~
- Sec. 50-4. Transfer of existing licenses not restricted.
- Sec. 50-5. Effective date; approved by voters.

Sec. 50-1. Title of chapter.

This chapter shall be entitled Liquor and Tavern Licenses.

Sec. 50-2. Restrictions on city council authority to signify approval of class C/TAVERN liquor licenses.

~~The city council shall not signify approval to the state liquor control commission of the issuance of any class C liquor license for use within the city when the number of class C liquor licenses issued or approved for use within the city are six or more in number. The term "issued or approved for use within the city" shall include applications for class C liquor licenses which have been recommended for issuance by the city council, but have not been acted upon by the state liquor control commission, and shall include class C liquor licenses in escrow as provided by the rules of the state liquor control commission.~~

The city council shall not signify approval to the state liquor control commission of the issuance of any class C /**TAVERN** liquor license for use within the city when the number of class C/**TAVERN** liquor licenses issued or approved for use within the city are ~~six or more in number.~~ **ELEVEN 11) IN NUMBER.** The term "issued or approved for use within the city" shall include applications for class C/**TAVERN** liquor licenses which have been recommended for issuance by the city council, but have not been acted upon by the state liquor control commission, and shall include class C/**TAVERN** liquor licenses in escrow as provided by the rules of the state liquor control commission.

~~**Sec. 50-3. Restrictions on city council authority to signify approval of tavern licenses.**~~

~~The city council shall not signify approval to the state liquor control commission of the issuance of any tavern license for use within the city when the number of tavern licenses issued or~~

approved for use within the city are one or more in number. The term "issued or approved for use within the city" shall include applications for tavern licenses which have been recommended for issuance by the city council, but have not been acted upon by the state liquor control commission, and shall include tavern licenses in escrow as provided by the rules of the state liquor control commission.

Sec. 50-4. Transfer of existing licenses not restricted.

The provisions of this chapter shall not restrict the authority of the city council to signify its approval to the state liquor control commission of the transfer of any existing class C or tavern license issued or approved for use within the city to any prospective transferee of such license.

Sec. 50-5. Effective date; approved by voters.

The provisions of this chapter became effective when they were approved by a majority of the electors of the city voting at an election held November 4, 1986 **AUGUST 3, 2004, AS FOLLOWS:**

THE GROSSE POINTE WOODS CITY COUNCIL HAS PROPOSED AN AMENDMENT TO CHAPTER 50 WHICH CONTROLS THE ISSUANCE OF CLASS C/TAVERN LICENSES. SECTION 50-2 CURRENTLY STATES THAT NO MORE THAN SIX (6) CLASS C LICENSES CAN BE ISSUED OR APPROVED FOR USE. SECTION 50-3 STATES THAT NO MORE THAN (1) TAVERN LICENSE CAN BE ISSUED OR APPROVED FOR USE. ACCORDINGLY, THE ORDINANCE CURRENTLY ALLOWS A TOTAL OF SEVEN (7) CLASS C/TAVERN LICENSES TO BE ISSUED OR APPROVED FOR USE. ALL SEVEN ARE CURRENTLY IN USE.

SHOULD SECTIONS 50-2 AND 50-3 BE COMBINED INTO ONE NEW SECTION 50-2 TO ALLOW FOR A TOTAL OF ELEVEN (11) CLASS C/TAVERN LICENSES TO BE ISSUED OR APPROVED FOR USE?

YES ()

NO ()

IT IS HEREBY CERTIFIED BY THE BOARD OF CANVASSERS AT THEIR MEETING OF 8-5-04 THAT THE FOREGOING ORDINANCE WAS ADOPTED ON AUGUST 3, 2004, AT AN ELECTION HELD THEREON AND THAT THE VOTE UPON THE PROPOSITION TO ADOPT THE FOREGOING ORDINANCE WAS AS FOLLOWS:

YES: 1831

NO: 1336

Louise S. Warnke, City Clerk

VOTE ONLY ONE PARTY SECTION



REPUBLICAN PARTY SECTION CONT.



DEMOCRATIC PARTY SECTION CONT.

DELEGATE

Delegate to County Convention
2 Year Term

Vote For Not More Than Thirty-Seven (37)

MICHAEL GALLAWAY

JAMES MILLER

MARTI K. MILLER

RAQUEL REARDON

JUDITH E. SHEEHY

ROBERT J. SHEEHY

DOUGLAS N. WILLIAMS

COUNTY

Register of Deeds
4 Year Term

Vote For Not More Than One (1)

RON CLEVELAND

GEORGE HART

BERNARD J. YOUNGBLOOD

County Commissioner

1st District

2 Year Term

Vote For Not More Than One (1)

CHRISTOPHER F. CAVANAGH

TIM KILLEEN

DELEGATE

Delegate to County Convention
2 Year Term

Vote For Not More Than Three (3)

LOCAL PROPOSALS

PROPOSED AMENDMENT TO THE GROSSE POINTE WOODS CITY CODE, CHAPTER 50, ENTITLED LIQUOR AND TAVERN LICENSES.

TO INCREASE THE NUMBER OF CLASS C/ TAVERN LICENSES AVAILABLE FOR DISTRIBUTION IN GROSSE POINTE WOODS FROM SEVEN TO ELEVEN.

The Grosse Pointe Woods City Council has proposed an amendment to Chapter 50 which controls the issuance of Class C/ Tavern Licenses. Section 50-2 currently states that no more than six (6) Class C Licenses can be issued or approved for use. Section 50-3 states that no more than one (1) tavern license can be issued or approved for use. Accordingly, the ordinance currently allows a total of seven (7) Class C/ Tavern Licenses to be issued or approved for use. All seven are currently in use.

Should Sections 50-2 and 50-3 be combined into one new Section 50-2 to allow for a total of eleven (11) Class C/ Tavern Licenses to be issued or approved for use?

YES

NO

**AGREEMENT RESTRICTING CERTAIN TRANSFER
OF CLASS C LIQUOR LICENSE**

City of Grosse Pointe Woods, Michigan

This Agreement is made and entered into this _____ day of _____, 2023, by and between CRISPELLI'S, LLC, a Michigan limited liability company (the "Applicant"), and THE CITY OF GROSSE POINTE WOODS, a Michigan municipal corporation (the "City").

RECITALS

A. The Applicant has requested that the City recommend to the Liquor Control Commission (the "MLCC") approval of the issuance of a new Class C liquor license ("New Quota License") from the City's quota of such licenses for use at 19850 Mack Avenue, Grosse Pointe Woods, Michigan 48236; and

B. As of the date of this Agreement, the City has only one (1) New Quota License available for possible issuance; and

C. The City's ability to encourage economic development and business growth within the City is enhanced by the City's ability to award New Quota Licenses; and

D. The City's ability to encourage economic development and business growth within the City may be undermined if current liquor licensees are able to transfer the location of the quota license to a location outside the boundaries of the City; and

E. The City has determined that it is critical to accomplish its goals for the remaining one New Quota License to remain in the City; and

F. Under Section 501 of the Michigan Liquor Control Code of 1998 (MCL 436.1531) is it is within the City's discretion to approve the issuance of the New Quota License and the City is not required to issue a minimum number of New Quota Licenses; and

G. Based on the above, the City has decided that it will not issue the New Quota License to the Applicant unless the Applicant is willing to abide by the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL PROMISES, THE PARTIES AGREE AS FOLLOWS:

1. The Recitals above are incorporated herein by reference and expressly agreed to and made a part of this Agreement for all purposes.

2. The City will, in reliance upon the Applicant's agreement herein, recommend to the MLCC approval of the New Quota License to be utilized at 19850 Mack Avenue, Grosse Pointe Woods, Michigan 48236.

3. The Applicant agrees that if for any reason, except for fire or acts of God, it should discontinue the use and operation of the New Quota License for a period in excess of ninety (90) consecutive days without the prior written consent of the City, then, and in that event, the Applicant shall return the New Quota License to the MLCC and shall request that its rights to the license be terminated and that the license not be placed or continued in escrow, but instead be returned to the City to be added to its available licenses under the quota provisions of Section 531 of the Michigan Liquor Control Code of 1998 (MCL 436.1531).

4. Nothing in this Agreement shall prohibit the Applicant from selling, assigning, or transferring its interest in the license and/or business, nor from transferring the location of said license within the boundaries of the Township, subject to the prior approval of the City.

5. Prior to the Applicant transferring, selling or assigning its interest in the New Quota License and/or business to another person or entity, the Applicant shall present to the City for approval a new agreement incorporating the same terms and conditions of this Agreement, fully executed by the transferee, purchaser or assignee, verifying that the transferee, purchaser or assignee agrees to abide by the terms of this Agreement.

6. The City and the Applicant acknowledge that this Agreement and the covenants and obligations herein are unique, and in the event of default by the Applicant, the City would

not be able to be adequately compensated in damages. It is, therefore, agreed that in the event of a default by the Applicant hereunder, the City shall have the right to enforce the terms and provisions hereof by an action for specific performance, and if the City prevails in such action, it shall be entitled to recover its costs and attorney fees.

7. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Michigan, without regard to its conflicts of law principles, or any principles that may require the application of the laws of any other jurisdiction.

8. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, this invalidity, illegality or unenforceability shall not affect the enforceability of any other provision of this Agreement. This Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it. The remainder of the Agreement shall remain in full force and effect.

9. No waiver, alteration, amendment or modification of any provision of this Agreement shall be binding unless in writing and signed by the parties hereto. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

10. It is the intention of the parties that this Agreement is not made for the benefit of any private third party.

11. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

12. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, superseding any prior oral or written agreements or understandings.

13. The parties acknowledge that they have not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein or expressly incorporated by reference herein.

14. The parties represent that they have the authority to execute this Agreement on behalf of their respective entities and to bind their respective entities to all the terms contained herein.

15. A delay in enforcement of any provisions of this Agreement shall not be construed as a waiver or estoppel of the City's right to eventually enforce, or take action to enforce, the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first written above.

CRISPELLI'S, LLC

By:
Its:

By:
Its:

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The foregoing Agreement was acknowledged before me by _____ and _____ on behalf of Crispelli's, LLC, on the _____ day of _____, 2023.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

CITY OF GROSSE POINTE WOODS

By: Arthur W. Bryant
Its: Mayor

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The foregoing Agreement was acknowledged before me by Arthur W. Bryant, Mayor, on behalf of the City of Grosse Pointe Woods, on the _____ day of _____, 2023.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____