



Washington Police Department

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Michael D. McCoy
Chief of Police

TO: The Honorable Mayor Manier and Washington City Council
FROM: Chief Michael D. McCoy and Deputy Chief Jeff Stevens
RE: Potential for Changes to the Public Accommodation License Classification
DATE: May 10, 2019

Mayor and Aldermen,

The current City Ordinance (Chapter 112) addresses possession of open liquor and consumption of liquor in public places, including facilities available for rental by the public for otherwise private events. Generally, consumption of liquor is prohibited in public places unless the business is licensed for retail sale for consumption on the premises.

The Committee will have an opportunity to discuss potential for changes to public accommodation licenses, including whether the City should allow possession and consumption of liquor in businesses not licensed for retail sale.

This discussion guide is intended to facilitate discussion and not as a definitive end product. We will list some potential problems as well as potential means to minimize the negative effects of a "BYOB" (bring your own bottle) ordinance. In no case should the recitation of a potential remedy be interpreted as an endorsement.

A change to allow BYOB would be a significant and fundamental deviation from past policy. In general, the City's ordinance history is consistent with the philosophy that health, safety, and welfare are protected through temperance (not requiring abstinence) in the consumption of alcoholic liquors and such temperance is promoted by sound, careful control and regulation of the sale, distribution, and public consumption of alcoholic liquors.

Current public accommodation criteria were crafted to encourage additional businesses of types that may not have been viable without the additional draw that alcohol provided. In all of these businesses, the alcohol was a feature but not the focal point, and successful participation in the focal point activity would likely be hampered by overindulgence. Current PA-eligible businesses would be a ceramic arts hobby facility, a painting arts hobby facility, or a culinary arts hobby facility.

There are potential benefits to BYOB allowance beyond the current PA criteria.

New opportunities for business:

Event locations may be able to offer a wider variety of services, increasing competition among event space businesses. Currently, rental of an event location by a client desiring alcohol service

requires either rental of a limited number of facilities licensed for retail sale or use of a caterer licensed for retail sale of alcohol. In some cases, businesses currently licensed for retail sale offer event space without additional charge, presumably based on charges generated from sales.

Increasing variety of event location service levels may have the effect of lowering event costs in that a client could provide and serve alcohol purchased at a retail package business, eliminating the labor costs involved in provision of this service.

Event locations may include de facto bars, which charge for attendance, membership or activities therein.

Restaurants may offer corkage for a fee.

Other potential effects:

The effect on revenue for local government service is not clear. While BYOB may generate additional liquor consumption or sales by removing an impediment (cost) to liquor service for events, the package sale may not occur in the City. Sales by caterers are treated as being in the City when the caterer is based in the City and billing from Washington. Sales by caterers based elsewhere do not generate revenue for Washington. Additionally, when sale prices account for higher labor costs, the sale price itself is generally higher than the package price on a per serving basis, which itself generates higher sales tax returns.

Potential remedies for reduced municipal income:

- Fees related to PA or other BYOB licenses
- Fees based on space rental
- Fees for out-of-town or off-site catering
- Fees related to corkage charges
- Reduction in City services

Liquor service prohibitions: Among other things, it is unlawful to deliver alcohol to a person under age 21 or who is intoxicated. Businesses with a retail sales license have an incentive to train employees to follow these laws because their livelihood may be threatened by failure to do so, particularly in regard to minors. Individuals may perceive lower risks or may believe that social stigma associated with refusing to serve a minor or intoxicated person at a private gathering outweighs such risk. It is unlikely that increasing the severity of potential punishment will greatly affect this calculation. Individuals also tend to weigh risks differently when faced with potential rationalizations, such as may be created with shared responsibility. A client may rationalize that the host business bears the ultimate responsibility to control liquor consumption, whereas the business itself may hold a similar belief about the guest serving alcohol. Increasing the number of locations that police must enter to enforce increases the difficulty of enforcement. Additionally, for private gatherings, regulation compliance checks using underage "patrons" are not available, meaning there is no associated deterrent effect. Uniformed officers at a private gathering are unlikely to observe violations due to the officers' conspicuity.

Potential remedies for risk of liquor service violations:

- Require free access to even private events by police (at public accommodations and subject to Constitutional limits)

- Require businesses with a BYOB license to regulate distribution and consumption (businesses may be prohibited from serving guest-provided alcohol except where a corkage fee is allowed, or corkage service may be required)
- Require guest identification/guest lists available to an enforcement authority (for private gatherings, subject to Constitutional limits)
- Require training for hosts
- Require guests to be 21 or over when alcohol is present at a public accommodation
- Require pre-published guest lists
- Prohibit advertisement of events
- Prohibit signaling or announcing the presence of police

Creation of temporary or permanent de facto unlicensed bars:

BYOB or expanded PA provisions may allow for de facto bars, in that a client may rent a facility and sell the rights to attend and consume alcohol. While this amounts to an unlawful sale of alcohol, enforcement would be problematic. Prevention of this scenario may be more problematic if the serving of alcohol is incidental to the costs of attendance, such as when the cost is held out to be for events or other benefits of attendance.

Potential remedies for risk of unlicensed bars:

- Prohibition of payment or collection of payments to attend or consume alcohol at a PA
- Require a contract which is available for inspection and require notification of the event to the City
- Require pre-published guest lists
- Prohibit advertisement of events
- Limitation on hours of events and on number of guests, including hosts
- Define a liquor sale to include delivery, pouring, or dispensing of liquor in conjunction with any promotion, sales device, or payment

Options for event spaces under current ordinances:

- Retail sale (consumption) licenses may currently allow “dedicated event spaces” and “party packages.” A person seeking to offer only the dedicated event space may do so under current licensing schemes
- Hosts or clients may hire a licensed caterer
- Host business may apply for a regular liquor license and charge a corkage fee
- Clients may utilize a retailer licensed for on-premise consumption

The City ordinance does not prohibit a business licensed to sell liquor for consumption on the premises from charging a corkage fee and allowing a guest to bring sealed liquor, such as wine. In 2014, the Illinois Restaurant Association estimated that about 10 percent of its 3,000 restaurant members allowed BYOB.

NON-RETAIL LICENSES

§ 112.50 PUBLIC ACCOMMODATION (PA) LICENSE

- (A) For purposes of this Section the following definitions shall apply:
- (1) “public accommodation” is defined as “a facility or business establishment of any kind, whose goods, services, facilities, privileges or advantages are extended, offered, sold or otherwise made available to the public.”
 - (2) “business property” is defined as “the building out of and real property upon which the public accommodation operates.”
 - (3) “licensed premises” is defined as “the area within a building for which a license authorizing the consumption of beer and wine is issued and which is actually used in connection with the consumption of beer and wine, but specifically excluding any outside areas such as patios, decks, open porches, roof tops, balconies, stoops, beer gardens and the like, sidewalks, yards, driveways, parking lots and similar outside areas.”
 - (4) “PA License” is defined as “a license authorizing the consumption of beer and wine only inside the licensed premises of a person or business entity operating as a public accommodation.”
- (B) Except for licensees under this Chapter, no person, including any business entity, operating as a public accommodation within the City, shall permit or allow any invitee to possess or consume alcoholic liquor on its business property.
- (C) A public accommodation meeting the following business classification, as determined by the City, may apply for a PA License: (1) a ceramic arts hobby facility/business establishment; (2) a painting arts hobby facility/business establishment; and (3) a culinary arts hobby facility/business establishment.
- (D) Beer and wine may only be brought onto the licensed premises in its original package by either:
- (1) the consuming party for personal use; or
 - (2) by the person or entity who has rented the licensed premises to hold an event, gathering or other function, and the beer and wine is only provided to the person’s or entity’s invitees.
- (E) No alcoholic beverages can be sold, offered for sale, gifted, given in return for any donation or any monetary contribution of any kind, or otherwise provided to invitees, by the licensee or its agents, on the licensed premises and business property.
- (F) The possession or consumption of any alcoholic liquor on the licensed premises by any person under 21 years of age is prohibited. The provisions of Section 112.04 apply to

licensees and their agents in terms of not permitting possession or consumption of alcoholic liquors by persons under 21 years of age.

- (G) Consumption of beer and wine on the licensed premises may only occur between the hours of 6:00 a.m. and 12:00 a.m. on Monday through Thursday; between the hours of 6:00 a.m. on Friday and 1:00 a.m. on Saturday; between the hours of 6:00 a.m. on Saturday and 1:00 a.m. on Sunday; and between the hours of 10:00 a.m. on Sunday and 12:00 a.m. on Monday. The licensee shall not permit any invitee to remain at the licensed premises for longer than one-half hour after the aforementioned closing times.
- (H) Licensees are prohibited from providing any outdoor entertainment on the business property.
- (I) All applicants for the PA License must submit a written application to the Mayor, or the party designated by him/her, as set forth in Section 112.22 for retail licenses, or in such form as approved by the Mayor, or the party designated by him/her. All information required of a retail license applicant may be required for a PA License applicant.
- (J) All licensees must obtain dram shop and/or host liquor liability insurance coverage, and must provide and submit proof of insurance when submitting the PA License application.
- (K) A PA License issued under this Section shall be valid from the date of issuance until the next succeeding April 30, with an annual license fee of \$350.00.
- (L) Except as expressly modified in this Section, licensees of a PA License are subject to all other provisions of Chapter 112.
(Ord. 2970, passed 3-19-12; Am. Ord. 3200, passed 9-19-16; Am. Ord. 3242, passed 8-7-17;
Am. Ord. 3313, passed 3-18-19)

§ 112.99 PENALTY

- (A) Whoever violates the provisions of this chapter for which no suspension or revocation of the license has been incurred shall be fined not more than one thousand dollars (\$1,000.00) for each offense; each day on which a violation continues shall constitute a separate violation. Not more than ten thousand dollars (\$10,000.00) in fines under this section may be imposed against any licensee during the period of his license. No licensee shall be fined except after a public hearing as provided by 235 ILCS 5/7-5, as amended from time to time.
- (B) Any individual who violates any of the provisions of this chapter shall be fined not more than seven hundred fifty dollars (\$750.00) for each offense; each day on which a violation continues shall constitute a separate violation.
(Ord. 1712, passed 4-6-92; Am. Ord. 2816, passed 1-5-09; Am. Ord. 2923, passed 1-18-11;
Am. Ord. 3114, passed 2-2-15)