

ORDINANCE NO.: 5640

AN ORDINANCE TO AMEND CHAPTER 5.08 "ALCOHOLIC BEVERAGES" SPECIFICALLY TO ALLOW A INTEREST IN TWO LICENSES WITHIN SECTION 5.08.070, REPEAL SECTION 5.08.230 FOR BEING UNCONSTITUTIONAL, AND PROHIBIT MALE AND FEMALE REVIEW WITHIN SECTION 5.08.240

WHEREAS, Section 5.08.070 of the Code of the City of Elizabeth, entitled "Issuance Restriction" requires no more than one alcoholic beverage license of any kind or class whatsoever to be issued to any individual, copartnership or corporation in the City; and

WHEREAS, N.J.S.A. 33:1-12.31 prohibits the "acquisition of a beneficial interest in more than two retail licenses". This is subject to certain exceptions enumerated in N.J.S.A. 33:1-12.31-12.37; and

WHEREAS, the City Council of the City of Elizabeth finds that broadening the alcoholic beverage limitation to reflect that of the State would increase business opportunities and transparency in the licensing process; and

WHEREAS, accordingly, City Council finds it is in the best interest of the City to adopt changes to Section 5.08.070 to allow individuals, copartnerships, and corporations an interest to participate in obtaining two (2) licenses; and

WHEREAS, there have been reports of lewdness at liquor establishments in the form of male or female review. While this activity is prohibited by N.J.A.C. 13:2-23.6, it is the intent of City Council to further define immoral or lewd behavior in order to give notice to licensees that this behavior is not tolerated and to allow the Police Department to swiftly enforce this prohibition; and

WHEREAS, on June 29, 2021, the New Jersey Division of Alcoholic Beverage Control issued a Special Ruling apologizing to licensees and the LGBTQ+ community for pain and harm caused by the ABC's homophobic and transphobic conduct and rhetoric; and

WHEREAS, specifically, in 1934, the year after the Prohibition was repealed, the newly formed State ABC Department enacted rules for the conduct of liquor licensees. Rule Four stated, "[n]o licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters...prostitutes, female impersonators, or other persons of ill repute." The State noted that prior to the 1950s, the term "female impersonator" was used instead of "homosexuals." In fact, this provision was used to target LGBTQ+ individuals as a way of prohibiting their presence at licensed establishments; and

WHEREAS, this language is still found in our City Code in Section 5.08.230. As this language is appallingly offensive by today's standards, the City Council finds it is in the best interest of the City to eliminate Section 5.08.230 entirely to eliminate any possibility of unconstitutional discriminatory behavior; and now, therefore

PRESENTED to the Mayor for
APPROVAL or DISAPPROVAL on
APR 27 2022
CITY CLERK

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH:

SECTION 1. Section 5.08.070 of the Code of the City of Elizabeth, entitled "Issuance Restriction", is hereby amended to read as follows:

Issuance Restriction. A "person", defined in N.J.S.A. 33:17-1, in the City may hold a beneficial interest in no more than two alcoholic beverage retail licenses in accordance with N.J.S.A. 33:1-12.31-.37. A beneficial interest exercises ownership in a licensed business, the ability to derive profit from the operation of a licensed business, or an individual's service in the capacity of officer or director of a licensed business. Nothing in this Section shall abrogate a person from holding an interest in more than two licenses pursuant to the exceptions enumerated in N.J.S.A. 33:1-12.32-.37.

SECTION 2. Section 5.08.230 of the Code of the City of Elizabeth, entitled "Disorderly persons prohibited from premises", is hereby repealed in its entirety.

SECTION 3. Section 5.08.240 of the Code of the City of Elizabeth, entitled "Maintenance of orderly persons prohibited from premises," is hereby amended to read as follows:

No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls or unnecessary noises or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance.

Such lewd or immoral activity shall include but is not limited to: male or female review, which may involve the exposure or lack of covering of intimate parts, simulation of sexual activity, even if clothed, for the purpose of arousing or gratifying the sexual desire of the patron. Dancers hired or invited by licensee are not permitted to touch or be touched by patrons, including the placing of tips in the costume of the dancer, or solicit drinks from patrons.

SECTION 4. If any portion or clause of this ordinance is declared invalid for any reason whatsoever, the same shall not affect the validity or constitutionality of any other part or portion of this ordinance.

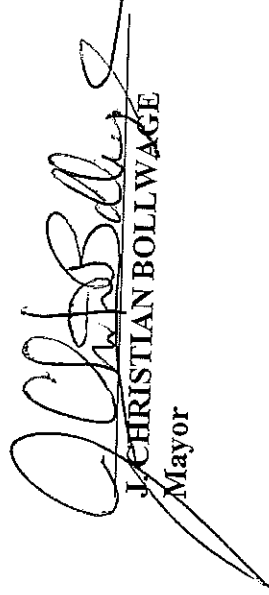
SECTION 5. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are to hereby be repealed.

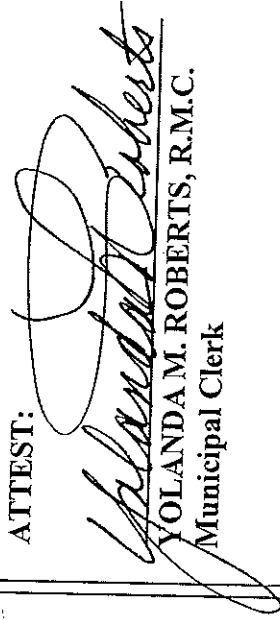
SECTION 6. The effective date of this ordinance shall be twenty (20) days after its final passage by City Council and approval by the Mayor at the time and in the manner provided by law.

PASSED: 4/26/22


NELSON GONZALEZ
President of City Council

APPROVED: 4/27/22


CHRISTIAN BOLLWAGE
Mayor

ATTEST:

YOLANDA M. ROBERTS, R.M.C.
Municipal Clerk