

1 Sec. 6-33. - Nuisance prohibition.

2 (a) *Alcohol related public nuisance.* No licensee shall allow its licensed establishment to become a
3 nuisance or to be operated in a manner to constitute a public nuisance. It is a public nuisance for
4 patrons, invitees or employees of a licensed premise to engage in a pattern of nuisance activity as
5 defined in this chapter. All notices shall be subject to the provisions in section 6-31.

6 1. *Exclusions.* Alcohol-related public nuisance shall exclude the same pursuant to section 29-127.5
7 of the city code.

8 2. *Procedure.*

9 a. When the local liquor commissioner receives notice of one (1) or more occurrences of
10 alcohol-related public nuisance activity attributable to an alcoholic liquor establishment, then
11 the local liquor control commissioner may at his discretion, do one [of] the following:

12 1. Notify the licensee that the establishment is in danger of becoming an alcohol related
13 public nuisance. If the local liquor control commissioner sends such notice, shall include
14 the following:

15 a. A statement that the city has information that the establishment may be an alcohol
16 related public nuisance along with a concise description of the nuisance activities
17 that exist or have occurred. The local liquor control commissioner shall offer the
18 licensee an opportunity to propose a course of action that will abate the alcohol
19 related public nuisance activities giving rise to the violation.

20 b. Demand that the licensee respond to the local liquor control commissioner within
21 ten (10) business days to discuss the alcohol related public nuisance activities.

22 2. Issue a violation notice to the liquor license holder.

23 b. When the local liquor control commissioner receives documentation of the occurrence of
24 additional alcohol related public nuisance activity at the same establishment after notice has

1 been given within the previous twelve (12) months, as specified in section 6-33(2)(a), the
2 local liquor control commissioner, at his discretion, may do one or both of the following:

- 3 1. Notify the owner, in writing, that the property has been determined to be an alcohol
4 related public nuisance property;
- 5 2. Issue a violation notice to the liquor license holder.

6 3. *Options of holder upon violation notice; hearing.*

- 7 a. The holder of the license of the alcoholic liquor establishment cited in a violation notice shall
8 respond to the violation notice in one of the following manners:

- 9 1. If a pattern of alcohol-related public nuisance activity has not been previously found to
10 have existed attributable to the alcoholic liquor establishment, the holder of the license
11 of the alcoholic liquor establishment may notify the local liquor control commissioner, in
12 writing, that the alcoholic liquor establishment agrees to institute a nuisance abatement
13 plan that meets the requirements of this division by the deadline stated on the violation
14 notice which, upon implementation of the approved plan, shall operate as the final
15 disposition of the violation notice; or
- 16 2. By attending the hearing on the merits of the violation notice at the time and date
17 specified on the violation notice or at which hearing the holder of the license of the
18 alcoholic liquor establishment cited in a violation notice shall have the opportunity to
19 contest the merits of the alleged violation.

- 20 b. Hearings shall be held in accordance to section 6-30.

21 4. *Determination of liability.*

- 22 a. A final determination that an alcoholic liquor establishment is a public nuisance or is being
23 operated in a manner to constitute a public nuisance shall occur following:
- 24 1. The failure by a person served with a violation notice to attend the hearing to contest
25 the alleged violation in the time and manner specified in the violation notice and the
26 local liquor control commissioner's determination of liability; or

- 1 2. The local liquor control commissioner's determination of liability following a hearing.
- 2 b. Upon a final determination that an alcoholic liquor establishment is a public nuisance or is
- 3 being operated in a manner to constitute a public nuisance, the local liquor control
- 4 commissioner may require the alcoholic liquor establishment to institute a nuisance
- 5 abatement plan, may enter a fine, may suspend the alcoholic liquor establishment's license,
- 6 or any combination thereof.
- 7 c. If an alcoholic liquor establishment fails to implement or fails to comply with the requirements
- 8 of a nuisance abatement plan after having agreed or having been ordered to implement a
- 9 nuisance abatement plan, the local liquor control commissioner may, in addition to any other
- 10 authorized sanction, revoke the alcoholic liquor establishment's license.
- 11 d. Upon a final determination that an alcoholic liquor establishment is a public nuisance or is
- 12 being operated in a manner to constitute a public nuisance after the implementation of a
- 13 nuisance abatement plan or the failure to implement a nuisance abatement plan after having
- 14 agreed or having been ordered to do so, the local liquor control commissioner may, in
- 15 addition to any other authorized sanction, revoke the alcoholic liquor establishment's license.
- 16 5. *Abatement plan.* A nuisance abatement plan for an alcoholic liquor establishment shall, at a
- 17 minimum, meet the following requirements:
- 18 a. An exterior and interior safety plan approved by the police chief or his/her designee or the
- 19 local liquor control commissioner designed to prevent:
- 20 1. Excessive noise by patrons, invitees or employees entering or exiting the alcoholic
- 21 liquor establishment;
- 22 2. Loitering or littering by patrons, invitees or employees of the alcoholic liquor
- 23 establishment; and
- 24 3. Fighting or other criminal activity by patrons, invitees or employees of the alcoholic
- 25 liquor establishment.

1 b. An exterior lighting and video monitoring plan approved by the police chief or his/her
2 designee or the local liquor control commissioner to include:

3 1. Video surveillance cameras (minimum 720p resolution) installed at each building exit
4 utilized by the general public deployed in such a manner so as to identify persons
5 entering or exiting the alcoholic liquor establishment from dusk to closing time;

6 2. Digital or tape recording equipment which captures the images recorded by the video
7 surveillance cameras and a system by which the images are retained for a minimum for
8 fourteen (14) days. The plan shall include a requirement that the images shall be made
9 available to any law enforcement officer requesting the images pursuant to an official
10 investigation;

11 3. Adequate exterior lighting to enable the video surveillance cameras to record clear
12 images of persons entering or exiting the alcoholic liquor establishment from dusk until
13 closing time; and

14 4. The employment of adequately trained security personnel to monitor the behavior of
15 persons entering or exiting the alcoholic liquor establishment from dusk to closing time.

16 c. An interior plan restricting the access to alcohol by the police chief or his/her designee or the
17 local liquor control commissioner to include:

18 1. Restricting access of alcoholic liquor sales and storage by physical barrier that is
19 separate from the sale and storage of other merchandise offered for retail sale at the
20 licensed premises; or

21 2. Re-location of alcohol liquor sales and storage to a different location of the
22 store/establishment to prevent theft or other types of crime.

23 An establishments will be seen as no longer being an alcohol-related public nuisance upon
24 determination by the local liquor control commissioner that no additional incidents have occurred and the
25 establishment has followed through will all recommendations and shall be reviewed no later than twelve
26 (12) months after its creation.

(b) ~~Reserved. *Habitually intoxicated persons nuisance.* No licensee shall allow its licensed establishment to become a nuisance as defined in this subsection by selling or giving alcoholic liquor to known habitual drunkards.~~

~~(1) *Declaration of policy.* A person who is habitually intoxicated may lack self-control as to the use of alcoholic beverages and use such beverages to the extent that their health is substantially impaired or endangered and their social or economic functioning is substantially disrupted. Such conduct is dangerous to the individual and to others. It is in the interest of the health, safety and welfare of the citizens of the City of Aurora to prohibit the harmful conduct of habitually intoxicated persons, and it is a reasonable exercise of the city's police powers to enforce these provisions to prohibit a retailer from selling alcoholic liquor to these habitually intoxicated persons.~~

~~(2) *Definition.* A known habitually intoxicated person is a person who, within the past one hundred eighty (180) days:~~

~~(i) Has been convicted of six (6) or more civil or criminal offenses, in which the police reports or other evidence indicate that the police officer who made the arrest determined, based upon the training and experience of the officer, that the person was under the influence of alcohol at the time of the commission of the offense, or~~

~~(ii) Has been transported and hospitalized six (6) or more times under conditions where the person appeared to be incapacitated by alcohol and in need of emergency treatment, or~~

~~(iii) Has been subject to any combination of arrests and convictions under subparagraph (i) and hospitalized under subparagraph (ii) that equals or exceeds six (6) times.~~

~~(iv) Where a person from the same incident has been both convicted of a civil or criminal offense, as defined in subparagraph (i), and has been hospitalized under subparagraph (ii), both the arrest and the hospitalization may be counted separately for the calculation provided in subparagraph (iii).~~

~~(v) A person may voluntarily request that their name be added to the list of known habitually intoxicated persons. Such a request shall be made in writing and shall be submitted to the police chief.~~

~~(3) *Maintenance of list.*~~

~~(i) The police chief or his designee shall maintain a list of known habitually intoxicated persons and shall, in his judgment, determine the format and content of the list. The chief or designee shall periodically review the format of the list. Whenever the chief determines that a person meets the definition of a known habitually intoxicated person, as provided in subparagraph (2), the chief or designee shall cause the name of that person to be placed on said list, as provided in this section, along with a photograph of the person, which reasonably represents the likeness of the person.~~

~~(ii) Petition for removal. If one hundred and eighty (180) days have passed from the time the name of a person has been placed on the list, and the person has not either been convicted of an offense under subparagraph (2) (i), or has not been hospitalized during that one hundred eighty (180) day period, that person may petition the chief to remove their name from the list, pursuant to this Section, by filing a written request with the city clerk, stating that they qualify for removal from the list. Upon verification that within the past one hundred eighty (180) days the person has not either been convicted of an offense under subparagraph (2) (i), or has not been hospitalized during that one hundred eighty (180) day period, the chief shall remove the name of the person from the list.~~

~~(iii) Removal by chief. On or about January 1 of each year, the chief or his designee shall review the list of known habitually intoxicated persons, and shall remove the names of all persons who during the prior six (6) months, has not been convicted of an offense under subparagraph (2) (i) and who has not been hospitalized.~~

~~(4) Notice. When the chief or designee determines that a person meets the definition of a known habitually intoxicated person, the chief or designee shall provide the person with a written notice, prepared by the chief or designee, that their name will be placed on the list of known habitually intoxicated persons. The notice shall inform the person of their right to appeal the determination of the chief or designee as provided in this section. The chief or designee shall keep a record of the date and time that the person was provided with such written notice.~~

~~(5) Appeals.~~

~~(i) A person who has been informed in writing by the chief or designee that their name will be placed on the list of known habitually intoxicated persons, may appeal the determination of the chief or designee~~

1 ~~by filing a written objection with the city clerk within five (5) business days of receiving the notice from~~
2 ~~the chief or designee. The content of an appeal shall be liberally construed so that, as long as the~~
3 ~~person appealing provides timely written notice that states that he or she objects to being placed on~~
4 ~~the list of known habitually intoxicated persons, the appeal shall be deemed to be in proper form.~~

5 ~~(ii) Hearing officer. The local liquor control commissioner or the local liquor hearing officer shall serve as~~
6 ~~hearing officer for appeals under this section, and shall have authority to conduct hearings upon the~~
7 ~~filing of a written objection as provided herein.~~

8 ~~(iii) Authority of hearing officer. The hearing officer shall have the authority to administer oaths and shall~~
9 ~~be responsible for the fair, orderly and impartial conduct of the hearing and the preservation of the~~
10 ~~exhibits and record therein.~~

11 ~~(iv) Procedure. All proceedings and testimony shall be recorded on tape. A copy of the tape recordings~~
12 ~~shall be supplied to anyone requesting the same at the requestor's expense. If either party requests a~~
13 ~~stenographic recording and transcription, the hearing officer shall make the necessary arrangements,~~
14 ~~but the expense shall be borne by the requesting party.~~

15 ~~(v) Standard of proof. In the hearing, the chief or designee shall have the burden of proving by a~~
16 ~~preponderance of the evidence that the person has been convicted of six (6) or more civil or criminal~~
17 ~~offenses, where the police reports or other evidence indicate that the person was under the influence~~
18 ~~of alcohol at the time of the commission of the offense; or that the person has been hospitalized six~~
19 ~~(6) or more times under conditions where the person appeared to be incapacitated by alcohol and in~~
20 ~~need of emergency treatment; or has been subject to any combination of convictions and~~
21 ~~hospitalizations that equals or exceeds six (6) times. If after the hearing, the hearing officer finds that~~
22 ~~there is not a preponderance of evidence of any combination of six (6) convictions or hospitalizations,~~
23 ~~as provided herein, the hearing officer shall enter an order granting the appeal and the chief or his~~
24 ~~designee shall remove the person's name from the list of known habitually intoxicated persons. If after~~
25 ~~the hearing, the hearing officer finds that there is a preponderance of the evidence that the person has~~
26 ~~been subject to any combination of six (6) or more convictions or hospitalizations, the hearing officer~~

1 shall deny the appeal and the chief or his designee shall retain the persons' name on the list of known
2 habitually intoxicated persons.

3 ~~(vi) Finality of appeal. All orders of the hearing officer shall be final administrative determinations and~~
4 ~~shall be subject to review in court as by law may be provided from time to time. Any party to the~~
5 ~~proceeding may seek review thereof within thirty (30) days of service by mail of the final determination~~
6 ~~of the hearing officer. In addition, written notice of any request for judicial review shall be given by the~~
7 ~~party seeking review to all parties who appeared at the proceeding before the hearing officer, with said~~
8 ~~notice to be sent by first class mail to each party's last known address. The institution of the proceeding~~
9 ~~for judicial review shall not stay the decision and order of the hearing officer; however, the reviewing~~
10 ~~court may order a stay upon such terms as it deems proper.~~

11 ~~(6) Distribution of list. The city clerk shall distribute the list of known habitually intoxicated person to each~~
12 ~~class of licensee in the city on a semi-annual basis.~~

13 ~~(7) Retailers prohibited. It shall be unlawful for any licensee to sell, dispense, give away or aid and abet~~
14 ~~the receipt of alcoholic liquor beverages to a person whose name and photograph appears on the list~~
15 ~~of known habitually intoxicated persons. To aid and abet the receipt of alcoholic liquor means to sell,~~
16 ~~dispense or give alcoholic liquor to anyone the licensee knows or should know is receiving any portion~~
17 ~~of alcoholic liquor on behalf of or for the benefit of a known habitually intoxicated person. If the city~~
18 ~~clerk has provided a copy of the most current list to the licensee, at the address of the licensee as~~
19 ~~listed by the city clerk, it shall not be a defense that the licensee did not have a copy of the most current~~
20 ~~list. If a licensee has no prior convictions for violation of this section, and has not previously received~~
21 ~~a warning, the local liquor commissioner shall formally warn the licensee that any future violations will~~
22 ~~result in a liquor violation hearing. The city clerk shall be responsible for maintaining a list of those~~
23 ~~licensees who have received warnings under this section.~~

24 ~~(8) Review. The chief or designee shall annually review to ascertain the efficacy of this section in deterring~~
25 ~~alcohol consumption by habitually intoxicated persons.~~

26 ~~(9) Penalty. Penalty for violation of this section shall be as provided in this chapter.~~

- 1 (Ord. No. 093-62, § 2, 8-3-93; Ord. No. 010-030, § 1, 6-8-10; Ord. No. 015-053, 8-25-15; Ord.
- 2 No. 018-119, § 1(Exh. A), 12-19-18)