

CHAPTER 13

ALCOHOL AND TOBACCO

GENERAL PROVISIONS

13.101. Adoption of State Law By Reference. The provisions of Minnesota Statutes, Chapter 340A, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor and/or 3.2 percent malt liquor are adopted by reference and made a part of this ordinance as if fully set forth herein. Any future amendments to Chapter 340A shall be similarly adopted by reference as if in existence at the time this ordinance was originally adopted by the Council.

13.102. City - Restrictive. The Council is authorized to impose additional restrictions on the sale and possession of alcoholic beverages as permitted by law.

13.103. Definitions. In addition to the statutory definitions set forth in Chapter 340A, the following terms are defined as follows:

- (1) "Sale" and "Sell" means all barter and manners of furnishing intoxicating liquor including such furnishings in violation or evasion of law.
- (2) "Ordinance" shall refer to Chapter 13 in its entirety, including any future amendments or additions.

13.104. Severability. If any section, or subsection, subdivision or provision of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

LICENSES, APPLICATIONS AND FEES

13.201. Types of Licenses. The Council is authorized to issue, subject to the requirements of this ordinance, up to the number permitted by law, the following licenses:

- (1) *3.2 percent malt liquor "On-Sale" licenses:* This license may be issued only to clubs, restaurants, hotels, bowling centers or similar establishments incidental to the sale of prepared food, tobacco, and soft drinks.
- (2) *3.2 percent malt liquor temporary "On-Sale" licenses:* This license may be issued only to a club, religious and/or non-profit organization.
- (3) *3.2 percent malt liquor "Off-Sale" licenses:* This license shall permit the sale of beer at a retail store, in the original package, for consumption off

the premises only.

- (4) *Intoxicating Liquor “On Sale” Licenses*: This license shall be issued only to hotels, motels, restaurants and bowling centers and shall permit "On-Sale" of liquor only.
- (5) *Club Intoxicating “On Sale” License*: This license shall be issued only to clubs or congressionally chartered veterans organizations as defined by Chapter 340A.
- (6) *Temporary Intoxicating “On Sale” License*: This license shall be issued only in connection with a social event sponsored by a club, charitable, religious or other non-profit organization which has been in existence for three or more consecutive years. A temporary on sale intoxicating liquor license shall not be for more than four consecutive days nor be less than two consecutive days. The City may not issue more than twelve days of temporary licenses to any one organization in a calendar year.
- (7) *Wine Licenses - “On Sale”*: This license authorizes the sale of wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. An on-sale wine license may be issued only to a restaurant seating not fewer than 25 guests at one time.
- (8) *Consumption and Display*: It is unlawful for any business establishment or club, not holding an on-sale liquor license, to directly or indirectly, or by any pretense or other device, sell, barter, keep for sale or otherwise dispose of any liquid for the purpose of mixing the same with liquor, on or within the premises, without a consumption and display permit from the City. If the Applicant is eligible and met the requirements of the State of Minnesota, a permit shall be issued only if the following requirements are satisfied:
 - a. Applicant has not been convicted of a felony or any provision of Minnesota Statutes, Chapter 340A, within the previous 5 years;
 - b. The premises are zoned for the proposed use;
 - c. The premises are not within 100 feet of the boundary line of any school or church property;
 - d. Applicant has tendered payment to the City for the required fee;

CHAPTER 13

- e. The premises have adequate emergency fire exit and parking facilities; and

- f. The premises to be licensed is a:
 - 1. Restaurant;
 - 2. Hotel;
 - 3. Resort as defined by Minnesota Statutes §157.15;
 - 4. Establishment licensed for the sale of 3.2 percent malt liquor “on sale”;
 - 5. Bed and breakfast facility as defined by Minnesota Statutes §340A.4011, subdivision 1; or
 - 6. A club or an unincorporated club provided that no license has been issued to the club for an on-sale or intoxicating liquor license.

Security. For everyone 100 people anticipated to be in attendance at any premises where there is a Consumption and Display Permit, owner shall have on the premises one off-duty police officer or other security personnel satisfactory to the Chief of Police.

Owner Present. During any and all times when the premises is open, the owner or representative of the owner must be present.

13.202. License Fees. The Council shall establish by resolution the fee for any license. The license fee may not exceed any limit set by law; and further, shall not exceed the cost of issuing the license and other costs directly related to the enforcement of this ordinance. No fee shall be increased without holding a public hearing and providing notice of all affected licensees at least 30 days prior to the hearing. The fee for all licenses granted after the beginning of the calendar year, except temporary ones, may be prorated on a quarterly basis. No refund of a license fee shall be made unless authorized by law or this ordinance.

13.203. Application. Application for a license issued under this ordinance shall be on a form provided by the City and shall include the following information: Full legal name of the applicant; address of applicant, including a separate mailing address if applicable; address and location of the premises of operation; type of license applied for; if applicable, the name and address of the owner or operator of the business; and, such other information as the Council may require. An application for an *Intoxicating Liquor “On Sale” License* shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required by the Council. No application shall contain a false or misleading statement.

- (1) Each application for a license shall be accompanied by a receipt from the City for payment in full of the license fee. If an application for a license is rejected, the City shall refund the amount paid.

CHAPTER 13

13.204. Granting of License. The City shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its discretion grant or deny the license.

- (1) As part of the application process, the City shall conduct a personal and financial background investigation. The City shall establish a fee, by resolution, for the expense of the investigation. The applicant shall submit this fee with the license application. If the City or Commissioner of Public Safety determines that further investigation is required, the applicant shall submit an additional sum equal to the anticipated expense of the investigation. Any unused balance shall be returned to the applicant. The investigation results shall be submitted to the Commissioner of Public Safety when and where required by law.

13.205. Financial/Liability Responsibility. Prior to issuance of a license, the applicant must submit proof of financial responsibility as defined and required by Chapter 340A. Proof of compliance shall be filed with the City and Commissioner of Public Safety, where applicable. Any liability insurance policy filed as proof of financial responsibility must conform to the provisions of Chapter 340A. Failure to maintain proof of financial responsibility is grounds for immediate revocation or suspension of the license.

- (1) The City may, in its discretion, require the posting of an additional bond to secure the terms and conditions of the license.

13.206. Restrictions. No license shall be granted to any person: Under 21 years of age; who has been convicted of a felony; who is not a resident of this state; or, who is ineligible under federal, state or local law from holding the desired license.

No license shall be issued for any place of business or location which is ineligible for such a license under federal, state or local law.

- (1) No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the City are delinquent and unpaid.

13.207. Transfer. Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without Council approval. Any transfer of the majority of issued and outstanding stock of a corporate licensee is deemed a transfer of the license.

13.208. Term of License. Except as stated herein, each license shall be issued for a period of up to one year and shall expire on December 31st of each year.

CHAPTER 13

- (1) Temporary licenses expire according to their issuing terms.
- (2) Club Intoxicating On Sale License shall expire on October 1st of each year.
- (3) Consumption and Display license shall expire on April 1st of each year

13.209. Conditions of License. Any person granted a license under this ordinance shall operate the licensed business subject to the following conditions:

- (1) All licensed premises shall have their licenses posted in a conspicuous place at all times;
- (2) No non-intoxicating malt liquor or intoxicating liquor shall be sold or served to any intoxicated person or to any person under 21 years of age;
- (3) A licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City to enter and inspect and search the premises of the licensee during business hours without a warrant.
- (4) A licensee is responsible for the conduct of his place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed to be the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.
- (5) A licensee shall post and maintain in a conspicuous place all notices required by law.

13.210. Times. The hours of operation and days of sale shall be governed by Chapter 340A. In addition, the following restrictions shall apply:

- (1) No person shall consume nor shall any licensee permit the consumption of any intoxicating liquor or 3.2 percent malt liquor more than 30 minutes after the time a sale can legally occur.
- (2) No licensee shall permit any beverage container to remain upon any table, bar or stool more than 30 minutes after the time a sale can legally occur.
- (3) No person, other than the licensee and its employees, remain on the licensed premises more than 30 minutes after the time a sale can legally occur.

MUNICIPAL LIQUOR STORE

13.301. Authorized. The municipal liquor store previously established is continued for the "on-sale" and "off-sale" of intoxicating liquor. No person, except those authorized by this ordinance, shall sell any intoxicating liquor.

13.302. Location. The liquor store shall be at a place as determined by the Council and may be either leased or owned by the municipality.

13.303. Manager. The liquor store shall be in the immediate charge of the liquor store manager as selected by the Council. The manager shall receive such compensation as the council may determine and shall serve at the pleasure of the Council. The manager shall furnish a surety bond, in a sum determined by the Council, to the City conditioned upon the faithful discharge of his or her duties. The bond premium shall be paid by the City. The manager shall operate the liquor store under the Council's direction. The manager shall have the authority to purchase supplies and employ additional persons as may be needed, such help to serve at the pleasure of the Council.

13.304. Fund. All revenues from the operation of the municipal liquor store shall be deposited in a liquor store fund from which all operating expenses shall be paid. Any surplus accumulating in this fund may be transferred to the general fund by Council resolution and expended for any lawful city purposes. All receipts and expenses shall be accounted for in the manner generally prescribed by law for receipts and disbursements of city funds.

- (1) 90 days after the end of the calendar year, the Council shall make available a balance sheet and statement of operations which shall be published as required by law.

PROHIBITED ACTS

13.401. Nudity. The City Council finds it is in the best interest of the public health, safety, and general welfare of the people of the City that nudity is prohibited upon the premises of any establishment licensed under this ordinance. This is to protect the owners, operators, and employees of the establishments, as well as patrons and general public, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct such as prostitution, sexual assault, and disorderly conduct. The Council finds this prohibition reflects the prevailing community standards of the City.

- (1) It is unlawful for any licensed establishment to permit or allow any person upon the licensed premises when such person does not have his or her buttocks, breast, and genitals covered with a non-transparent material.

CHAPTER 13

- (2) It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, breast, and genitals covered with a non-transparent material.

13.402. Public Place Consumption. Except as permitted by this ordinance, no person shall consume any intoxicating liquor or 3.2 percent malt liquor in or upon any public street, sidewalk, parking lot, alley, park, or other public place, other than the premises of the licensed establishment.

13.403. Minors. No person under the age of 21 may be in a licensed establishment except to work, consume meals in that portion which serves as a restaurant, attend social functions in a portion where liquor is not sold, or participate in an activity not related to the consumption of liquor (e.g. bowling).

- (1) No one under the age of 18 shall be employed in any portion of the licensed establishment where liquor is sold; except that such individuals may be employed as musicians, kitchen staff (including a busperson or dishwasher), or in any employment capacity which is not directly related to the sale of liquor.

13.404. Gambling. No licensee may keep, possess, operate, or allow on the licensed premises any dice, or any gambling device as defined by law, or permit gambling therein, except as allowed by law.

13.405. License Required. No person shall sell any alcoholic beverage, liquor or tobacco product within the City without first obtaining a license to do so from the City.

PENALTIES

13.501. Penalties. Any person violating the provisions of this ordinance (Chapter 13) or state law is subject to the following penalties:

- (1) *Criminal:* Any person violating the provisions of this ordinance (Chapter 13) or state law is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- (2) *Civil:* The Council may impose a civil penalty, in addition to any criminal penalty, of up to \$2,000.00 for each separate violation of this ordinance within a three year period as follows:

First Violation:	\$500.00
Second Violation:	\$1,000.00
Third Violation:	\$2,000.00

CHAPTER 13

A criminal conviction is not necessary to impose a civil penalty. Upon request, the Council shall hold a hearing on the violation and/or penalty. Failure to timely pay the penalty is grounds for immediate suspension or revocation of a license.

- (3) *Suspension and Revocation:* The Council may either suspend a license for a period of up to Sixty (60) days, or revoke a license, upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to liquor. Unless otherwise stated, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for an administrative hearing pursuant to Minn. Stat. §14.57 - 14.70.
 - a. Lapse of required proof of financial responsibility or liquor liability insurance shall result in an immediate suspension of a license, which suspension shall continue until the Council determines the requirements of state law and/or this ordinance have been satisfied.
 - b. The Council shall determine the day or days of suspension.

SALE OF TOBACCO

13.601. License Required. No person shall sell any tobacco product, including cigarettes, cigars, or loose leaf tobacco without first obtaining a tobacco license from the city.

13.602. License Fees. The Council shall establish by resolution the fee for any license. The license fee may not exceed any limit set by law; and further, shall not exceed the cost of issuing the license and other costs directly related to the enforcement of this ordinance. No fee shall be increased without holding a public hearing and providing notice of all affected licensees at least 30 days prior to the hearing. The fee for a license granted after the beginning of the calendar year may be prorated on a quarterly basis. No refund of a license fee shall be made unless authorized by law or this ordinance.

13.603. Application for License. Any person desiring a tobacco license shall submit to the City a written application containing the following information:

- (1) The name and address of the person desiring the license;
- (2) Location of the premises for which a license is desired;
- (3) The nature of the business conducted at the premises for which the license is desired; and
- (4) Such other information as the council may desire.

CHAPTER 13

Any person desiring a tobacco license shall pay the license fee to the City when making application for the license. Upon rejection of an application for a license, the City shall refund any amount paid for the license desired.

13.604. License not Transferable. A tobacco license shall be valid only for the person to whom the license was issued or his agents and assigns, and shall be valid only at the premises described in the application.

13.605. Granting of License. The City shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall, at its discretion, grant or refuse the license.

13.606. Conditions of License. Any person granted a tobacco license shall operate the licensed premises subject to the following conditions:

- (1) All licensed premises shall have its license posted in a conspicuous place at all times;
- (2) No tobacco license shall permit the sale of cigarettes at a moveable place of business, nor shall any license permit the sale of tobacco at more than one place of business.
- (3) A licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City to enter and inspect and search the premises of the licensee during business hours without a warrant.
- (4) The act of any employee on the licensed premises is deemed to be the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.
- (5) A licensee shall post and maintain in a conspicuous place all notices required by law.

13.607. Penalties. Any person violating the provisions of Section 13.601 - 13.606 or applicable state or federal law is subject to the following penalties:

- (1) *Criminal:* The violation shall be a misdemeanor and upon conviction shall be punished as provided by law.
- (2) *Civil:* The Council may impose a civil penalty of up to \$250.00 for each separate violation of this ordinance. A criminal conviction is not necessary to impose a civil penalty. Upon request, the Council shall hold a

CHAPTER 13

hearing on the violation and/or penalty. Failure to timely pay the penalty is grounds for immediate suspension or revocation of a license.

- (3) *Suspension and Revocation:* The Council may either suspend a license for a period of up to Sixty (60) days, or revoke a license, upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to tobacco. Unless otherwise stated, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for an administrative hearing pursuant to Minn. Stat. §14.57 - 14.70.
 - a. The Council shall determine the day or days of suspension.