

## **Chapter 6 - ALCOHOLIC BEVERAGES<sup>1</sup>**

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### **ARTICLE I - IN GENERAL**

#### ***Sec. 6-1 - Provisions of state law adopted***

The provisions of the Minnesota Liquor Act, Minn. Stats. ch. 340A, with reference to the definition of the terms, application for license, grant of license, conditions of license, restrictions on consumption, provisions on sales, conditions of bonds or insurance of licensees, hours of sale, and all other matters pertaining to the retail sale distribution, and consumption of alcoholic beverages are adopted and made a part of this section as if fully set out except as modified herein. All future amendments to said chapter are incorporated in this section.

(Code 1993, § 6-1.01)

#### ***Secs. 6-2 – 6-22 - Reserved***

### **ARTICLE II. - LICENSES<sup>2</sup>**

#### ***Sec. 6-23 - Required***

Except for alcohol wholesalers and manufacturers and as otherwise provided in state law, no person may directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, or

otherwise dispose of alcoholic beverages as part of a commercial transaction without having obtained a license.

(Code 1993, § 6-1.02)

**State Law reference** – Certain activities exempt from license, Minn. Stats. § 340A.33 et seq.

***Sec. 6-24 - On-sale licenses***

- (a) *Intoxicating liquor.* On-sale licenses shall be granted only to restaurants and establishments where meals are regularly served at tables to the general public, and have a seating capacity for not less than 30 guests at one time; and where the sale of beverages is incidental to the principal business that is the sale of food. For restaurants, the term "incidental sale of alcoholic beverages" means that the sale of intoxicating liquor and 3.2 percent malt liquor during any given three-month period shall not account for more than 45 percent of the gross receipts and that the sale of food during any given three-month period shall account for at least 55 percent of the gross receipts. In the event a restaurant includes a bar or lounge or some similar area in which the principal activity is the sale and consumption of alcoholic beverages, such bar or lounge area shall not contain more than 30 percent of the total seating capacity of the restaurant. The number of on-sale licenses shall be limited to two.
- (b) *Sunday.* Sunday "on-sale" licenses shall be issued pursuant to Minn. Stats. § 340A.504, subd. 3.
- (c) *Wine.* On-sale wine licenses shall be issued for consumption of wine on the premises. The number of wine licenses shall be limited to three.
- (d) *Sale of 3.2 percent malt liquor to certain establishments.* Licenses shall be granted only to clubs, restaurants and establishments used exclusively for the sale of 3.2 percent malt liquor for consumption on the premises. The number of 3.2 percent malt liquor licenses shall be limited to four.
- (e) *Wine and 3.2 percent malt liquor.* Persons who hold both an on-sale wine license and an on-sale 3.2 percent malt liquor license and whose gross receipts are at least 60 percent attributable to the sale of food, are authorized to sell intoxicating malt liquor at on-sale without an additional license.

(Code 1993, § 6-2.01)

**State Law reference** – On-sale intoxicating liquor licenses, Minn. Stats. § 340A.404; 3.2 percent malt liquor licenses, Minn. Stats. § 340A.403.

***Sec. 6-25 - Off-sale licenses***

- (a) *Retail liquor stores.* Licenses shall be granted only to exclusive liquor stores where retail or wholesale sales are made in the original package for consumption off the premises only. The number of off-sale licenses shall be limited to one.

- (b) *Sale of 3.2 percent malt liquor.* Licenses shall permit the sale of 3.2 percent malt liquor at retail or at wholesale in the original package for consumption off the premises. The number shall be limited to four.
- (c) *Exemption.* Any person licensed to sell intoxicating liquor at off-sale may sell 3.2 percent malt beverages at off-sale without further license.

(Code 1993, § 6-2.02)

**State Law reference** – Off-sale intoxicating liquor licenses, Minn. Stats. § 340A.405; 3.2 percent malt liquor licenses, Minn. Stats. § 340A.403.

***Sec. 6-26 - On-sale/off-sale combination liquor licenses***

No license permitting "off-sale" and "on-sale" of alcoholic beverages on the premises shall be granted.

(Code 1993, § 6-2.04)

***Sec. 6-27 - Temporary permits***

- (a) *One day consumption and display permits.* Permits may be issued pursuant to Minn. Stats. § 340A.404, subd. 10. Such a permit shall describe and specify the conditions under which the permit is issued and shall include the following information:
  - (1) The place to which the permit pertains;
  - (2) The person to whom the permit is issued;
  - (3) Any other conditions or restrictions that the city council shall deem necessary to adequately provide for the public welfare and safety including conditions and restrictions relative to insurance that must be obtained for the event and to the type of alcoholic beverages that may be sold or consumed and the hours during which such beverage may be sold or consumed.
- (b) *Temporary event sales licenses.* The city may issue licenses as authorized in Minn. Stats. § 340A.404, subd. 4.

(Code 1993, § 6-2.05)

***Sec. 6-28 - Licensing procedure***

- (a) *Application.* Application forms for a license to sell intoxicating liquor, 3.2 percent liquor or wine in the form prescribed by the state commissioner of public safety may be obtained from the city clerk. In addition to the form prescribed by the state commissioner of public safety, the city council may require such additional information as deemed necessary or helpful in passing on the application.

- (b) *Financial responsibility; requirements.* No retail license to sell intoxicating liquor, 3.2 percent malt liquor or wine may be issued or renewed unless the applicant has filed with the city clerk the proof of financial responsibility required by Minn. Stats. § 340A.409.
- (c) *Investigation of applicant.* An investigation of the applicant's background and financial status shall be conducted. The city council shall have the authority to charge an investigative fee equal to the actual cost to the city of such investigation but not to exceed the amount established by the council. No license may be issued or renewed if the results of the investigation show to the satisfaction of the city council, that issuance or renewal would not be in the public interest.

(Code 1993, § 6-3.01)

**State Law reference** – Investigation fees, Minn. Stats. § 340A.412, subd. 2.

### ***Sec. 6-29 - Renewal***

- (a) *Sixty-day requirement.* Application for the renewal of an existing license shall be made at least 60 days prior to the date of the expiration of the license and shall be made on forms provided by the city in such abbreviated form as the city council may approve. If, in the judgment of the city council, good and sufficient cause is shown by any applicant for his or her failure to file for a renewal within the time provided, the city council may, if the other provisions of this article are complied with, grant the application.
- (b) *Statement of compliance.* At the earliest practicable time after application is made for the issuance or renewal of a license to sell intoxicating liquor, 3.2 percent malt liquor or wine within the city, the applicant shall file with the city clerk a statement reflecting compliance with the applicable liquor and food gross receipt requirements of this chapter.

(Code 1993, § 6-3.02)

### ***Sec. 6-30 - Ineligibility for license***

- (a) *Persons ineligible for a license.*
  - (1) No license shall be granted or renewed to any person made ineligible for such a license by state law.
  - (2) No license shall be granted or renewed to a partnership or corporation that does not have a managing partner or a manager who is eligible to hold a license pursuant to the provisions of this chapter.
  - (3) No license shall be granted or renewed to a person who is the spouse of a person ineligible for a license under this section, or who, in the judgment of the city council, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license.
  - (4) No license shall be granted or renewed to a corporation without full disclosure of the stockholders of the corporation and their percentage of ownership. If there are more

than ten stockholders, only those owning more than ten percent of the outstanding common stock shall be listed.

- (5) No license shall be issued to an applicant who violates Minn. Stats. § 340A.363.
  - (6) No license shall be issued if the city council determines issuance would not be in the interest of the public.
- (b) *Miscellaneous persons or places ineligible for license.*
- (1) No license shall be granted where any license has been revoked for cause until five years have elapsed after such conviction or revocation.
  - (2) No license shall be granted for premises within 300 feet of any elementary or secondary school or within 300 feet of any church.
  - (3) No license shall be effective beyond the compact and contiguous space specified in the license for which it was granted.
  - (4) No license shall be granted or renewed for operation on any premises owned by the licensee or the licensee's agent on which taxes, assessments or other financial claims of the city are delinquent and unpaid.

(Code 1993, § 6-3.03)

**State Law reference** – License eligibility, Minn. Stats. § 340A.402 et seq.

***Sec. 6-31 - License fees and term***

- (a) *Payment of fees.* The city clerk shall not accept an application for license unless the license fees are paid and all forms signed. Upon rejection of any application for a license, the amount paid shall be refunded.
- (b) *Establishment of fees.* The city council shall establish the annual and event license fees for the issuance of licenses for alcoholic beverages. Fees for new licenses shall be prorated on a quarterly basis.
- (c) *Refunds.* The city shall refund to the licensee or the licensee's agent a pro rata portion of the annual fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license for any of the following reasons:
  - (1) The business ceases to operate due to destruction or damage of the licensed premises by fire or other catastrophe;
  - (2) The licensee's death;
  - (3) The business ceases to be lawful for a reason other than revocation;
  - (4) The licensee ceases to carry on the licensed business under the license; or
  - (5) A change in the legal status of the municipality makes it unlawful for the licensed business to continue.

The application for refund must be made to the city council within 30 days of one or more of these occurrences.

- (d) *Term of licenses.* The term of all licenses issued under this chapter shall be from January 1 through December 31.

(Code 1993, § 6-3.04)

**State Law reference** – License fees, Minn. Stats. § 340A.408.

***Sec. 6-32 - License conditions***

- (a) Every licensee is responsible for employee conduct in the licensed establishment and any sale of alcoholic beverages by any employee authorized to sell alcoholic beverages in the premises is the act of the licensee.
- (b) Any police officer, building inspector, fire marshal or any properly designated agent or employee of the city shall have the unqualified right to enter, inspect and search the premises of the licensee during business hours without a warrant. If a violation exists, the appropriate action shall be taken in accordance with Minn. Stats. § 340A.415.
- (c) For cause, the business records of the licensee, including federal and state income tax returns, shall be available for inspection by a duly authorized representative of the city council at all reasonable times.

(Code 1993, § 6-3.05)

***Sec. 6-33 - Issuance***

All facts set out in the applications shall be investigated. After such investigation, the council shall grant or deny the license in its discretion. Each license granted shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the compact and contiguous premises described in the application. No license may be transferred to another place without the approval of the city council.

(Code 1993, § 6-3.06(A); Ord. No. 99-02, § 1, 1-13-1999)

***Sec. 6-34 - Revocation or suspension of license***

- (a) *Hearing notice.* Revocation or suspension of a license by the city council shall be preceded by a public hearing conducted in accordance with Minn. Stats. §§ 14.57—14.70. The city council may appoint a hearing examiner or may conduct a hearing itself. The hearing notice shall be given at least ten days prior to the hearing, include notice of the time and place of the hearing, and state the nature of the charges against the licensee.
- (b) *Grounds for revocation or suspension of license.* The council may suspend or revoke any license for the sale of intoxicating or 3.2 percent malt liquor for any of the following reasons:

- (1) False or misleading statements made on a license application or renewal, or failure to abide by the commitments, promises or representations made to the city council.
- (2) Violation of any special conditions under which the license was granted, including, but not limited to, the timely payment of real estate taxes, and all other charges.
- (3) Violation of any federal, state, or local law regulating the sale of intoxicating liquor, 3.2 percent malt liquor, or controlled substance.
- (4) Creation of a nuisance on the premises or in the surrounding area.
- (5) The licensee suffered or permitted illegal acts upon the licensed premises or on property owned or controlled by the licensee adjacent to the licensed premises, unrelated to the sale of intoxicating liquor or 3.2 percent malt liquor.
- (6) The licensee had knowledge of illegal acts upon or attributable to the licensed premises, but failed to report the same to the police.
- (7) Expiration or cancellation of any required insurance, or failure to notify the city within a reasonable time of changes in the term of the insurance or the carriers.
- (8) Failure of an establishment granted a license to exhibit satisfactory progress toward completion of construction within six months from its issuance, or failure of an establishment to operate for a period of six months. A hearing shall be held to determine what progress has been made toward opening or reopening the establishment and, if satisfactory progress is not demonstrated, the council may revoke the license.

***Sec. 6-35 - Presumptive civil penalties***

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the length of license suspensions and the propriety of revocations, and shall apply to all premises licensed under this chapter. These penalties are presumed to be appropriate for every case; however, the council may deviate in an individual case where the council finds that there exist substantial reasons making it more appropriate to deviate, such as, but not limited to, a licensee's efforts in combination with the state or city to prevent the sale of alcohol to minors. When deviating from these standards, the council will provide written findings that support the penalty selected.
- (b) *Presumptive penalties for violations.* The minimum penalties for convictions or violations must be presumed as follows (unless specified, numbers below indicate consecutive days' suspension):

|     | Type of Violation   | 1st Appearance | 2nd Appearance | 3rd Appearance | 4th Appearance |
|-----|---|----------------|----------------|----------------|----------------|
| (1) | Commission of a felony related to the licensed activity       | Revocation     | NA             | NA             | NA             |
| (2) | Sale of alcoholic beverages while license is under suspension | Revocation     | NA             | NA             | NA             |

|      |  |                                 |         |            |            |
|------|--|---------------------------------|---------|------------|------------|
| (3)  | Sale of alcoholic beverages to underage person   | \$500.00                        | 6 days  | 18 days    | Revocation |
| (4)  | Sale of alcoholic beverages to obviously intoxicated person                                    | \$500.00                        | 6 days  | 18 days    | Revocation |
| (5)  | After hours sale of alcoholic beverages  | \$500.00                        | 6 days  | 18 days    | Revocation |
| (6)  | After hours display or consumption of alcoholic beverages                                      | \$500.00                        | 6 days  | 18 days    | Revocation |
| (7)  | Refusal to allow city inspectors or police admissions to inspect premises                      | \$500.00 plus 3 days suspension | 15 days | Revocation | NA         |
| (8)  | Illegal gambling on premises   | \$500.00                        | 6 days  | 18 days    | Revocation |
| (9)  | Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages | \$500.00                        | 6 days  | 18 days    | Revocation |
| (10) | Sale of intoxicating liquor where only license is for 3.2 percent malt liquor                  | Revocation                      | NA      | NA         | NA         |

The council may impose a three-day suspension for failure to pay the required fine on the first appearance.

- (c) *Multiple violations.* At a licensee's first appearance before the council, the council must act upon all of the violations that have been alleged in the notice sent to the licensee. The council in that case must consider the presumptive penalty for each violation under the first appearance column in subsection (b) of this section. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the council's discretion.
- (d) *Subsequent violations.* Violations occurring after the notice of hearing has been mailed, but prior to the hearing, must be treated as a separate violation and dealt with as a second appearance before the council, unless the city administrator and licensee agree in writing to add the violation to the first appearance. The same procedure applies to a second, third or fourth appearance before the council.



- (e) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by the same licensee, the council must impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, the council may consider the amount of time that elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this section.
- (f) *Computation of appearances.* After the first appearance, a subsequent appearance by the same licensee will be determined as follows:
- (1) If the first appearance was within 18 months of the current violation, the current violation will be treated as a second appearance.
  - (2) If a licensee has appeared before the council on two previous occasions, and the current violation occurred within 30 months of the first appearance, the current violation will be treated as a third appearance.
  - (3) If a licensee has appeared before the council on three previous occasions, and the current violation occurred within 42 months of the first appearance, the current violation will be treated as a fourth appearance.
  - (4) Any appearance not covered by subsections (f)(1), (2), or (3) of this section will be treated as a first appearance.
- (g) *Other penalties.* Nothing in this chapter shall restrict or limit the authority of the council to suspend the license up to 60 days, revoke the license, or impose a civil fine not to exceed \$2,000.00 for each violation, to impose conditions, or impose any combination of the foregoing sanctions, or take any other action in accordance with law; provided that the license holder has been afforded an opportunity for a hearing in the manner provided for in this section.

(Code 1993, § 6-3.06(B); Ord. No. 99-02, § 1, 1-13-1999)

Footnotes:

<sup>1</sup> **State Law reference** – Alcoholic beverages, Minn. Stats. ch. 340A; general authority of municipalities, Minn. Stats. § 340A.509.

<sup>2</sup> **State Law reference** – Local alcoholic beverage licenses, Minn. Stats. §§ 340A.402 et seq., 340A.404 et seq.