

## CHAPTER 5

### ALCOHOLIC BEVERAGES LICENSING AND REGULATION

**SECTION 5.01. DEFINITIONS.** As used in this Chapter, unless otherwise stated in specific sections, the following words and terms shall have the meanings stated:

1. **"Alcoholic Beverage"** means any beverage containing more than one-half (1/2) of one (1) percent alcohol by volume, including, but not limited to, beer, wine, and liquor as defined in this Section.

2. **"Applicant"** means any person making an application for a license under this Chapter.

3. **"Application"** means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Source: City Code  
Effective Date: 03-15-1992

3.1. **"Bed and Breakfast Facility"** means a place of lodging that (1) provides not more than eight (8) rooms for rent to no more than twenty (20) guests at a time, (2) is located on the same property as the owner's personal residence, (3) provides no meals, other than breakfast served to persons who rent rooms, and (4) was originally built and occupied as, or was converted to, a single family residence prior to being used as a place of lodging. Where this definition is satisfied, the facility is exempt from license requirements under this Chapter.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

4. **"Beer"** means malt liquor containing not less than one-half (1/2) of one (1) percent alcohol by volume nor more than 3.2 percent alcohol by weight. (This definition includes so-called "malt coolers" with the alcoholic content limits stated herein.)

5. **"Brewer"** means a person who manufactures beer for sale.

6. **"Club"** means an incorporated organization organized under the laws of the State for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which: (1) has more than thirty (30) members; (2) has owned or rented a building or space in a building for more than one (1) year that is suitable and adequate for the accommodation of its members; (3) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. Such club or congressionally chartered veterans' organization must have been in existence for at least three (3) years.

7. "**Commissioner**" means the Minnesota Commissioner of Public Safety.

Source: City Code  
Effective Date: 03-15-1992

7.1. "**Community Festival**" means an event held within the City on an annual or irregularly scheduled basis for the purpose of promoting community pride, tourism, interest in local history, or non-profit objectives.

7.2. "**Exclusive Liquor Store**" means an establishment used exclusively for the sale of liquor except for the incidental sale of ice, tobacco, beer, beverages for mixing with liquor, soft drinks, liqueur-filled candies, food products that contain more than one-half (1/2) of one (1) percent alcohol by volume, cork extraction devices, books and videos on the use of alcoholic beverages, magazines and other publications published primarily for information and education on alcoholic beverages, and the establishment may offer recorded or live entertainment. "Exclusive liquor store" also includes an on-sale [or combination on-sale] or combination on-sale and off-sale liquor establishment which sells food for on-premise consumption when authorized by the City.

8. "**Hotel**" or "**Motel**" means an establishment where food and lodging are regularly furnished to transients and which has: (1) a dining room serving the general public at tables and having facilities for seating at least one hundred (100) guests at one time; and (2) at least ten (10) guest rooms.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

9. "**License**" means a document, issued by the City, to an applicant permitting him to carry on and transact the business stated therein.

10. "**Licensee**" means an applicant who, pursuant to his approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the City for carrying on the business stated therein.

11. "**License Fee**" means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

Source: City Code  
Effective Date: 03-15-1992

12. "**Licensed Premises**" means the space or structure described in the issued license. In the case of a restaurant or a club licensed for on-sales of alcoholic beverages and located on a golf course, "licensed premises" means the entire golf course except for areas where motor vehicles are regularly parked or operated.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

**13. "Liquor"** means ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. (This definition includes so-called "wine coolers" and "malt coolers" with the alcoholic content limits stated herein.)

Source: City Code  
Effective Date: 03-15-1992

**14. "Malt Liquor; 3.2 Percent"** means any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half (1/2) of one (1) percent nor more than 3.2 percent alcohol by volume.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

**15. "Manufacturer"** means every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces alcoholic beverages for sale.

**16. "Minor"** means any natural person who has not attained the age of twenty one (21) years.

**17. "Off-Sale"** means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

**18. "On-Sale"** means the sale of alcoholic beverages for consumption on the licensed premises only.

**19. "Package" and "Original Package"** mean any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

Source: City Code  
Effective Date: 03-15-1992

**20. "Restaurant"** means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public, and having a minimum seating capacity for sixty (60) guests.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

**21. "Sale", "Sell" and "Sold"** mean all barter and all manners or means of furnishing alcoholic beverages to persons, including such furnishing in violation or evasion of law.

**22. "Wholesaler"** means any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.

Source: City Code  
Effective Date: 03-15-1992

**23. "Wine"** means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake. (This definition includes "wine coolers" with the alcoholic content limits stated herein.) For purposes of on-sale wine licenses, "wine" may contain up to fourteen (14) percent alcohol by volume for consumption with the sale of food. For all other purposes, "wine" is a product containing not less than one-half (1/2) of one (1) percent nor more than twenty four (24) percent alcohol by volume for non-industrial use.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

**24. "2:00 a.m. Closing"** means that an establishment may stay open until 2:00 a.m. When there is a change from Daylight Savings time to Standard Time or from Standard Time to Daylight Savings Time, 2:00 a.m. closing shall mean closing two (2) hours after midnight of the previous evening.

Source: Ordinance No. 62, 2<sup>nd</sup> Series  
Effective Date: 10-30-2003

## **SEC. 5.02. APPLICATIONS AND LICENSES UNDER THIS CHAPTER - PROCEDURE AND ADMINISTRATION.**

**Subd. 1. Application.** All applications shall be made at the office of the City Administrator upon forms prescribed by the City, or if by the Commissioner, then together with such additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant. Every application for the issuance or renewal of an alcoholic beverage license must include a copy of each summons received by the applicant during the preceding year under Minnesota Statutes, Section 340A.802.

**Subd. 2. False Statements.** It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this Chapter, or any part thereof.

**Subd. 3. Application and Investigation Fees.** At the time the initial application is made, an applicant for a license under this Chapter shall accompany such application with payment of a fee to be considered an application and investigation fee, not refundable to the applicant, to cover the cost of the City in processing the application and the investigation of the applicant. No such fee shall be required of an applicant for a temporary beer license.

#### **Subd. 4. Action.**

**A. Hearing.** Prior to granting an initial liquor license, a public hearing may be held by the Council. Opportunity shall be given any person to be heard for or against granting the license. After such hearing, the Council may, in its discretion, grant or refuse such license. A public hearing may be held, but is not required, on renewal liquor licenses and other licenses under this Chapter.

**B. Granting.** The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications including proposed license periods must be consistent with this Chapter. Prior to consideration of any application for a license, the applicant shall pay the license fee. Upon rejection of any application for a license, or upon withdrawal of an application before consideration by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

**C. Issuing.** If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the City or the Commissioner, as the case may be. All licenses shall be on a calendar year basis unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described.

**D. Transfer.** No license shall be transferable between persons. Any change in individual ownership, incorporation, or substitution of partners is a transfer. No license shall be transferable to a different location without prior consent of the Council and payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this Subparagraph.

**E. Refusal and Termination.** The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall terminate only by expiration or revocation.

**F. Public Interest.** No license under this Chapter may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest.

**G. Revocation or Suspension.** The Council shall revoke or suspend, for a period not to exceed sixty (60) days, a license granted under the provisions of this Chapter, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), for each violation on a finding that the licensee has failed to comply with a statute, regulation or provision of the City Code relating to alcoholic beverages. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of beer, wine or liquor upon premises of the licensee, or if such revocation is mandatory by Statute. If it shall be made to appear at the hearing thereon that such violation was not willful, the Council may order a civil fine, suspension or revocation; provided that revocation

shall be ordered upon the third such violation or offense. No civil fine, suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing under the Administrative Procedures Act, as may be determined by the Council in action calling the hearing. Such hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than fifteen (15) nor more than thirty (30) days prior to the hearing date, stating the time, place and purpose thereof. As additional restrictions or regulations on licensees under this Chapter, and in addition to grounds for revocation or suspension stated in the City Code or Statute, the following shall also be grounds for such action: (1) that the licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of beer, wine or liquor; (2) that the licensee had knowledge of such illegal acts upon licensed premises, but failed to report the same to police; (3) that the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts upon licensed premises; or, (4) that the activities of the licensee created a serious danger to public health, safety, or welfare.

**H. Corporate Applicants and Licensees.** A corporate applicant, at the time of application, shall furnish the City with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the City Administrator in writing of any change in legal ownership, or beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty (30) days after any such change in ownership or beneficial interest of shares unless the Council has been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the City designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

**Subd. 5. Duplicate Licenses.** Duplicates of all original licenses under this Chapter may be issued by the City Administrator without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of the fee adopted by resolution of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

**Subd. 6. Posting.** All licensees shall conspicuously post their licenses in their places of business.

**Subd. 7. Resident Manager or Agent.** Before a license is issued under this Chapter to an individual who is a non-resident of the City, to more than one individual whether or not they are residents of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the City as its manager or agent. Such resident manager or agent shall, by the terms of his written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee. If such manager or agent ceases to be a resident of the City or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

**Subd. 8. Persons Disqualified.**

**A.** No license under this Chapter may be issued, or renewed, to: (1) a person not a citizen of the United States or a resident alien; (2) a person who within five (5) years of the license application has been convicted of a willful violation of a Federal or State law, or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of alcoholic beverages; (3) a person who has had an alcoholic beverage license revoked within five (5) years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested; (4) a person under the age of twenty-one (21) years; or, (5) a person not of good moral character and repute.

**B.** No person holding a license from the Commissioner as a manufacturer, brewer or wholesaler may have any direct or indirect interest in a business holding an alcoholic beverage license from the City.

**SEC. 5.03. RENEWAL LICENSE APPLICATIONS.** Applications for renewal of all licenses under this Chapter shall be made at least thirty (30) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause.

**SEC. 5.04. DELINQUENT TAXES AND CHARGES.** No license under this Chapter shall be granted for operation on any premises upon which taxes, assessments, or installments thereof, or other financial claims of the City, are owed and are delinquent and unpaid.

**SEC. 5.05. CONDITIONAL LICENSES.** Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such special conditions and restrictions, in addition to those stated in this Chapter, upon any license as it, in its discretion, may deem reasonable and justified.

**SEC. 5.06. PREMISES LICENSED.** Unless expressly stated therein, a license issued under the provisions of this Chapter shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure.

## **SEC. 5.07. UNLAWFUL ACTS.**

**Subd. 1. Consumption.** It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on licensed premises more than thirty (30) minutes after the hour when a sale thereof can legally be made.

**Subd. 2. Closing.** It is unlawful for any person, other than a licensee or his bona fide employee actually engaged in the performance of his duties, to be on premises licensed under this Chapter more than thirty (30) minutes after the legal time for making licensed sales.

**SEC. 5.08. CONDUCT ON LICENSED PREMISES.** Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order therein.

**SEC. 5.09. SALE BY EMPLOYEE.** Any sale of an alcoholic beverage in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as of the person actually making the sale; and every such employer is liable to all of the penalties, except criminal penalties, provided by law for such sale, equally with the person actually making the sale.

## **SEC. 5.10. LICENSE CONDITION AND UNLAWFUL ACT.**

**Subd. 1.** All premises licensed under this Chapter shall at all times be open to inspection by any police officer to determine whether or not this Chapter and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and without a warrant for searches or seizures.

**Subd. 2.** It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making such inspection.

## **SEC. 5.11. LICENSE FEES - FIXING AND REFUNDMENT.**

**Subd. 1. Fixing Fees.** Except as otherwise specifically provided, all fees for licenses provided for in this Chapter, including, but not by way of limitation, license fees, investigation and administration fees, shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such fees may, from time-to-time, be amended by the Council by resolution. Provided, however, that before any such fee shall be increased, a thirty (30) day notice shall be mailed to all affected licensees and a hearing held thereon. A copy of the resolution shall be kept on file in the office of the City Administrator and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may categorize and classify, provided, that such categorization and classification shall be included in the resolution authorized by this Section.

**Subd. 2. Refundment.** A pro-rata share of an annual license fee for a license to sell alcoholic beverages, either on-sale or off-sale, may be refunded to the licensee, or to his estate, if: (1) the business ceases to operate because of destruction or damage; (2) the licensee dies; or, (3) the business ceases to be lawful for a reason other than a license revocation or suspension.

Source: City Code  
Effective Date: 03-15-1992

## **SEC. 5.12. FINANCIAL RESPONSIBILITY OF LICENSEES.**

**Subd. 1. Proof.** No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility. The minimum requirement for proof of financial responsibility shall be given by filing with the City:

**A.** A certificate that there is in effect for the license period an insurance policy or pool providing at least fifty thousand dollars (\$50,000.00) of coverage because of bodily injury to any one person in any one occurrence, one hundred thousand dollars (\$100,000.00) because of bodily injury to two or more persons in any one occurrence, ten thousand dollars (\$10,000.00) because of injury to or destruction of property of others in any one occurrence, fifty thousand dollars (\$50,000.00) for loss of means of support of any one person in any one occurrence, and on hundred thousand dollars (\$100,000.00) for loss of means of support of two or more persons in any one occurrence. An annual aggregate policy limit for dram shop insurance of not less than three hundred thousand dollars (\$300,000.00) per policy year may be included in the policy provisions. A liability insurance policy required by this Section must provide that it may not be cancelled for any cause except non-payment of premium, by either the insured or the insurer unless the canceling party has first given thirty (30) days' notice in writing to the issuing authority of intent to cancel the policy; and non-payment of premises unless the canceling party has first given ten (10) days' notice in writing to the issuing authority of intent to cancel the policy.

Source: Ordinance No. 15, 2<sup>nd</sup> Series  
Effective Date: 01-23-1997

**Subd. 2. Documents Submitted to Commissioner.** All proofs of financial responsibility filed with the City under this Section shall be submitted by the City to the Commissioner.

Source: City Code  
Effective Date: 03-15-1992

**SEC. 5.13. INSURANCE CERTIFICATE REQUIREMENTS.** Whenever an insurance certificate is required by this Chapter the applicant shall file with the City Administrator a certificate of insurance showing (1) that the limits are at least as high as required under MSA 340A, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty (30) days' written notice served upon the City Administrator. Cancellation or termination of such coverage shall be grounds for license revocation. This Section does not apply to licensees who by affidavit establish that: (1) they are on-sale 3.2 percent malt liquor licensees with sales of less than twenty five thousand dollars (\$25,000.00) of 3.2 percent malt liquor for the preceding year; (2) they are off-sale 3.2 percent malt liquor licensees with sales of less than fifty thousand dollars (\$50,000.00) of 3.2 percent malt liquor for the preceding year; (3) they are holders of on-sale wine licenses with sales of less than twenty five thousand dollars (\$25,000.00) for wine for the preceding year; or (4) they are holders of temporary wine licenses issued under law.

## **SEC. 5.14. MINORS AS DEFINED IN SECTION 5.01 - UNLAWFUL ACTS.**

**Subd. 1. Consumption.** It is unlawful for any:

**A.** Licensee to permit any minor to consume alcoholic beverages or tobacco products on licensed premises.

**B.** Minor to consume alcoholic beverages or tobacco products except in the household of the minor's parent or guardian, and then only with the consent of such parent or guardian.

**Subd. 2. Purchasing.** It is unlawful for any:

**A.** Person to sell, barter, furnish, or give alcoholic beverages or tobacco products to a minor unless such person is the parent or guardian of the minor, and then only for consumption in the household of such parent or guardian.

**B.** Minor to purchase or attempt to purchase any alcoholic beverage or tobacco products.

**C.** Person to induce a minor to purchase or procure any alcoholic beverage or tobacco products.

**Subd. 3. Possession.** It is unlawful for a minor to possess any alcoholic beverage or tobacco products with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage or tobacco products by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his parent or guardian.

**Subd. 4. Entering Licensed Premises.** It is unlawful for any minor, as defined in this Chapter, to enter licensed premises or the municipal liquor store for the purpose of purchasing or consuming any alcoholic beverage or tobacco products. It is not unlawful for any person who has attained the age of eighteen (18) years to enter licensed premises for the following purposes: (1) to perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute; (2) to consume meals; and (3) to attend social functions that are held in a portion of the establishment where liquor is not sold. It is unlawful for a licensee to permit a person under the age of eighteen (18) years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or in the company of a parent or guardian.

**Subd. 5. Misrepresentation of Age.** It is unlawful for a minor to misrepresent his/her age for the purpose of purchasing an alcoholic beverage or tobacco products.

**Subd. 6. Proof of Age.** Proof of age for purchasing or consuming alcoholic beverages or tobacco products may be established only by a valid driver's license or identification card issued by Minnesota, another State, or a province of Canada, and including the photograph and date of birth of the licensed person; or by a valid military identification card issued by the United States Department of Defense; or, in the case of a foreign national, from a nation other than Canada, by a valid passport.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

**SECTION 5.15. CONSUMPTION & POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY, & PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS.**

**Subd. 1. General Prohibition.** Except as otherwise provided in Subdivision 2 hereof, it is unlawful for any person to consume or possess in an unsealed container, any alcoholic beverage on or in any:

- i) City park;
- ii) City Street;
- iii) Public property; or
- iv) Private parking lot to which the public has access,

except on such premises when and where permission has been specifically granted or licensed by the City Council, provided, however, that this Section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of such vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For purposes of this Section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

**Subd. 2. Limited Special Exception.** It is lawful for a person who is a member of a group which has applied for and received a permit for the use and rental of the Van's Beach Veteran's Park Shelter, and has on the application therefore indicated that their group intends to consume alcohol, to then possess and consume alcohol within the area of the Veteran's Park Shelter and within the lawn area outside of the Shelter, which is between the Shelter and Cedar Point Road; between the Shelter and the parking lot; and between the Shelter and the woods, and which area is further defined by signs indicating "no alcohol beyond this point". As long as the use and consumption of alcohol in all manners and respects complies with the restrictions contained in the agreement for the use of the Veteran's Park Shelter and is limited to the geographic area described herein, then that possession, use and consumption will be lawful. It shall be the responsibility of the person or persons signing the rental agreement with the City to make sure that all members of their party clearly understand the rules of the rental agreement with respect to the use and consumption of alcohol and the areas within which such alcohol may be possessed or consumed.

**Section 2.** City Code Chapter 1 entitled "General Provisions and Definitions Applicable to the Entire City Code, Including Penalty Provision for Violation" and Section 5.99 entitled "Violation a Misdemeanor", are hereby adopted in their entirety by reference as though repeated verbatim herein.

Source: Ordinance No. 117, 2<sup>nd</sup> Series  
Effective Date: 07-30-2009

**SEC. 5.16. ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS.** It is unlawful for any person to introduce upon, or have in his possession upon, or in, any public elementary or secondary school ground, or any public elementary or secondary school building, any alcoholic beverage, except for experiments in laboratories.

**SEC. 5.17. ALCOHOLIC BEVERAGES - CERTAIN UNLAWFUL ACTS.** It is unlawful for any:

**Subd. 1.** Person to knowingly induce another to make an illegal sale or purchase of an alcoholic beverage.

**Subd. 2.** Licensee to sell or serve an alcoholic beverage to any person who is obviously intoxicated.

**Subd. 3.** Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises.

**Subd. 4.** Licensee to sell an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

**Subd. 5.** Licensee to allow consumption of an alcoholic beverage on licensed premises on any day, or during any hour, when such consumption is not permitted by law.

**Subd. 6.** Person to purchase an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

**SEC. 5.18. WORKER'S COMPENSATION.** No license to operate a business shall be issued by the City until the applicant presents his employer's tax identification number and acceptable evidence of compliance with the worker's compensation insurance coverage requirement of Minnesota Statutes by providing the name of the insurance company, the policy number, and dates of coverage, or the permit to self-insure.

**SEC. 5.19. DISTANCE FROM SCHOOLS AND CHURCHES.** No license shall be granted for any place within five hundred (500) feet of any public school, nor within seventy five (75) feet of any church. In applying the restrictions set forth above, distances shall be measured between the main front entrances following the route of ordinary pedestrian travel.

Source: City Code  
Effective Date: 03-15-1992

**SEC. 5.20. LICENSE REVOCATION OR SUSPENSION; CIVIL PENALTY.**

**Subd. 1.** The purpose of this Section is to regulate the sale of alcoholic beverages, both on-sale and off-sale. To help to insure the sales of alcoholic beverages within the City limits are made in compliance with the laws of the State of Minnesota and the City Code, compliance checks may, from time to time, be conducted by the City. A compliance check is a system to investigate and insure that those authorized to sell alcoholic beverages

comply with the requirements of this Section. Compliance checks shall involve the use of persons under the age of twenty one (21) years. Compliance checks shall also mean the use of these individuals to attempt to purchase alcoholic beverages. Compliance checks may also be conducted by other units of government for the purposes of enforcing appropriate Federal or State laws and regulations or the City Code relating to alcoholic beverages.

**Subd. 2.** No person shall sell or offer to sell any alcoholic beverage without first obtaining a license to do so from the City.

**Subd. 3.** On a finding that a license holder has (i) sold alcoholic beverages to another retail licensee for purposes of re-sale; (ii) purchased alcoholic beverages from another retail licensee for purposes of re-sale; (iii) conducted or permitted the conduct of gambling on the licensed premises in violation of the law; (iv) failed to remove or dispose of alcoholic beverages when ordered by the Commissioner to do so under Minnesota Statutes, 340A.508, Subd. 3; or (v) failed to comply with an applicable State Statutes or the City Code relating to alcoholic beverages, the City may revoke the license or permit, suspend the license or permit for up to sixty (60) days, impose a civil penalty of up to three thousand dollars (\$3,000.00) for each violation, or impose any combination of these sanctions.

**Subd. 4.** Any individual violator shall be subject to criminal prosecution.

**Subd. 5.** License holders, upon discovery of a violation, shall be notified of the alleged violation in writing.

**A.** If a licensed holder accused of violating so requests within twenty (20) days after notification of violation, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

**B.** The Council shall serve as a hearing officer. The hearing shall be conducted in accordance with the Minnesota Procedures Act, Minnesota Statutes, Section 14.57, et seq. The hearing shall be recorded.

**C.** If the hearing officer determines that a violation of this Section has occurred, that decision, along with the hearing officer's reasons for finding of violation, and the penalty to be imposed under this Section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such finding shall be recorded and a copy provided to the acquitted accused violator.

**D.** Appeals of any decision made by the hearing officer shall be filed in District Court in Stearns County, Minnesota.

**E.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense and be subject to separate civil penalties.

**Subd. 6.** All liquor licensees are responsible for the activities within the licensed premises and specifically for all sales of alcoholic beverages. Licensees must assure that the

sale, consumption or service of alcoholic beverages to persons under the age of twenty one (21) years is prohibited under any condition. Failure to do so will result in progressively severe penalties. The following civil penalties will be imposed for on-sale or off-sale violations where sale to, consumption by or service to a person under the age of twenty one (21) occurs:

**A.** For the first offense the licensee shall be subject to a civil fine of \$500 payable to the City.

**B.** For the second offense, within two (2) years of the first offense, the licensee's license shall be suspended for two (2) days and a civil fine of one thousand dollars (\$1,000.00) shall be payable to the City. If a second offense occurs outside of two (2) years from the first offense, it will be treated as a first offense.

**C.** For a third offense, if within three (3) years of the second offense, the licensee's license shall be suspended for ten (10) days and a civil fine of two thousand dollars (\$2,000.00) shall be payable to the City. If a third offense occurs outside of three (3) years from the second offense, it will be treated as a second offense.

**D.** For a fourth offense, if within four (4) years of the third offense, the licensee's license shall be revoked and a civil fine of \$3,000 shall be payable to the City. If the fourth offense occurs outside of four (4) years from the third offense, it will be treated as a third offense.

**E.** Other mandatory requirements may be made of the licensee, such as mandatory training or education sessions, increased staffing or supervision, or such other steps as the Council deems appropriate to eliminate illegal sales of alcoholic beverages within the City.

**Subd. 7.** If any provision of this Section shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other provisions of this Section.

Source: Ordinance No. 25, 2<sup>nd</sup> Series

Effective Date: 05-31-2001

(Sections 5.21 through 5.29, inclusive, reserved for future expansion.)

(Pages 126 through 134 reserved)

**SEC. 5.30. BEER LICENSE REQUIRED.** It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of beer, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding beer licenses from the City. Annual on-sale beer licenses may be issued only to restaurants, hotels, bowling centers, clubs, and establishments used exclusively for the sale of beer with the incidental sale of tobacco and soft drinks. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

**SEC. 5.31. TEMPORARY BEER LICENSE.**

**Subd. 1. Applicant.** A club or charitable, religious, or non-profit organization shall qualify for a temporary on-sale beer license.

**Subd. 2. Conditions.**

**A.** An application for a temporary license shall state the exact dates and place of proposed temporary sale.

**B.** No applicant shall qualify for a temporary license for more than a total of seven (7) days in any calendar year.

**C.** The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary beer license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of one hundred thousand dollars (\$100,000.00) for injury to any one person and three hundred thousand dollars (\$300,000.00) for injury to more than one person, and one hundred thousand dollars (\$100,000.00) for property damage, or a combined single limit of three hundred thousand dollars (\$300,000.00), naming the City as an insured during the license period. An annual aggregate of \$600,000.00 may be included in the insurance coverage.

**SEC. 5.32. HOURS AND DAYS OF BEER SALES.** No sale of beer shall be made between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday nor after 2:00 a.m. on Sunday.

Source: Ordinance No. 63, 2<sup>nd</sup> Series  
Effective Date: 11-20-2003

(Sections 5.33 through 5.39, inclusive, reserved for future expansion.)

(Pages 136 through 140 reserved)

**SEC. 5.40. LIQUOR LICENSE REQUIRED.** It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply (1) to such potable liquors as are intended for therapeutic purposes and not as a beverage, (2) to industrial alcohol and its compounds not prepared or used for beverage purposes, (3) to wine in the possession of a person duly licensed under this Chapter as an on-sale wine licensee, (4) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (5) to sales by wholesalers to persons holding liquor licenses from the City, or (6) to the municipal liquor store. The voters of the City having authorized such issuance at a special election called for that purpose, the City may issue on-sale liquor licenses to hotels, restaurants, and clubs provided that liquor sales will be made only to members and bona fide guests. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

**SEC. 5.41. TEMPORARY LIQUOR LICENSE.**

**Subd. 1. License Authorized.** Notwithstanding any provision of the City Code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. Such license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the City, for liquor catering services.

**Subd. 2. Applicant.** The applicant for a license under this Section must be a club or charitable, religious, or other non-profit organization in existence for at least three (3) years.

**Subd. 3. Terms and Conditions of License.**

**A.** No license is valid until approved by the Commissioner.

**B.** No license shall be issued for more than three (3) consecutive days.

**C.** No (temporary) license shall issue until the City is furnished with written proof that the licensee has dram shop coverage in the amount provided for in this Chapter, and that such coverage is in force on the premises where liquor is to be served.

**D.** All licenses and licensees are subject to all provisions of statutes and the City Code relating to liquor sale and licensing. The licensee shall provide proof of financial responsibility coverage and, in the case of catering by a full-year on-sale licensee, such caterer shall provide proof of the extension of such coverage to the licensed premises.

**E.** Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.

**Subd. 4. Insurance Required.** The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of one hundred thousand dollars (\$100,000.00) for injury to any one (1) person, three hundred thousand dollars (\$300,000.00) for injury to more than one (1) person, and one hundred thousand dollars (\$100,000.00) for property damage, naming the City as an insured during the license period. An annual aggregate of three hundred thousand dollars (\$300,000.00) may be included in the insurance coverage.

**SEC. 5.42. HOURS AND DAYS OF SALE BY ON-SALE LIQUOR LICENSEES.** No on-sale of liquor shall be made between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor after 2:00 a.m. on Sunday unless the licensee holds a valid Sunday on-sale intoxicating liquor license.

**Section 2.** City Code, Chapter 5, is hereby amended to add Section 5.43 to read as follows:

**SEC. 5.43. SUNDAY ON-SALE INTOXICATING LIQUOR LICENSE.** The voters of the City of Paynesville, have approved the issuance of Sunday on-sale intoxicating liquor licenses at the general election on November 7, 2006 and, therefore, Sunday on-sale intoxicating liquor licenses may be issued to restaurants, clubs, bowling centers or hotels, as the same are defined in Chapter 5 of the City Code, or, if not defined therein, as defined in Chapter 340A of Minnesota Statutes. The holder of a Sunday on-sale intoxicating liquor license is authorized to sell intoxicating liquor for consumption on the licensed premises in conjunction with the sale of food between the hours of 10:00 a.m. on Sunday and 2:00 a.m. on Monday. An application for a Sunday on-sale intoxicating liquor license shall be accompanied by the payment of a fee in the amount of \$200.00.

Source: Ordinance No. 93, 2<sup>nd</sup> Series  
Effective Date: 11-30-2006

(Sections 5.44 through 5.49, inclusive, reserved for future expansion.)

(Pages 143 through 147 reserved)

**SEC. 5.50. ON-SALE WINE LICENSE REQUIRED.** It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the City. This Section shall not apply (1) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (2) to sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the City, (3) to sales by wholesalers to persons holding on-sale wine licenses from the City, or (4) to sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted.

**SEC. 5.51. HOURS AND DAYS OF SALES BY ON-SALE WINE LICENSEES.** No on-sale of wine shall be made between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor after 2:00 a.m. on Sunday.

Source: Ordinance No. 63, 2<sup>nd</sup> Series  
Effective Date: 11-20-2003

(Sections 5.52 through 5.59, inclusive, reserved for future expansion.)

(Pages 149 through 153 reserved)

**SEC. 5.60. LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.**

**Subd. 1. Number of Licenses.** The Council may issue the number of on-sale liquor licenses authorized by statute or restrict such number from time to time as it may, in its discretion, deem proper. Provided, however, that one such license shall be issued to a Class One restaurant, one such license shall be issued to a Class Two restaurant, and the remaining licenses

shall be issued to undesignated Classes at the Council's discretion.

**Subd. 2. Restaurant Defined.** Notwithstanding other provisions of this Chapter, for the purpose of this Section, a restaurant is defined, as follows:

1. **"Class One Restaurant"** means a restaurant with seating capacity for at least sixty (60) guests and serving sandwiches and light meals (i.e. pizza).

2. **"Class Two Restaurant"** means a restaurant or a hotel/motel with restaurant with seating capacity for at least one hundred (100) guests and which serves at least an evening meal. Such meal shall comprise a meal normally served in a steak house consisting of steak, pork, fowl or seafood with condiments and which is served by waiters/waitresses.

**Subd. 3. Licenses in Connection With Premises of Another.** A liquor license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this Chapter. This Subdivision does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this Chapter.

**Subd. 4. Employment of Minors.** No person under eighteen (18) years of age may sell or serve liquor or wine on licensed premises.

**Subd. 5. Premises Eligible.** On-sale wine licenses shall be granted only to restaurants as defined in Section 5.01. Provided, however, for purposes of this Subdivision, such restaurant shall have appropriate facilities for seating not less than twenty five (25) guests at one time. Notwithstanding the provisions of this Subdivision, an on-sale wine license may be issued, with the approval of the Commissioner, to a licensed bed and breakfast facility authorizing the licensee to furnish wine only to registered guests of the facility.

**Subd. 6. Intoxicating Malt Liquor Sale Without License.** The holder of an on-sale wine license issued pursuant to this Chapter who is also licensed to sell beer at on-sale, and whose gross receipts are at least sixty (60) percent attributable to the sale of food, is authorized to sell intoxicating malt liquor at on-sale without an additional license.

Source: City Code  
Effective Date: 03-15-1992

## **SEC. 5.61. COMMUNITY FESTIVALS.**

**Subd. 1. General Provisions.** A community festival, as defined in this Chapter, shall be conducted only upon application and approval by the Council, under such terms and restrictions set forth in the Resolution approving such application.

**Subd. 2. Council Approval.** The Council, without obligation, may grant permission to a holder of a retail on-sale liquor license to dispense liquor at a community festival held within the City limits. Said authorization shall specify the area in which the liquor shall be dispensed and consumed and shall require that the license holder provide the City with proof of liability insurance as prescribed by Minnesota Statutes, Sec. 340A.409 to cover the event.

**Subd. 3. Procedure.** The applicant shall submit its request and information upon such form as established by the Chief of Police. Upon approval by the Council, the Chief of Police shall investigate the applicant's reputation and standing in the State, and issue a permit upon obtaining results satisfactory to the Chief that the applicant and its promoters have reputations for compliance with the terms of such permit and for intolerance of disorderly conduct on the part of venders and participants.

**Subd. 4. Limits on Number of Permits.** A community festival permit shall not be issued for more than four (4) consecutive days, and no more than two (2) permits may be issued to any applicant for events to be held in any calendar year.

Source: Ordinance No. 33, 2<sup>nd</sup> Series  
Effective Date: 05-30-2002

(Sections 5.62 through 5.69, inclusive, reserved for future expansion.)

(Pages 156 through 160 reserved)

## **SEC. 5.70. MUNICIPAL DISPENSARY.**

**Subd. 1. Establishment.** A Municipal Dispensary is hereby established to be operated within the City for the sale of alcoholic beverages. Such Dispensary shall be at such place or places as the Council shall determine and may be either leased or owned by the City. It shall be in the charge of a person known as the Manager who shall have such assistants as may be necessary. All employees, including the Manager, shall hold their positions at the pleasure of the Council.

**Subd. 2. Dispensary Fund.** A Liquor Dispensary Fund is hereby created into which all revenues received from the operation of the Dispensary shall be paid, and from which all operating expenses shall be paid. Any surplus accumulating in this Fund may, from time to time, be transferred to the General Fund by resolution of the Council, and expended for any municipal purpose.

Source: City Code  
Effective Date: 03-15-1992

(Sections 5.71 through 5.79, inclusive, reserved for future expansion.)

## **SEC. 5.80. CONSUMPTION AND DISPLAY.**

**Subd. 1. Consumption and Display License Required.** It is unlawful for any business establishment or club, not holding an on-sale liquor license to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale, or otherwise dispose of any liquid for the purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to such members, without a license therefore from the City.

### **Subd. 2. Consumption and Display Restrictions and Regulations.**

**A. Eligible Licensees.** If the applicant is otherwise eligible, licenses may be issued only to (1) persons who have not, within five (5) years prior to application, been convicted of a felony or of violating provisions of this Chapter or other law relating to the sale or furnishing of alcoholic beverages; (2) a restaurant; (3) a hotel; (4) a beer licensee; (5) a resort as defined by statute; or, (6) a club or an unincorporated club otherwise meeting the definition of a club, provided, that no license may be issued to a club holding an on-sale liquor license.

**B. Unlawful Act.** It is unlawful to sell liquor on licensed premises.

**C. License Expiration.** In order to coordinate the expiration of a consumption and display license with a State permit, all licenses shall expire on March 31 of each year.

**D. State Permit Required.** Licenses shall be issued only to holders of a consumption and display permit from the Commissioner.

**E. Lockers.** A club to which a license is issued under this Section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.

**F. Hours and Days.** No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 2:00 a.m. and 12:00 noon on Sunday and between 2:00 a.m. and 8:00 a.m. on Monday through Saturday.

Source: Ordinance No. 63, 2<sup>nd</sup> Series  
Effective Date: 11-20-2003

(Sections 5.81 through 5.89, inclusive, reserved for future expansion.)

(Pages 163 through 167 reserved)

## **SEC. 5.90. NUDITY OR OBSCENITY PROHIBITED.**

**Subd. 1. Definitions.** As used in this Section, the following words and terms shall have the meanings stated:

1. **"Nudity"** means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

2. **"Obscene performance"** means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

3. **"Obscenities"** means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

4. **"Sado-masochistic Abuse"** means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

5. **"Sexual conduct"** means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

6. **"Sexual excitement"** means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

**Subd. 2. Unlawful Act.** It is unlawful for any person issued a license provided for in this Chapter to permit upon licensed premises any nudity, obscene performance, or continued use of obscenities by any agent, employee, patron or other person.

Source: City Code  
Effective Date: 03-15-1992

(Sections 5.91 through 5.98, inclusive, reserved for future expansion.)

(Pages 169 through 173 reserved)

**SEC. 5.99. VIOLATION A MISDEMEANOR.** Every person violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

Source: City Code  
Effective Date: 03-15-1992