

## Chapter 3

### ALCOHOLIC BEVERAGES

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## ALCOHOLIC BEVERAGES

### **Division 3. Operation of Retail Establishment**

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**ARTICLE I. IN GENERAL****Secs. 3-1--3-30. Reserved.****ARTICLE II. SALE, CONSUMPTION AND DISPLAY****DIVISION 1. GENERALLY****Sec. 3-31. Provisions of state law adopted.**

Except to the extent the provisions of this article are more restrictive, the provisions of M.S.A. ch. 340A, as amended, regarding the terms, licensing, consumption, sales, hours of sale and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor and 3.2 percent malt liquor are adopted and made a part of this article as if set out in full in this section.

(Ord. No. 2184-00, § 1(13-301), 12-16-2000)

**Sec. 3-32. Definitions.**

The following words, terms and phrases, when used in this article, and in addition to the definitions contained in M.S.A. ch. 340A, as amended, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bona fide club* means an organization for social or business purposes or for intellectual improvement, or for the promotion of sports, where the serving of alcohol is incidental and not the major purpose of the club.

*Brewpub* means an establishment in which malt liquor is brewed or manufactured for sale and consumption on tap on the premises where the malt liquor is brewed or for sale and personal consumption off the brewer's premises.

*Display* means the keeping or storing, or permitting to be kept or stored of an alcoholic beverage which has been poured, dispensed or has had its package seal broken on, in or at any table, booth, bar or other area of a premises licensed under this article which is accessible to the general public, except when the alcoholic beverage is stored in a normal storage area of such licensed premises during nonsale hours.

*Interest* means and includes any pecuniary interest in the ownership, operation, management or profits of a liquor establishment, but does not include bona fide loans; bona fide fixed sum rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business, or selling or leasing merchandise, fixtures or supplies to such establishment; or any interest of five percent or less in any corporation holding a liquor license under this article. A person who receives monies, from time to time, directly or indirectly from a licensee in the absence of a bona fide consideration therefor, excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such retail license. In determining "bona fide" under this definition, the reasonable value of the goods or things received as consideration for the payment of the licensee and all other facts reasonably tending to prove or disprove the existence of any purposeful scheme or arrangement to evade any prohibitions under this article shall be considered.

*Licensed premises* means the premises described in the approved license application as set forth in this article. In the case of a restaurant, club or exclusive liquor store licensed for on-sales of alcoholic beverages and located on a golf course, such term means the entire golf course, except for areas where motor vehicles are regularly parked or operated.

*Place of Worship* means church, synagogue, temple, mosque, or other facility used for religious services.

*Properly designated officer* means and includes the:

- (1) City fire inspector;
- (2) City building official; and
- (3) Health inspectors employed by the county or the state acting in the course of the scope of their employment.

*Sale* and *sell* mean and include all barter and manners or means of furnishing alcoholic beverages.

*School* means a building used for the purpose of elementary or secondary education, which meets all the requirements of compulsory education laws of the State of Minnesota, and not providing residential accommodations.

*Store manager* means a person designated by a license holder under this article, who works on the licensed premises and is in charge of day-to-day liquor sales.

*Restaurant* means an establishment, other than a hotel, where meals are regularly prepared on the premises and served at tables to the general public, and which has a seating capacity for at least 30 guests at one time, and the principal part of the business is the preparation and serving of food.

*Underage person* means a person who is under the legal drinking age as provided by M.S.A. ch. 340A.

(Ord. No. 2184-00, § 1(13-302), 12-16-2000; Ord. No. 2329-07, 6-1-2007; Ord. No. 2359-08, 8-29-2008)

**Cross reference(s)**--Definitions generally, § 1-2.

### **Sec. 3-33. Unlawful acts.**

(a) No person shall consume alcoholic beverages on a licensed premises more than 15 minutes after the hour when a sale of such alcoholic beverages can legally be made.

(b) No person shall possess open containers of alcoholic beverages or consume any alcoholic beverages on public streets, public parking lots or parking lots under the control of a liquor licensee outside the licensed structure or on private property generally open to the public, unless possession or consumption is during a specific event on such property which is approved by the city as provided in this article.

(Ord. No. 2184-00, § 1(3-338), 12-16-2000)

### **Sec. 3-34. Violations.**

The following actions by an applicant or a licensee under this article shall constitute a violation of this section:

- (1) Providing false or misleading statements made on a license application or renewal application, or failure to abide by the commitments, promises or representations made to the city council on a license application.
- (2) Violation of any special conditions under which a license was granted under this article, 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 a controlled substance.

- (4) Creation of a nuisance on a premises licensed under this article or in the surrounding area of such premises.
- (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 such illegal acts to the police.
- (7) Expiration or cancellation of any required insurance under this article, or failure to notify the city within a reasonable time of changes in the term of such insurance or the carriers of such insurance.

(Ord. No. 2184-00, § 1(13-325), 12-16-2000)

**Secs. 3-35--3-55. Reserved.**

**DIVISION 2. LICENSES**

**Sec. 3-56. Required.**

Except as otherwise provided in this article or in M.S.A. ch. 340A, no person shall directly or indirectly deal in, sell, keep for sale or deliver any intoxicating liquor, 3.2 percent malt liquor or wine as part of a commercial transaction without first having received a license to do so as provided in this division; nor shall any private club or public place, directly or indirectly, or upon any pretense or by any device, allow the consumption or display of intoxicating liquor or serve any liquid for the purpose of mixing such liquid with an intoxicating liquor without first obtaining a license from the city as provided in this division.

(Ord. No. 2184-00, § 1(13-303), 12-16-2000)

**Sec. 3-57. Classifications.**

The following types of licenses shall be issued under this division:

- (1) *On-sale intoxicating liquor license.* On-sale intoxicating liquor licenses shall be granted only to hotels, clubs and restaurants. Such license shall be issued to clubs and congressionally chartered veterans' organizations if they have been in existence for at least three years and liquor sales will only be to members and bona fide guests of such club or organization.
- (2) *Off-sale intoxicating liquor license.* Off-sale intoxicating liquor licenses may be issued to an exclusive liquor store, and shall permit off-sale of intoxicating liquor and 3.2 percent malt liquor. (Ord. No. 2359-08, 8-29-08)
- (3) *On-sale Wine licenses.* Wine licenses may be issued, with the approval of the commissioner, only to restaurants having facilities for seating at least 30 people at one time for the sale of wine not exceeding 14 percent alcohol by volume and for consumption on the licensed premises only in conjunction with the sale of food. The holder of a wine license who is also licensed to sell 3.2 percent malt liquor on-sale, and whose gross receipts are at least 60 percent attributable to the sale of food, may also sell intoxicating malt liquor at on-sale without an additional license. A rabbi, priest or minister of a church or other established religious organization may import wine exclusively for sacramental purposes without a license. No license shall be required for the resale of wine by a rabbi, priest, minister or pastor of a duly organized religious organization to worshippers solely for the purpose of practicing religious rites in their homes.

- (4) *On-sale 3.2 percent malt liquor license.* On-sale 3.2 percent malt liquor licenses may be issued to bona fide clubs, restaurants and hotels for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks at retail, provided that no manufacturer or wholesaler of such 3.2 percent malt beverage shall have any ownership, in whole or in part, in the business of any licensee holding an on-sale 3.2 percent malt liquor license. Such license shall permit the licensee to sell 3.2 percent malt liquor for consumption on the premises of the licensee as set forth in such license.
- (5) *Off-sale 3.2 percent malt liquor license.* Off-sale 3.2 percent malt liquor licenses may be issued to general foodstores and drugstores, and shall permit the sale of 3.2 percent malt liquor at retail, in the original package, for consumption off the premises only.
- (6) *On-sale Sunday liquor license.* On-sale Sunday liquor licenses may be issued only to restaurants, clubs or hotels with facilities for serving not less than 30 guests at one time, to which an on-sale intoxicating liquor license has been issued. Such license shall permit the sale of liquor to be consumed on the premises between the hours of 12:00 noon Sunday and 1:00 a.m. on Monday in conjunction with the serving of food. Such license may permit the sale of liquor to be consumed on the premises between the hours of 10:00 a.m. Sunday and 1:00 a.m. on Monday in conjunction with the serving of food, provided that the licensee is in conformance with the Minnesota Clean Air Act (M.S.A. §§ 144.411--144.417), and provided a public hearing is held prior to the issuance of the license. No Sunday license is needed for an on-sale wine license.
- (7) *Temporary on-sale 3.2 malt liquor license.* Temporary on-sale 3.2 percent malt liquor licenses may be issued to clubs or charitable, religious or nonprofit organizations which have been in existence for three years. The license may authorize the on-sale of 3.2 percent malt liquor for consumption on a specific premises for not more than two consecutive days, and no individual organization may be granted such license for more than six days per calendar year. Licenses issued under this subsection are subject to all laws and ordinances governing the sale of intoxicating liquor, except that mandatory liability provisions and M.S.A. §§ 340A.409 and 340A.504, subd. 3(d), do not apply.
- (8) *Temporary on-sale intoxicating liquor license.* Temporary on-sale intoxicating liquor licenses may be issued to clubs, charitable, religious or other nonprofit organizations which have been in existence for at least three years, or to a state-registered political committee, in connection with a social event within the city and sponsored by the licensee. The city shall not issue more than three temporary licenses to any one organization or location during a calendar year, and each such license is limited to not more than four consecutive days. The license may authorize sales on the premises other than that owned or permanently occupied by the licensee. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full year on-sale intoxicating liquor license issued by any municipality. The licenses are subject to the terms, including a license fee, imposed by the issuing municipality. Licenses issued under this subsection are subject to all laws and ordinances governing the sale of intoxicating liquor, except that mandatory liability provisions and M.S.A. §§ 340A.409 and 340A.504, subd. 3(d), do not apply, and those other laws and ordinances which, by their nature, are not applicable. A license approved by the city council under this subsection shall not be valid until it is approved by the commissioner of public safety. No more than three four-day, four three-day or six two-day temporary licenses, in any combination not to exceed 12 days per year, may be issued for the sale of alcoholic beverages to any one organization or registered political committee, or for any one location, within a 12-month period. Not more than one temporary license may be issued to any one organization or registered political committee, or for any one location, within any 30-day period.

- (9) *Club license.* Club licenses may be issued to clubs as provided in M.S.A. § 340A.404, subd. 1. No license shall be issued or renewed to a club which discriminates against members or applicants for membership, or guests of members, on the basis of race.
- (10) *Consumption and display permit.* Consumption and display permits may be issued to a bottle club which complies with the requirements of M.S.A. § 340A.414, and which has obtained a permit from the commissioner of public safety. Consumption and display permits shall not be issued in the city, except to establishments that had been issued such a license on or prior to the effective date of the ordinance from which this division is derived.
- (11) *One-day consumption and display permit.* A nonprofit organization in conjunction with a social activity held within the city and sponsored by that organization may apply for a one-day consumption and display permit. There shall be no sale of intoxicating liquor under such license, nor shall there be a fee charged at a permitted social activity where such fee includes the cost of intoxicating liquor. The applicant for such permit shall complete both state and city forms, and the city shall not issue more than ten one-day consumption and display permits per calendar year.
- (12) *Brewpub off sale malt liquor license.* A brew pub off-sale malt liquor license may be issued, with the approval of the commissioner, to a brewer who holds an on-sale intoxicating liquor or 3.2 percent malt liquor license issued by the city for a restaurant operated in the place of manufacture, subject to the following conditions:
- a. The malt liquor sold off-sale must be produced and packaged on the licensed premises.
  - b. Off-sale of malt liquor shall be limited to the legal hours for off-sale pursuant to section 3-105.
  - c. The malt liquor sold off-sale must be removed from the licensed premises before the applicable off-sale closing time pursuant to section 3-105.
  - d. The malt liquor sold off-sale shall be packaged in 64-ounce containers commonly known as “growlers” or in 750 milliliter bottles and shall have the following requirements for packaging:  
(Ord. No. 2388-10, 8-13-10)
    - 1) The containers shall bear a twist type closure, cork, stopper or plug.
    - 2) At the time of sale, a paper or plastic adhesive band, strip or sleeve shall be applied to the container and extend over the top of the twist type closure, cork, stopper or plug forming a seal that must be broken upon opening of the container or bottle.
    - 3) The adhesive band, strip or sleeve shall bear the name and address of the brewer/licensee selling the malt liquor.

- 4) The containers shall be identified as malt liquor, contain the name of the malt liquor, bear the name and address of the brewer/licensee selling the malt liquor, and the contents in the container packaged as required herein shall be considered intoxicating liquor unless the alcoholic content is labeled as otherwise in accordance with the provisions of Minnesota Rules, part 7515.1100.
  - e. The retail sales for a brewer/licensee at on-sale or off-sale under this subsection may not exceed 3,500 barrels per year, provided that off-sales may not total more than 50 percent of the brewer/licensee's production or 500 barrels, whichever is less.
  - f. A brewer operating a brewpub may hold or have an interest in other retail on-sale licenses, but may not have an ownership interest in whole or in part, or be an officer, director, agent or employee of, any other manufacturer, brewer, importer, or wholesaler or be an affiliate thereof, whether the affiliation is corporate or by management, direction or control. Notwithstanding this prohibition, a brewer licensed under this provision may be an affiliate or subsidiary company of a brewer licensed in Minnesota or elsewhere if that brewer's only manufacture of malt liquor is:
    - 1) As a brewpub as defined herein and limited to the regulations of a brewpub by this chapter;
    - 2) Manufactured in another state for consumption exclusively in a restaurant located in the place of manufacture or brewing; or
    - 3) Manufactured in another state for consumption primarily in a restaurant located in or immediately adjacent to the place of manufacture, if the brewer was licensed subject to the regulations herein on January 1, 1995.
- (13) *Brewer off sale malt liquor license.* A brewer who has a license from the Commissioner of Public Safety to brew 3,500 barrels of malt liquor per year may with the approval of the Commissioner of Public Safety be issued a license by the City for off-sale of malt liquor subject to the following conditions:
- a. The malt liquor sold off-sale must be produced and packaged on the licensed premises.
  - b. Off-sale of malt liquor shall be limited to the legal hours for off-sale pursuant to section 3-105.
  - c. The malt liquor sold off-sale shall be packaged in 64-ounce containers commonly known as “growlers” or in 750 milliliter bottles and shall have the following requirements for packaging:
    - 1) The containers or bottles shall bear a twist type closure, cork, stopper or plug.
    - 2) At the time of sale, a paper or plastic adhesive band, strip or sleeve shall be applied to the container or bottle and extend over the top of the twist type closure, cork, stopper or plug forming a seal that must be broken upon opening of the container or bottle.

- 3) The adhesive band, strip or sleeve shall bear the name and address of the brewer/licensee selling the malt liquor.
- 4) The containers or bottles shall be identified as malt liquor, contain the name of the malt liquor, bear the name and address of the brewer/licensee selling the malt liquor, and the contents in the container packaged as required herein shall be considered intoxicating liquor unless the alcoholic content is labeled as otherwise in accordance with the provisions of Minnesota Rules, part 7515.1100.

(Ord. No. 2184-00, § 1(13-304), 12-16-2000; Ord. No. 2329-07, 6-1-2007; Ord. No. 2359-08, 8-29-2008; Ord. No. 2388-10, 8-13-10)

**Sec. 3-58. Period of issuance.**

Each renewal liquor license shall be issued for a maximum period of one year. Temporary licenses shall expire according to the terms of such license as set forth in section 3-57. Except as otherwise provided in this division, liquor licenses expire on the last day of February each year. Consumption and display permits expire on March 31 of each year.

(Ord. No. 2184-00, § 1(13-305), 12-16-2000)

**Sec. 3-59. Retail license fees.**

(a) *Annual fees.* The annual fee for all licenses shall be set by the city council, by resolution, in amounts no greater than those set forth in M.S.A. ch. 340A.

(b) *Prorated fees.* If a license application under this division is made during the license year, the license shall be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month.

(c) *Investigation fees.* Investigation fees shall be determined by resolution of the city council. Investigation fees are nonrefundable. No investigation fee shall be charged for a renewal application. At any time that an additional investigation is required because of a change in the control of a corporate license, change in manager, change in location or enlargement of the premises, the licensee shall pay an additional investigation fee. Where a new application is filed as a result of incorporation or a change of name by an existing licensee and the ownership control and interest in the license are unchanged, no additional investigation fee will be required.

(d) *Payment.* All fees required to be paid in connection with a license under this section shall be paid at the time of the filing of the license application. License and permit fees shall be paid into the general fund.

(Ord. No. 2184-00, § 1(13-306), 12-16-2000)

**Sec. 3-60. Fee refunds.**

License fees under this division shall be refunded if an application for a liquor license is denied by the city council, except where rejection is for a willful misstatement in the license application. No part of the fee paid for any issued license shall be refunded except as authorized under M.S.A. § 340A.408, subd. 5, upon application to the city clerk within 20 days of the occurrence of any event provided under M.S.A. § 340A.408, subd. 5.

(Ord. No. 2184-00, § 1(13-307), 12-16-2000)

**Sec. 3-61. Liability insurance.**

Except as stated otherwise in this division, all applicants for a liquor license or consumption and display permit must, as a condition to the issuance of such license or permit, demonstrate to the city proof of financial responsibility with regard to liability imposed by M.S.A. § 340A.801, by providing proof of liquor liability and workers' compensation insurance coverage.

- (1) *Liability.* Proof of financial responsibility shall be given by filing one of the following:
  - a. A certificate stating that there is in effect for the license period an insurance policy issued by an insurer required to be licensed under M.S.A. 60A.07, subd. 4, or by an insurer recognized as an eligible surplus lines carrier pursuant to M.S.A. § 60A.206, or pool providing at least the insurance coverage amounts as required by M.S.A. § 340A.409.
  - b. A certificate of the commissioner of finance stating that the licensee has deposited with the commissioner of finance cash or securities which may legally be purchased by savings banks or for trust funds having a market value in an amount required by M.S.A. § 340A.409.

(Ord. No. 2359-08, 8-29-08)

- (2) *Dram shop.* An annual aggregate policy limit for dram shop insurance of not less than the amounts as required by M.S.A. § 340A.409 may be included in the policy provisions.

(Ord. No. 2359-08, 8-29-08)

- (3) *Workers' compensation insurance.* The policy limits for workers' compensation insurance shall be as provided for by state law.

- (4) *Additional requirements.* For purposes of subsection (1) of this section, the city shall be named as an additional insured on the liability insurance policy. The liability insurance required by subsection (1) of this section must provide that such liability insurance may not be canceled for the following:
- a. Any cause, except for nonpayment of premium, by either the insured or the insurer unless the canceling party has first given 30 days' notice in writing to the city of their intent to cancel the policy; and
  - b. Nonpayment of the premium unless the canceling party has first given ten days' notice in writing to the city of their intent to cancel the policy.

The insurance limits outlined in this section shall be effective for license renewals and immediately on any new license applications.

(Ord. No. 2184-00, § 1(13-308), 12-16-2000; Ord. No. 2359-08, 8-29-2008)

**Sec. 3-62. Application.**

An applicant for a license under this division shall complete the application form provided by the city clerk. The city clerk may waive completion of any part of the application form that is inappropriate or unnecessary.

(Ord. No. 2184-00, § 1(13-309), 12-16-2000)

**Sec. 3-63. Execution of application.**

If the application for a license under this division is by an individual, it shall be signed and sworn to by such person; if by a corporation, by an officer of such corporation; if by a partnership, by one of the partners; and if by an incorporated association, by the operating officer or managing officer of the incorporated association. If the applicant is a partnership, the application, license and insurance policy shall be made and issued in the name of all partners. It shall be unlawful to make any false statement in an application.

(Ord. No. 2184-00, § 1(13-310), 12-16-2000)

**Sec. 3-64. Renewal application.**

(a) Applications for the renewal of an existing liquor license shall be made at least 45 days prior to the date of the expiration of the license, and shall state that everything in the prior application remains true and correct except as otherwise indicated on the renewal application.

(b) Renewal applications for an on-sale license for a restaurant shall include a certified public accountant's statement showing total sales, food sales, liquor sales and percentage of total sales of the restaurant for the previous year.

(Ord. No. 2184-00, § 1(13-311), 12-16-2000)

**Sec. 3-65. Investigations.**

(a) At the time of making an initial application, renewal application, or request for approval for a new manager, the applicant shall, in writing, authorize the city police department to investigate all facts set out in the application and do a personal background and felony criminal record check on the applicant and store manager. The applicant shall further authorize the police department to release information received from such investigation to the city council.

(b) If the city council denies the applicant's request for a license due to the applicant's prior conviction of a crime, the city council shall notify the applicant of the grounds and reasons for the denial; the applicable complaint and grievance procedure as set forth in M.S.A. § 364.06; the earliest date the applicant may reapply for a liquor license; and that all competent evidence of rehabilitation will be considered upon reapplication.

(Ord. No. 2184-00, § 1(13-312), 12-16-2000)

**Sec. 3-66. Hearing required for new licenses.**

A public hearing for the issuance of a license under this division for a new premises, or for a different licensee at the same premises, shall be preceded by one week's published notice. A public hearing is not required for temporary license applications.

(Ord. No. 2184-00, § 1(13-313), 12-16-2000)

**Sec. 3-67. Information considered for license approval.**

In determining whether a new or renewal license under this division shall be granted, the city council shall consider the following in addition to conformity with state statutes and city ordinances:

- (1) The investigative and staff report submitted by the police department and city clerk;
- (2) Information received through the public hearing process;
- (3) Whether the applicant has or will take affirmative action to minimize public safety problems commonly associated with on-sale liquor establishments, including, but not limited to, driving while intoxicated (DWI) drivers, illegal sale to minors, disturbing the peace, etc.;
- (4) The license application and any other relevant information.

(Ord. No. 2184-00, § 1(13-314), 12-16-2000)

**Sec. 3-68. Granting and transfer of license; building under construction; zoning requirements met; death of licensee.**

(a) *Applicant and premises.* A license under this division shall be issued to the applicant only. Each license shall be issued only for the exact rooms and square footage described in the application. A license is 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. Except as otherwise provided in this article, no license may be transferred to another person or another premises without the approval of the city council.

(b) *Building under construction.* When a license is granted for a premises where the building is under construction or otherwise not ready for occupancy, the city clerk shall not issue the license until notified by the building official that the building is ready for occupancy.

(c) *Zoning requirements met.* No license shall be granted until all applicable zoning requirements are met or until all conditions for approval of the use have been satisfied.

(d) *Death of licensee.* In the event of the death of a person holding a liquor license, the personal representative of such person shall be allowed to continue to operate the business within the terms of the license for a period not to exceed 90 days after the death of the licensee.

(Ord. No. 2184-00, § 1(13-315), 12-16-2000)

### **Sec. 3-69. Corporations, partnerships or associations.**

(a) All corporations, partnerships and associations licensed under this division must designate a store manager. The store manager must be a person working full-time at the licensed premises who is in charge of day-to-day liquor sales.

(b) Licenses under this division issued to corporations shall be valid only as long as there is no change in the officers or ownership interest of the corporation, unless such change is approved by the city council. Such requirement does not apply to corporations whose stock is traded on the New York or American Stock Exchange.

(c) Licenses under this division issued to associations or partnerships shall be valid only as long as there is no change in the partnership or association, unless such change is approved by the city council.

(d) Corporations holding a license under this division shall submit written notice to the city clerk of any change in store managers prior to the effective date of such change. The written notice shall designate the new store manager. The new store manager shall be subject to the investigation as set forth in section 3-65.

(e) Corporations, partnerships or associations holding a license under this division shall submit written notice to the city clerk of any changes as set forth in this division on or before 30 days prior to the effective date of any such change. Notwithstanding the definition of "interest," as defined in section 3-32, in the case of a corporation, the licensee shall notify the city clerk when a person not listed in the application acquires an interest that, when combined with that of a spouse, parent, brother, sister or child, exceeds five percent, and shall give all information about such person as is required of a person pursuant to the provisions of this division.

(f) The designation of a new store manager shall not cause a corporation's liquor license to become invalid before a decision is rendered by the city manager or designee, provided proper notice and application are made by the applicant of the change in the store manager. A proposed new store manager shall be referred to as the interim store manager. If an interim store manager is rejected by the city manager or designee, the corporation shall designate another interim store manager and make the required application within 15 days of the decision by the city manager or designee. In any event, a corporation shall be limited to two successive interim store managers.

(Ord. No. 2184-00, § 1(13-316), 12-16-2000)

**Sec. 3-70. Ineligibility.**

(a) No license under this division shall be issued to or held by any person who:

- (1) Is made ineligible by state law;
- (2) Is under 21 years of age;
- (3) Is not a citizen of the United States or a resident alien;
- (4) Has had a liquor license revoked within five years of the license application, or 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 corporation licensee, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested;
- (5) Is not of good moral character and repute;
- (6) Has a direct or indirect interest in a manufacturer, brewer or wholesaler; or
- (7) Within five years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution or possession for sale or distribution of an alcoholic beverage, and who cannot show competent evidence under M.S.A. § 364.03 of sufficient rehabilitation and present fitness to perform the duties of a licensee.

(b) No liquor license shall be granted to a corporation that does not have a store manager.

(c) No liquor license shall be granted 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.

(d) A liquor license will not be renewed if, in the case of an individual, the licensee is not a resident of this state at the time of the date for renewal; if, in the case of a partnership, the managing partner is not a resident of this state at the time of the renewal; or in the case of a corporation, if the store manager is not a resident of this state at the time of the date of renewal. The time for establishing residency within this state may, for good cause, be extended by the city council.

(e) No liquor license shall be granted for operation on any premises on which state, city or county taxes, assessments or other financial claims of the state, city or county are delinquent and unpaid.

(f) No liquor license shall be issued to an applicant unless the applicant is the actual owner or proprietor of the proposed licensed premises.

(g) No on-sale intoxicating liquor license shall be issued unless at least 50 percent of the gross receipts of the establishment will be attributable to the sale of food. This requirement shall be regulated as follows:

- (1) Each on-sale intoxicating liquor licensee shall have the continuing obligation to have at least 50 percent of gross receipts from the establishment during the preceding business year attributable to the sale of food.

- (2) In the case of a new restaurant, the applicant must make a bona fide estimation that at least 50 percent of the gross receipts from the sale of food and beverages of the establishment during its first year of business will be attributable to the sale of food.
- (3) For the purpose of this section, the term "establishment" shall include the food and beverage portion of a multiservice establishment. Financial records for the food and beverage portion must be maintained separately from the records of the remainder of the establishment.
- (4) For the purpose of this section, the term "sale of food" shall include gross receipts attributable to the sale of food items, soft drinks and nonalcoholic beverages. It shall not include any portion of gross receipts attributable to the nonalcoholic components of plain or mixed alcoholic beverages, such as ice, soft drink mixes or other mixes.
- (5) The city may require the production of such documents or information, including, but not limited to, books, records, audited financial statements or pro forma financial statements as it deems necessary or convenient to enforce the provisions of this section. The city may also obtain its own audit or review of such documents or information, and all licensees shall cooperate with such a review, including prompt production of requested records.
- (6) In addition to other remedies that it may have available, the city may place the license of any on-sale intoxicating liquor licensee on probationary status for up to one year, when the sale of food is reported, or found to be, less than 50 percent of gross receipts for any business year. During the probationary period, the licensee shall prepare any plans and reports, participate in any required meetings and take other action that the city may require to increase the sale of food.

(Ord. No. 2184-00, § 1(13-317), 12-16-2000)

**Sec. 3-71. Conditions of approval.**

At the time a license under this division is issued or a consumption and display permit is approved, the city council may attach special conditions to the approval of such license or permit based upon the nature of the business, the location of the business and verified complaints, if any, to protect the health, safety, welfare and quietude of the city, and ensure harmony with the location where the business is located. Violation of any of the conditions shall be grounds for revocation of the license.

(Ord. No. 2184-00, § 1(13-318), 12-16-2000)

**Sec. 3-72. Restriction of number of licenses issued.**

The city council may, by resolution, restrict the number of any type of license issued under this division within designated areas or zoning districts within the city.

(Ord. No. 2184-00, § 1(13-319), 12-16-2000)

**Sec. 3-73. Revocation, suspension and/or civil fine.**

The city council may suspend for up to 60 days or revoke any liquor license or permit, or impose a civil fine of up to \$2,000.00 for each violation, or impose any combination of these sanctions, as provided in M.S.A. § 340A.415, for violation of any provision or condition of this article, or any other city ordinance or state law relating to alcoholic beverages.

(Ord. No. 2184-00, § 1(13-322), 12-16-2000)

**Sec. 3-74. Notice of hearing.**

Revocation or suspension of a license under this division by the city council shall be preceded by a public hearing conducted in accordance with M.S.A. §§ 14.57--14.70. The city council may appoint a hearing examiner or may conduct a hearing itself. A notice of such hearing shall be given to the violator at least 20 days prior to the hearing, and shall include the following:

- (1) Notice of the time and place of the hearing;
- (2) The nature of the charges against the licensee; and
- (3) The penalty that the city may impose for the violation.

(Ord. No. 2184-00, § 1(13-323), 12-16-2000)

**Sec. 3-75. Administrative penalty.**

Prior to expiration of the 20-day notice period as set forth in section 3-74, the licensee may stipulate to both the violation identified in the notice and an administrative penalty agreed to by the city manager, in lieu of a hearing before the city council. The stipulation must be approved by the city council. If such stipulation is approved by the city council, the administrative penalty proposed by the stipulation must be completed within 30 days. If the city council does not approve the stipulation, the city council may impose penalties as provided in section 3-78, following a hearing as set forth in section 3-74.

(Ord. No. 2184-00, § 1(13-324), 12-16-2000; Ord. No. 2329-07, 6-1-2007)

**Sec. 3-76. Inactive license.**

The city council may revoke the intoxicating liquor or 3.2 percent malt liquor license of any establishment granted such license that is not under construction and exhibiting satisfactory progress toward completion of such construction within six months from the issuance of such license, or any establishment that ceases operation 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 city council may revoke the license.

(Ord. No. 2184-00, § 1(13-326), 12-16-2000)

**Sec. 3-77. Posting license.**

All liquor licensees shall have their license posted in a conspicuous place that is visible to the public in the licensed establishment at all times.

(Ord. No. 2184-00, § 1(13-330), 12-16-2000)

**Secs. 3-78. 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. The Council may deviate either upward or downward from the presumptive penalty where the Council finds that there exist substantial reasons making it 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) Presumed penalties for Violations: The presumed penalties for violations are as follows (unless specified, numbers below indicate consecutive business days' suspension):

<i>Type of Violation</i>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation within 3 yrs</b>	<b>3<sup>rd</sup> Violation within 3 yrs</b>	<b>4<sup>th</sup> Violation within 3 yrs</b>
1. Commission of a felony related to the licensed activity.	Revocation	N/A	N/A	N/A
2. Sale of alcoholic beverages while license is under suspension.	Revocation	N/A	N/A	N/A
3. Sale of alcoholic beverages to underage person.	\$2,000	\$2,000 and 1 day	\$2,000 and 3 days	Revocation
4. Sale of alcoholic beverages to obviously intoxicated person.	3 days	6 days	18 days	Revocation
5. After hours sale of alcoholic beverages.	3 days	6 days	18 days	Revocation
6. After hours display or consumption of alcoholic beverages.	2 days	4 days	12 days	Revocation
7. Refusal to allow government inspectors or Police admission to inspect premises.	5 days	15 days	Revocation	N/A
8. Illegal gambling on premises.	3 days	6 days	18 days	Revocation
9. Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages.	2 days	4 days	12 days	Revocation
10. Sale of intoxicating liquor where only license for 3.2 percent malt liquor	3 days	6 days	18 days	Revocation

The penalty for violations without a presumptive penalty shall be determined by the City Council.

- (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 as stated in subsection (B) above. 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 Manager and licensee agree in writing to add the violation to the first appearance. The same procedure applies to the 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 elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this Section.
- (f) Computation of Violations: Multiple violations are computed by checking the time period of the three (3) years immediately prior to the date of the most current violation.
- (g) Other Penalties: Nothing in this Section shall restrict or limit the authority of the Council to suspend up to sixty (60) days, revoke the license, impose a civil fee not to exceed two thousand dollars (\$2,000.00), to impose conditions, 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 in this Chapter.
- (h) In addition to civil penalties, every licensee that has been found in violation of this Chapter must enter into and complete a training program approved by the City's Police Department.

(Ord. No. 2329-07, 6-1-07)

**Secs. 3-79--3-100. Reserved.**

### **DIVISION 3. OPERATION OF RETAIL ESTABLISHMENT**

#### **Sec. 3-101. Nudity on licensed premises.**

No liquor licensee shall:

- (1) Employ or use any person in the sale or service of alcoholic beverages or as employees for the purpose of staging any nature of lingerie show in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks or genitals;
- (2) Employ or use the services of any hostess while such hostess is unclothed or in such attire, costume or clothing as is described in subsection (1) of this section;
- (3) Encourage or permit any person on the licensed premises to touch, caress or fondle the breast, buttocks, anus or genitals of any other person;
- (4) Permit any employee or person to wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof;
- (5) Permit any person to perform acts, or acts which simulate:
  - a. With or upon another person, sexual intercourse, sodomy, oral copulation, flagellation or any sexual acts which are prohibited by law;
  - b. Masturbation or bestiality;

- c. With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breast;
  - d. The displaying of the pubic hair, anus, genitals or female breasts below the top of the areola.
- (6) Permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities set forth in subsection (5) of this section;
  - (7) Permit any person to remain in or upon the licensed premises who exposes to public view any portion of their genitals or anus;
  - (8) Permit the showing of any film, still pictures, electronic reproduction or other visual reproductions that are deemed obscene or pornographic pursuant to state or federal law. Nothing in this section prohibits a licensed premise from the screening of any film or digital projection of motion pictures rated by the Motion Picture Association of America. (Ord. No. 2373-09, 6-26-09)
  - (9) Permit any type of lingerie show or similar exhibition in any portion of a licensed establishment other than on a raised stage a suitable distance apart from the area generally reserved for the seating of patrons.

(Ord. No. 2184-00, § 1(13-320), 12-16-2000; Ord. No. 2373-09, 06-26-2009)

**Sec. 3-102. Compliance checks.**

(a) From time to time, the city shall conduct compliance checks on established licensed premises under this article. Such compliance checks may involve, but are not limited to, engaging underage persons to enter the licensed premises to attempt to purchase alcohol and alcohol-related products.

(b) If underage persons are used for compliance checks as set forth in subsection (a) of this section, they shall not be guilty of unlawful possession of alcohol when such items are obtained as a part of a compliance check. No underage person used in compliance checks shall attempt to use a false identification misrepresenting such person's age, and all underage persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee or his employees, and shall produce any identification for which such underage person is asked.

(Ord. No. 2184-00, § 1(13-321), 12-16-2000)

**Sec. 3-103. Right of inspection.**

(a) Any city-designated police officer, firefighter or health officer displaying proper identification shall have the unqualified right to enter, inspect and search the premises of any licensee under this article without a warrant, during business hours or when owners, managers or other employees are located on the licensed premises.

(b) The business records of the licensee, including federal and state tax returns, shall be available for inspection by the city, at all reasonable times, upon written request.

(Ord. No. 2184-00, § 1(13-327), 12-16-2000)

(c) Proof of Age. No liquor licensee shall sell or allow consumption of alcoholic beverages without first obtaining proof of age. Proof of age for purchasing or consuming alcoholic beverages may be established only by one of the following:

- (1) 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;

- (2) a valid military identification card issued by the United States Department of Defense;
- (3) a valid passport issued by the United States; or
- (4) in the case of a foreign national, by a valid passport.

(Ord. No. 2329-07, 6-1-07)

**Sec. 3-104. Responsibility of licensee.**

(a) *Orderly conduct.* Every licensee under this article shall be responsible for the conduct on the licensee's place of business, including conduct and activity attributable to the business on property owned or controlled by the licensee. Every licensee shall also cooperate with the city in controlling activity attributable to the business in surrounding areas.

(b) *Acts of employees.* The act of any employee in violation of this article on the licensed premises is deemed the act of the licensee as well, and the licensee shall be equally liable with the employee for all penalties provided by this article and other laws.

(Ord. No. 2184-00, § 1(13-328), 12-16-2000)

**Sec. 3-105. Hours of operation.**

(a) Hours and days of sale of alcoholic beverages shall be as allowed by state law. There shall be no consumption or display of intoxicating or 3.2 percent malt liquor during the hours that sale is prohibited by state law.

(b) An off-sale liquor licensee shall not allow nonemployees on the business premises from 15 minutes after the sale of intoxicating liquor is prohibited until such sale is again permitted except as otherwise provided in this subsection. On-sale intoxicating liquor licensees and on-sale 3.2 percent malt liquor licensees may permit nonemployees on the premises during its normal hours of operation when the sale of intoxicating and 3.2 percent malt liquor is prohibited, provided that there is no sale, consumption or display of intoxicating or 3.2 percent malt liquor during the hours in which the sale or consumption of liquor is prohibited by state law.

(Ord. No. 2184-00, § 1(13-329), 12-16-2000; Ord. No. 2329-07, 6-1-2007)

**Sec. 3-106. Changes to building.**

Proposed enlargement or substantial alteration which changes the character of the licensed establishment, or extension of a premises previously licensed shall be reported to the city clerk at or before the time application is made for a building permit for any such change. The enlargement, substantial alteration or extension of the licensed establishment shall not be allowed unless the city council approves an amendment to the liquor license.

(Ord. No. 2184-00, § 1(13-331), 12-16-2000)

**Sec. 3-107. Restrictions involving underage persons.**

- (a) No licensee under this article or such licensee's agent or employee shall:
  - (1) Serve or dispense upon the licensed premises any intoxicating liquor or 3.2 percent malt liquor to a person under the legal drinking age;

- (2) Permit any person under the legal drinking age to be furnished or allowed to consume any intoxicating liquor or 3.2 percent malt liquor on the licensed premises; or
- (3) Permit any person under the legal drinking age to be delivered any intoxicating liquor or 3.2 percent malt liquor.

(b) No person under the legal drinking age shall enter a licensed premises for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of 18 years to enter licensed premises to:

- (1) Perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute;
- (2) Consume meals; and
- (3) Attend social functions that are held in a portion of the establishment where liquor is not sold.

(c) No person under the legal drinking age shall possess any intoxicating liquor or 3.2 percent malt liquor. Possession of an alcoholic beverage by a person under the legal drinking age at a place other than the household of such person's parent or guardian is prima facie evidence of intent to consume such alcoholic beverage at a place other than the household of the person's parent or guardian.

(d) No underage person shall misrepresent their age for the purpose of obtaining intoxicating liquor or 3.2 percent malt liquor; nor shall such person enter any premises licensed for the retail sale of intoxicating liquor or 3.2 percent malt liquor for the purpose of purchasing or being served or delivered any alcoholic beverage; nor shall any such person purchase, attempt to purchase, consume or have another person purchase for the underage person any intoxicating liquor or 3.2 percent malt liquor.

(e) Any person shall, upon demand of the licensee, the licensee's employee or agent, produce and permit to be examined one form of identification as provided under M.S.A. § 340A.503, subd. 6. In every prosecution for a violation of the provisions of this section relating to the sale or furnishing of intoxicating liquor or 3.2 percent malt liquor to underage persons, and in every proceeding before the city council with respect thereto, the fact that the underage person involved has obtained and presented to the licensee, the licensee's employee or agent a driver's license, passport or identification card from which it appears that such person was not an underage person and was regularly issued such identification card shall be prima facie evidence that the licensee, the licensee's agent or employee is not guilty of a violation of such a provision and shall be conclusive evidence that a violation, if one has occurred, was not willful or intentional.

(Ord. No. 2184-00, § 1(13-332), 12-16-2000)

### **Sec. 3-108. Employment of persons under 18 years of age.**

No person under 18 years of age may serve or sell intoxicating liquor in a licensed retail intoxicating liquor establishment.

(Ord. No. 2184-00, § 1(13-333), 12-16-2000)

**Sec. 3-109. Sales to obviously intoxicated persons.**

No licensee under this article or such licensee's agent or employee shall sell, give or furnish alcoholic beverages to an obviously intoxicated person.

(Ord. No. 2184-00, § 1(13-334), 12-16-2000)

**Sec. 3-110. Prohibited conditions.**

(a) *Prostitution.* No licensee under this article shall knowingly permit the licensed premises or any room in the licensed premises or any adjoining building directly under the licensee's control to be used by prostitutes.

(b) *Controlled substances.* No licensee shall knowingly permit the sale, possession or consumption of controlled substances on the licensed premises in violation of state law.

(c) *Gambling.* Gambling and gambling devices are not permitted on licensed premises. State lottery tickets may be purchased and sold within licensed premises as authorized by the director of the state lottery.

(d) Interior and exterior bars, grills, mesh or similar obstructions, whether permanently or temporarily affixed, shall not cover any exterior door or more than ten percent of any individual window or contiguous window area.

(e) The total area of signs in windows shall not exceed 50% of the total area of windows fronting a street. Signs shall not be displayed on doors, and doors shall not be included in the window area for purposes of determining the 50% maximum coverage.

(f) No initial license to sell intoxicating liquor may be issued within 300 feet of a school or place of worship as measured from the property line of the site to receive the proposed license to property line of the school or place of worship.

(Ord. No. 2184-00, 12-16-2000, Ord. No. 2329-07, 6-1-2007)

**Sec. 3-111. Ownership of equipment.**

No equipment or fixture in any licensed premises under this article shall be owned in whole or in part by any manufacturer or distiller, except as expressly permitted by state law.

(Ord. No. 2184-00, § 1(13-336), 12-16-2000)

**Sec. 3-112. Samples.**

Off-sale licensees may provide samples of malt liquor, wine, liqueurs, cordials and distilled spirits which the licensee currently has in stock and is offering for sale to the general public without obtaining an additional license, provided the wine, liqueur, cordial and distilled spirits samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity of less than 100 milliliters of malt liquor per variety per customer, 50 milliliters of wine per variety per customer, 25 milliliters of liqueur or cordial, and 15 milliliters of distilled spirits per variety per customer.

(Ord. No. 2184-00, § 1(13-337), 12-16-2000)