

**CHAPTER 4. ALCOHOLIC BEVERAGES**

**SECTION 400 - LICENSING AND REGULATING THE SALE AND CONSUMPTION OF INTOXICATING LIQUOR**

Section 400.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch. § 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full.

Section 400.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. § 340A, as it may be amended from time to time.

Section 400.03 DEFINITIONS.

In addition to the definitions contained in M.S. § 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

LICENSED LIQUOR ESTABLISHMENT: an establishment that is licensed for on-sale liquor and thirty percent (30%) or more of its gross sales are derived from the serving of food, prepared and consumed on the premises. Where meals are regularly prepared on the premises, has a seating capacity of at least 30 guests, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. A licensed liquor establishment must also have at a minimum 25 different food items on the menu.

RESTAURANT: An eating facility, under the control of a single proprietor or manager, where meals are regularly

prepared on the premises, has a seating capacity of at least 30 guests, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location, and where sixty percent (60%) or more of its gross sales are derived from the serving of food, prepared and consumed on the premises. An establishment must also have a minimum of 25 different food items on the menu.

Section 400.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

(A) The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this chapter. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this chapter, as set forth in this section, reflects the prevailing community standards of the city.

(B) It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a nontransparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this ordinance or the imposition of a civil penalty under the provisions of Section 400.29(B).

Section 400.05 CONSUMPTION IN PUBLIC PLACES.

Except as otherwise provided for in Section 703.04, subdivision 2 of this Code, no person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this ordinance or where the consumption and display of liquor is lawfully permitted.

Section 400.06 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. The Council is not required to issue the full number of licenses that it has available.

Section 400.07 TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance.

All licenses shall expire on the same date. Temporary licenses expire according to their terms.

Section 400.08 KINDS OF LIQUOR LICENSES.

The Council may issue the following licenses:

(A) 3.2 percent malt liquor on-sale licenses, which may be issued only to restaurants, clubs and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

(B) 3.2 percent malt liquor off-sale license.

(C) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores. The fee for an off-sale intoxicating liquor license established by the Council under Section 400.09 shall not exceed \$100 or a greater amount which may be permitted by M.S. § 340A.408, subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this ordinance: restaurants, clubs, congressionally chartered veterans organizations, or licensed liquor establishment where thirty percent (30%) or more of its gross sales are derived from the serving of food, prepared and consumed on the premises, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 400.09 of this ordinance shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time.

(F) Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in Section 400.03 of this ordinance, club, bowling center, or licensed liquor establishment which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food, meaning thirty percent (30%) or more of its gross sales are derived from servicing of food, prepared and consumed on the premises. The maximum fee for this license, which shall be established by the Council under the provisions of Section 400.09 of this ordinance, shall not exceed \$200, or the maximum amount provided by M.S. § 340A.504, subd. 3c, as it may be amended from time to time.

(G) Combination on-sale/off-sale intoxicating liquor licenses.

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 30 guests at one time and meet the criteria of M.S. §340A.404, subd. 5, as it may be

amended from time to time, and which meet the definition of restaurant in Section 400.03 of this ordinance. The fee for an on-sale wine license established by the Council under the provisions of Section 400.09 of this ordinance shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

(J) One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

Section 400.09 LICENSE FEES; PRO RATA.

(A) No license or other fee established by the city shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.

(B) The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a monthly basis, with any unexpired fraction of a month counted as one month.

(D) All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, subd. 5, as it may be amended from time to time.

Section 400.10. COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

Section 400.11 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. If the application for a license under this division is by an individual, it shall be signed 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. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall as a minimum provide \$300,000 per occurrence and \$300,000 aggregate. Operation of a business which is required to be licensed by

this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

Section 400.12 DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

Section 400.13 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

Section 400.14 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

SECTION 400.15 INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant as provided in section 271 of the City code. The applicant shall pay with the application an investigation fee of \$1,000 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$1,000, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an

on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation of the applicant as provided in Section 271 of the City code. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$1,000, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

Section 400.16 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. The City Council shall conduct a public hearing on the application within a reasonable period following receipt of a complete application and completion of the investigation. A notice of the date, time, place and purpose of the hearing shall be published once in the official newspaper not less than ten days before the date of the hearing. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

Section 400.17 RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.

(D) No license shall be issued for any place or any business ineligible for a license under state law.

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, the corporation must designate a store manager, who is a resident of the state. The store manager must be a person working full-time at the licensed premises who is in charge of day-to day liquor sales. The store manager and all shareholder's who hold an interest in the corporation in excess of five (5) percent are subject to investigation pursuant to this chapter. The designation of a new store manager shall not cause a corporation's liquor license to become invalid, provided proper notice and application are made by the applicant of the change in the store manager.

(F) No license shall be granted within 300 feet of any school or house of worship. The distance is to be measured from the closest side of the house of worship to the closest side of the structure on the premises within which liquor is to be sold.

#### Section 400.18 CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

(A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale or off-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

(B) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and

order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(C) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

(E) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.

Section 400.19 HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

(B) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premise more than 30 minutes after the time when a sale can legally occur.

(C) No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

(D) No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license.

Section 400.20 MINORS ON PREMISES.

(A) No person under the age of eighteen (18) shall serve or sell liquor or wine.

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

Section 400.21 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. §340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

Section 400.22 SUSPENSION AND REVOCATION.

(A) The Council may either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of Section 400.04 of this chapter, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:

(a) For the second violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.

(b) For the third violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c) For the fourth violation within any three-year period, the license shall be revoked.

(3) The Council shall select the day or days during which the license will be suspended.

(C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

(D) The provisions of Section 400.29 pertaining to penalties may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

**SECTION 400.23 ULTIMATE FIGHTING PROHIBITED**

**(A) Definition.** Ultimate fighting shall mean any activity, regardless of how named or described, or any other form of entertainment, where the primary practice involves individuals engaged in physical contact by striking or touching an opponent with hands, head, feet, or body. This shall include, but not be limited to any contest or event where kicking, punching, martial arts, or submission holds are permitted. Officially sanctioned matches regulated by the Minnesota Boxing Commission, wrestling and team sports in which physical contact is incidental to the primary purpose of the game, including, but not limited to football, basketball, volleyball, soccer, baseball, and softball are not included among activities prohibited by this section. Martial arts training or contests governed and sponsored by schools of martial arts are also not included among activities prohibited by this section.

**(B) No License.** No licensee shall permit, promote, or allow participation in ultimate fighting in any licensed establishment or any adjoining property owned or leased by licensee.

**(C) Violations; penalties.** A violation of this section is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or the imposition of a civil penalty under the provisions of this Ordinance.

**SECTIONS 400.24 TO 400.28 ARE RESERVED FOR FUTURE USE**

Section 400.29 PENALTIES.

(A) Any person violating the provisions of this chapter or M.S. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Ch. 340A, as it may be amended from time to time, and of this chapter. Prior to the imposition of the civil penalty, a notice of hearing before the Council shall be given to the licensee at least twenty (20) days prior to the hearing, and shall include the following:

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

Prior to the expiration of the twenty (20) day notice, the licensee may stipulate to both the violation identified in the notice and the civil penalty, in lieu of a hearing before the Council. The stipulation must be approved by the City Council. If such stipulation is approved by the Council, the civil penalty proposed by the stipulation must be paid within fourteen (14) days. If the Council does not approve the stipulation, the Council may impose civil penalties as provided in this section. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:

- (1) For the first violation within any three-year period, \$1,000.
- (2) For the second violation within any three-year period, \$1,500.
- (3) For the third and subsequent violations within any three-year period, \$2,000.

(C) The term "violation" as used in Section 400.22 includes any and all violations of the provisions in this section, or of M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

Section 400.30 EFFECTIVE DATE

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the

ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.