

## CHAPTER 8 - LIQUOR

### 8.01 SALE AND CONSUMPTION OF INTOXICATING LIQUOR, 3.2 PERCENT MALT LIQUOR AND WINE.

1. Adoption of State Law. Except as otherwise modified, the provisions of Minnesota Statutes, Chapter 340A, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor, 3.2 percent malt liquor, and wine are hereby adopted by reference and are made a part of this Chapter as if set out in full. The City Council is authorized by Minnesota Statutes Section 340A.509 to impose, and has imposed in this Chapter, additional restrictions and regulations on the sale of and possession of alcoholic beverages within its limits beyond those contained in Chapter 340A. Whenever there is an inconsistency between the provisions of Minnesota Statutes, Chapter 340A and the provisions of this Chapter, the more restrictive governs.
2. Definitions. In addition to the definitions set forth in Minnesota Statutes, Chapter 340A, the following terms are defined for the purposes of this Chapter:
  - A. “Liquor” means both intoxicating liquor and 3.2 percent malt liquor.
  - B. “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 thirty (30) guests.
3. License Required. It shall be unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of alcoholic beverages as part of a commercial transaction within the City without first having obtained the appropriate license or permit from the City.
4. Types of Licenses.
  - A. 3.2 Percent Malt Liquor Licenses.
    - i. On-Sale Licenses. On-sale 3.2 percent malt liquor licenses may only be issued to drug stores, restaurants, hotels, clubs, bowling centers, golf courses, and establishments used

exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

All retail 3.2 percent malt liquor licenses shall be issued for one year, except that for the purpose of coordinating the time of expiration of licenses in general, licenses may be issued for a shorter time, in which case a pro rata license fee will be charged.

- ii. Off-sale Licenses. Off-sale 3.2 percent malt liquor licenses may be issued to general food stores and gasoline service stations where non-alcoholic beverages are also sold.
- iii. Temporary Licenses. A club or charitable, religious, or non-profit organization may be issued a temporary on-sale license for the sale of 3.2 percent malt liquor. The City Council shall exercise its discretion in issuing a temporary license that authorizes the sale of 3.2 percent malt liquor in any school or school building.
- iv. Exemption: Intoxicating Liquors On-Sale Licenses. Any person licensed to sell intoxicating liquor at on-sale shall not be required to obtain an on-sale license under this section, and may sell 3.2 percent malt beverages at on-sale without further license.
- v. Exemption: Intoxicating Liquors Off-Sale License. Any person licensed to sell intoxicating liquor at off-sale shall not be required to obtain an off-sale license under this section, and may sell 3.2 percent malt beverages at off-sale without further license.

B. Intoxicating Liquor Licenses.

- i. On-Sale Licenses. On-sale licenses shall be granted only to hotels, restaurants, bowling centers, exclusive liquor stores, clubs or congressionally chartered veterans' organizations, with the approval of the Commissioner of Public Safety, provided that the organization has been in existence for at least three years and liquor sales will only be to members and bona fide guests. The number of on-sale intoxicating liquor licenses shall be limited to six (6).
- ii. Off-Sale Licenses. Off-sale intoxicating liquor licenses shall be granted only to exclusive liquor stores, the number of which shall be limited to six (6).

- iii. Events On-Sale Licenses. The holder of a retail on-sale intoxicating liquor license issued by the City or by an adjacent municipality may be authorized by the City to dispense intoxicating liquor at a convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention, or cultural facility owned by the City.

The licensee must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the premises, and may dispense intoxicating liquor only to persons attending the event. The licensee may not dispense intoxicating liquor to any person attending or participating in an amateur athletic event held on the premises.

The City may authorize a holder of a retail on-sale intoxicating liquor license issued by the City to dispense intoxicating liquor off premises at a community festival held within the City. The authorization shall specify the area in which the intoxicating liquor must be dispensed and consumed, and it shall not be issued unless the licensee demonstrates that it has liability insurance as prescribed by Minnesota Statutes Section 340A.409 to cover the event.

- iv. Temporary On-Sale Licenses. A temporary license for the on-sale sales of intoxicating liquor in connection with a social event within the City sponsored by the licensee may be issued to (1) a club, charitable, religious or other nonprofit organization in existence for at least three years, (2) a political committee registered under Minnesota Statutes Section 10A.14, or (3) a state university. The license may authorize the on-sale of intoxicating liquor for not more than four (4) consecutive days, and may authorize on-sales on premises other than the premises the licensee owns or permanently occupies. 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 a municipality. The licenses are subject to all terms, including payment of the license fee imposed by the City. Temporary on-sale licenses are subject to approval of the Minnesota Commissioner of Public Safety.

- C. Wine Licenses. Wine licenses permitting the sale of wine of up to 14 percent (14%) alcohol by volume for consumption on the premises in conjunction with the sale of food may be issued to restaurants having facilities for seating at least twenty-five (25) guests at one time.
    - i. Removal of Wine from Restaurant. A restaurant licensed to sell intoxicating liquor or wine at on-sale under Minnesota Statutes Section 340A.404 may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided that the bottle has been opened and the contents partially consumed. A removal of a bottle under the conditions described herein is not an off-sale of intoxicating liquor and may be permitted without additional license.
  - D. Combination Licenses. The City may issue an off-sale and on-sale intoxicating liquor license to the same licensee or, in lieu of issuing on-sale and off-sale licenses separately to a licensee, may issue a combination on-sale and off-sale license.
  - E. Caterer's Permit. The Minnesota Commissioner of Public Safety may issue a caterer's permit to a restaurant that holds an on-sale intoxicating liquor license issued by the City. The holder of a caterer's permit may sell intoxicating liquor as an incidental part of a food service that serves prepared meals at a place other than the premises for which the holder's on-sale intoxicating liquor license is issued.
  - D.  Holders of Multiple On-sale Licenses; uniform licensing periods. The City may adjust the licensing period for any holder of multiple on-sale alcoholic beverage licenses in the state, upon request of the licensee. The City may charge a fee for adjustment of the licensing period.
5. Application for License.
- A. Form. Every application for a license issued under this Chapter shall be on a form prescribed by the Commissioner of Public Safety of the State of Minnesota and/or the City. In addition to the form prescribed by the Minnesota Commissioner of Public Safety, the City Council may require such additional information as it, in the exercise of its judgment, deems necessary or helpful in acting on the application. A person must not make a false statement or

material omission in a license application. Any false statement or material omission is grounds for denying or revoking a license.

B. Contents of Application.

i. If the applicant is a natural person:

- a. The name, place and date of birth, street residence address, and phone number of the applicant;
- b. The name of the business if it is to be conducted under a designation, name or style other than the name of the applicant and a certified copy of the certificate of assumed name required by state law;
- c. Whether the applicant is the owner and operator of the business and if not, who is;
- d. Whether the applicant has ever used or been known by a name other than his or her true name, and if so the name, or names, and information concerning dates and places where used;
- e. Whether the applicant is married or single, and if married, the true name, place and date of birth and street address of applicant's spouse;
- f. The street address at which the applicant and his or her spouse have lived at during the preceding five (5) years;
- g. The kind and location of every business or occupation the applicant has been engaged in during the preceding five (5) years, and the name and address of the employers by whom engaged during said period;
- h. Whether the applicant or spouse has ever been convicted of a violation of any state law or local ordinance;
- i. Whether the applicant or spouse has ever been engaged as an employee or in operating a saloon, hotel, restaurant, café, tavern, pool hall, or business of a similar nature, and if so, information as to the time, place, and duration of such time; and

- j. The names and addresses of three (3) persons who may be used as character witnesses.
- ii. If the applicant is a partnership:
  - a. The names and address of all partners and all information concerning each partner as is required of an individual applicant as above;
  - b. The name(s) of the managing partner or partners and the interest of each partner, or partners in the business; and
  - c. A true copy of the partnership agreement and a copy of the certificate of assumed name required by state law.
- iii. If the applicant is a corporation or other organization or entity:
  - a. The name, and if incorporated, the state of incorporation;
  - b. A true copy of the certificate of incorporation, articles of incorporation, or association agreements;
  - c. The name(s) of the manager or proprietor or other agent in charge of, or to be in charge of the premises to be licensed, giving all information about that person as is required in the case of an individual applicant; and
  - d. A list of all persons who, single or together with their spouse or a parent, brother, sister or child of either of them, own or control an interest in the corporation or organization in excess of five percent (5%), together with their addresses and all information as is required for an individual applicant.
- iv. Information Required of All Applicants.
  - a. Whether the application is for an on-sale or off-sale intoxicating liquor or 3.2 percent malt liquor license;

- b. The address of the proposed licensed business and how long the business has been in business at that particular location;
  - c. A specific description of the compact and contiguous premises within which alcoholic beverages may be sold and/or dispensed and consumed;
  - d. An application made by a natural person shall be signed and sworn to by such person; if made by a corporation, by an officer thereof; if by a partnership, by one of the partners; if by an association, by the manager or managing director thereof. If the applicant is a partnership, the application, license and bond shall be made and issued in the name of all partners;
  - e. Every application for the issuance or renewal of a license for the sale of intoxicating or 3.2 percent malt liquor must include a copy of each summons received by the applicant under Minnesota Statutes Section 340A.802; and
  - f. Such other information as may be required by the City Council in order to determine whether a license should be granted to the applicant.
6. License Renewal. Application for the renewal of an existing license shall be made at least sixty (60) days prior to the date of the expiration of the license and shall be made on such form as the City Council may require. The decision whether or not to renew a license rests within the sound discretion of the City Council, and no licensee has a right to have the license renewed. If, in the judgment of the City Council, good and sufficient cause is shown by any applicant for his or her failure to file for a renewal within the time provided, the City Council may, if the other provisions of this Chapter are complied with, grant the renewal application.
7. Application Investigation.
- A. The City Council shall conduct a preliminary background and financial investigation on a license applicant or on the transfer applicant or contract with the Bureau of Criminal Apprehension to do the same. In addition, an investigation may be required prior to renewal of an existing license when the City deems it in the public

interest. Upon submission of the license application, the applicant shall pay an investigation fee of five hundred dollars (\$500), which shall be in addition to any license fee. If the investigation is conducted outside of the State of Minnesota, the applicant shall pay the actual cost of the investigation, not to exceed ten thousand dollars (\$10,000).

- B. No license may be issued, transferred or renewed if the results of the investigation show, to the satisfaction of the City Council, that issuance, transfer or renewal would not be in the public interest.
8. Financial Responsibility. No license may be issued, transferred, or renewed unless the applicant demonstrates proof of financial responsibility with regard to the liability imposed by Minnesota Statutes Section 340A.801 by filing with the City Administrator proof that the applicant has complied with the financial responsibility requirements of Minnesota Statutes Section 340A.409. This subsection does not apply to licensees who, by affidavit, establish that they meet the insurance exception in Minnesota Statutes Section 340A.409, subd. 4.
9. Granting of Licenses.
- A. After an application has been received, and the facts investigated, the City Council, in its discretion, may either grant or deny the application for any license, transfer, or renewal. Opportunity shall be given to any person to be heard for or against the granting of any license.
  - B. All licenses shall expire on the last day of April in each year. Each license shall be issued for a period of one (1) year except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro-rata fee. In computing such fee, any expired fraction of a month shall be counted as a full month.
10. Change in Required Information. Each licensee has the continuing duty to promptly notify the City Administrator of any change in the information or facts required to be furnished on the application for a license. This duty continues throughout the period of the license, and failure to comply with said duty constitutes cause for revocation or suspension of the license.
11. Persons and Premises Ineligible for a License.
- A. No license shall be issued or renewed for operation on any premises on which taxes, assessments or other financial claims of the City are delinquent and unpaid.



- B. No license shall be issued or renewed for premises owned by a person to whom a license may not be granted or renewed under the provisions of Minnesota Statutes, Chapter 340A.
- C. No license shall be issued or renewed for an applicant who does not have insurance for the payment of all sums which the insured shall be obligated to pay by reason of liability imposed by law for injuries or damages to person, other than employees, including the liability imposed upon the insured by reason of Minnesota Statutes Section 340A.409.
- D. No license shall be issued or renewed to a partnership or a corporation which does not have a managing partner or a manager who is eligible to hold a license pursuant to the provisions of this Chapter.
- E. No license shall be issued or renewed for a person 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.
- F. No license shall be issued or renewed for a corporation without the full disclosure of the stockholders of the corporation and their percentage of ownership. If there are more than ten (10) stockholders, only those owning more than ten percent (10%) of the outstanding common stock shall be listed.
- G. No license shall be issued for premises within three hundred (300) feet of any property line for any secondary or elementary school or church, nor for the areas prohibited in Minnesota Statutes Section 340A.412, subd. 4.

12. Conditions of License.

- A. Every license shall be granted subject to the conditions of the following paragraphs, all other subsections of this Chapter, and other applicable City Code provisions and State laws.
- B. The license shall be posted in a conspicuous place in the licensed premises at all times.
- C. Every licensee is responsible for the conduct of employees in the licensed establishment and on the licensed premises, and the conditions of sobriety and order in the place of business and on the premises. Any sale of alcoholic beverage by any employee

authorized to sell alcoholic beverages in the establishment is the act of the licensee.

- D. The license is only effective for the compact and contiguous space specified in the approved license application.
- E. No person under twenty-one (21) years of age shall be employed in any place where intoxicating liquor is sold for consumption on the premises except that persons between the ages of eighteen (18) and twenty (20) may be employed in an establishment licensed for the sale of alcoholic beverages for the purpose of performing work for the establishment, including the serving of alcoholic beverages unless otherwise prohibited by Minnesota Statutes, and except that persons under eighteen (18) years of age may be employed as musicians or to perform the duties of busboy or dishwashing services in a restaurant or hotel that is licensed to sell intoxicating liquor and may be employed as waiters or waitresses at a restaurant, hotel or motel where only wine is sold, provided that the person under the age of eighteen (18) may not serve or sell any wine.
- F. No licensee shall keep, possess, operate or permit the keeping, possession or operation of any slot machine, dice, or any gambling device or apparatus as defined in Minnesota Statutes Section 349.30 on the licensed premises, or in any room adjoining the licensed premises, and the licensee shall not permit any gambling therein except as follows: Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of gambling equipment is authorized by the City pursuant to Minnesota Statutes, Chapter 349.
- G. No licensee shall knowingly permit the licensed premises, any room in the licensed premises, or any adjoining building directly or indirectly under the licensee's control to be used in connection with prostitution.
- H. Any police officer, building inspector, fire marshal or other properly designated agent or employee of the City shall have the unqualified right to enter, inspect and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
- I. In the event of the death of a person holding a license, the personal representative of that person is allowed to continue to operate the business within the terms of the license for a period not to exceed ninety (90) days after the death of the licensee.

13. Transfer of License.
  - A. Each license is issued only to the applicant and for the specification location on the premises that is described in the license application and approved by the City Council. No license may be transferred to another person or place without the prior approval of the City Council.
  - B. The application for a license transfer shall be treated the same as an application for a new license, and all of the provisions of this Chapter applying to applications for the initial issuance of a license shall apply.
  - C. An application for a license transfer shall be made in writing to the City Administrator, and shall be accompanied by certified check or money order in the amount of the license transfer fee.
  - D. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior City Council approval is grounds for the revocation of the license.
14. Hours and Days of Sale. The hours and days of sale of 3.2 percent malt liquor and intoxicating liquor in the City of Mahtomedi shall be the same as the hours and days of sale permitted by Minnesota Statutes Section 340A.504. Each licensed premises shall close and lock its door to the public one-half hour after the closing time specified in Minnesota Statutes Section 340A.504, by which time all patrons must have left the premises.
15. Special Permit.
  - A. The City Council may issue a special permit to a club or charitable, religious, or other non-profit organization in existence for at least three (3) years for a temporary on-sale license for 3.2 percent malt liquor or intoxicating liquor in connection with a social event within the City sponsored by the licensee. The application for a special permit must be submitted to the City at least thirty (30) days prior to the event. The license may authorize the on-sale of alcoholic beverages for a specific period of time not to exceed three (3) consecutive days, and may authorize on-sales of alcoholic beverages on premises other than premises the licensee owns or permanently occupies. 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 the city. Such special permits may be issued when the City deems

such to be in the interest of the public welfare and safety and when authorized by law.

- B. Permits issued under this subdivision are subject to all laws and City Code provisions governing the sale of alcoholic beverages except those laws and City Code provisions which by their nature are not applicable.
  - C. Such permit shall describe and specify the conditions under which the permit is issued and shall include the following information:
    - i. The place to which the permit pertains;
    - ii. The person or persons to whom the permit is issued; and
    - iii. Any other conditions or restrictions that the City Council shall deem necessary to adequately provide for the public welfare and safety, including restrictions relative to the type of beverage that may be sold and consumed and the hours during which such beverage may be sold and consumed.
16. License Fees. All licensees shall pay the license fee established by the City Council and listed in the Fee Schedule.
17. Off-Sale License Fee Reductions. Off-sale intoxicating liquor license holders may request a reduction in their annual license fee by the amount specified in Minnesota Statutes Section 340A.408, subd. 3, if at the time of initial application or renewal they provide proof of compliance with the requirements of that statute.
18. Fee Increases. All license fees are subject to increase upon notice and hearing. Notice shall be mailed to all affected licensees at least thirty (30) days before the date set for the hearing.
19. Payment. Each application for a license shall be accompanied by a receipt from the City Clerk for payment in full of the required fee for the license and the investigation fee. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the City Clerk shall refund the amount paid for the license fee.
20. Refunds. There shall be refunded to the licensee or to the licensee's estate a pro-rata share of the annual license fee for the unexpired period of a retail license, computed on a monthly basis, when operation of the licensed business ceases not less than one (1) month before expiration of the license because of:

- A. Destruction of or damage to the licensed premises;
- B. The business ceases to be lawful for a reason other than a license revocation;
- C. The licensee's death;
- D. The licensee ceases to carry on the licensed business under the license; or
- E. A change in the legal status of the business making it unlawful for the licensed business to continue.

The application for refund must be made to the City Council within thirty (30) days of one (1) or more of these occurrences.

21. License Suspension and Revocation.

- A. Grounds. On a finding that the license or permit holder or an agent or employee of the license or permit holder has failed to comply with any applicable statute, rule or City Code provision relating to alcoholic beverages, including any provision of Minnesota Statutes, Chapter 340A or any rules promulgated thereunder, or a condition of any license, the Minnesota Commissioner of Public Safety or the City Council may revoke the license or permit, suspend the license or permit for up to sixty (60) days, impose a civil penalty of up to two thousand dollars (\$2,000.00) for each violation, or impose any combination of these sanctions. No suspension or revocation shall take effect until the license or permit holder has received notice and an opportunity for a hearing pursuant to Minnesota Statutes Sections 14.57 to 14.69. The City Council may act as the hearing body.
- B. Minimum Penalties. The following are deemed appropriate minimum penalties for a licensee's failure to comply with an applicable statute, rule or City Code provision relating to alcoholic beverages. However, the level and order of the penalties will be at the sole discretion of the City Council, based upon the nature of the individual infraction, and the City Council may impose penalties exceeding those stated below.
  - i. First Violation Within a Three (3) Year Period. The City Council may impose a fine of \$750.

- ii. Second Violation Within a Three (3) Year Period. The City Council may impose a fine of \$1,000 and a one (1) day license suspension.
  - iii. Third Violation Within a Five (5) Year Period. The City Council may impose a fine of \$2,000 and a three (3) day license suspension.
  - iv. Fourth and Subsequent Violations Within a Seven (7) Year Period. The City Council may revoke the license.
- C. Hearing and Notice. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing, notice of which shall be given to the Licensee at least (10) days before the hearing. For purposes of this subdivision, notice shall mean written notice served upon the licensee personally or by leaving the same at the licensee's usual place of abode with some person of suitable age and discretion then residing therein or by leaving the same at the licensed premises with a person in charge of those premises. The notice shall state the time and place of the hearing and shall state the nature of the charges against the licensee. No suspension shall exceed sixty (60) days. The Council shall select the day(s) during which a license is suspended.

## **8.02 CONSUMPTION AND POSSESSION ON PUBLIC PROPERTY.**

1. Consumption. No person shall consume intoxicating liquor, 3.2 percent malt liquor, or wine in any public place within the City, or in any motorized vehicle or passenger carrying appurtenance attached thereto, including but not limited to trailers or campers attached to pick-up trucks or any other type of motorized vehicle while such vehicle is in a public place unless such consumption is authorized by a lawfully obtained permit or temporary license.
2. Possession. No person shall have in his or her possession or on his or her person in any public place any bottle or receptacle containing intoxicating liquor, 3.2 percent malt liquor, or wine which has been opened, or the seal broken, or the contents of which have been partially removed except as otherwise permitted under this Chapter.

## **8.03 ENTERTAINMENT RESTRICTIONS.**

1. Purpose. The provisions of this Section are declared necessary for the public health, safety, and general welfare of the citizens of the City of Mahtomedi.

2. Premises Defined. The term premises shall mean any building or part thereof, whether separated by partition, wall or other division or any tract of land upon which such building is located wherein alcoholic beverages are sold.
3. Prohibited Entertainment. The following acts or conduct are prohibited at any premises holding a license for the sale of alcoholic beverages:
  - A. To employ or use any person in the sale or service of alcoholic beverages 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 any portion of the male or female pubic area, anus, cleft of the buttocks, or genitals.
  - B. To employ or use the services of any host or hostess while such host or hostess is unclothed or in such attire, costume, or clothing as described in Subsection A above.
  - C. To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, or genitals of any other person.
  - D. To permit any employee or person to use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic area or any portion thereof.
  - E. To permit any person to perform acts of or acts which simulate:
    - i. Sexual intercourse, sodomy, oral copulation, flagellation, or any sexual acts which are prohibited by law;
    - ii. Masturbation or bestiality;
    - iii. Touching, caressing or fondling of the male or female buttocks, anus, or genitals or of the female breast; or
    - iv. The display of the male or female pubic area, anus, or genitals or of the female breast below the top of the areola.
  - F. To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.
  - G. To permit any person to remain in or upon the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

- H. To permit the showing of film, still pictures, electronic reproductions, or other visual reproductions depicting:
  - i. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;
  - ii. Scenes wherein a person displays the anus or the genitals;  
or
  - iii. Scenes wherein artificial devices or inanimate objects are employed to depict or drawings are employed to portray any of the prohibited activities described above.
- 4. Nudity Prohibited. It is unlawful for any person to be on the licensed premises when that person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

**Amended in its entirety 2-7-06**