

## CHAPTER 4 INTOXICATING LIQUOR/BEER

### Section 400 - General

**400.01 Definition of Terms.** As used in this Chapter, the terms below shall have the following meanings:

**Subd. 1 Intoxicating Liquor/Liquor.** "Intoxicating liquor" or "liquor" shall mean ethyl alcohol distilled, fermented, spirituous, vinous and malt beverages containing more than 3.2 percent of alcohol by weight.

**Subd. 2 Beer / Malt Liquor.** "Beer" or "Malt Liquor" shall mean any malt beverage with an alcoholic content of more than one-half of one percent by volume and not more than 3.2 percent by weight.

**Subd. 3 On-sale.** "on-sale" shall mean sale by the drink for consumption in the dispensary.

**Subd. 4 Off-sale.** "Off-sale" shall mean retail sale in the original package for consumption away from the dispensary.

**Subd. 5 Sell.** "Sell" shall mean all barter and all manners or means of furnishing intoxicating liquor or beer, including such furnishing in violation or evasion of law or this ordinance.

**Subd. 6 Minor.** "Minor" shall mean any person under 21 years of age.

**400.02 Nudity.** In order to prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex, and to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct such as prostitution, sexual assault, and disorderly conduct, it shall be unlawful for any licensee to permit or allow any person from being upon a licensed premise when such person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It shall also be unlawful for any person to appear in a licensed establishment with such stated anatomical areas uncovered or covered only by a transparent material.

### Section 405 - Municipal Liquor Store

**405.01 Dispensary Established.** There shall hereby be continued a municipal liquor dispensary for the on and off-sale of intoxicating liquor. No liquor may be sold at retail elsewhere in the city or by anyone not employed in the dispensary, except in such clubs as

may lawfully be authorized by the Council. No person shall consume liquor in a public park, on a public street, or in any public place other than the dispensary or where the consumption and display of liquor is lawfully permitted.

#### **405.02 Location and Operation.**

**Subd. 1 Location.** The dispensary shall be located at such suitable place in the City as the Council determines, but no premises upon which taxes, assessments or other public charges are delinquent shall be leased for dispensary purposes.

**Subd. 2 Manager.** The dispensary shall be in the immediate charge of a liquor store manager selected by the Council and paid such compensation as is fixed by the Council. The manager shall operate the dispensary under the Council's direction and shall perform such duties in connection with the dispensary as may be imposed by the Council. The liquor store manager shall be responsible to the Council for the conduct of the dispensary in full compliance with this ordinance and with the laws relating to the sale of liquor and beer.

**Subd. 3 Other Employees.** The Council shall also appoint such additional employees as may be required for the dispensary and shall fix their compensation. All employees, including the manager, shall hold their positions at the pleasure of the Council. No minor under the age of 18 shall be employed in the dispensary. In the discretion of the Council, such employees may be required to furnish surety bonds conditioned for the faithful discharge (of their duties, in such sums as the Council may specify. The premium on such bonds shall be paid by the City.

#### **405.03 Dispensary Fund.**

**Subd. 1 Fund Established.** A municipal liquor dispensary fund shall hereby be continued in which all revenues received from the operation of the dispensary shall be deposited and from which all ordinary operating expenses shall be paid. Any amounts it may be necessary to borrow from the general fund of the City for initial costs of rent, fixtures and stock or for operating expenses shall be reimbursed to that fund out of the first available moneys coming into the dispensary fund thereafter. Surpluses accumulating in the dispensary fund may be transferred to the general fund or to any other appropriate fund of the City by resolution of the Council and expenses for any municipal purpose.

**Subd. 2 Receipts and Disbursements.** The handling of municipal liquor dispensary receipts and disbursements shall comply with the procedure prescribed by law for the receipts and disbursements of City funds generally.

**Subd. 3 Financial Statement.** The Council shall provide within 90 days following the close of each fiscal year for publication of a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor dispensary for that fiscal year.

**405.04 Hours of Operation.**

**Subd. 1 On-sale.** All on-sale must be between the hours of operation as set forth:

MONDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m. TUESDAY
TUESDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m. WEDNESDAY
WEDNESDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m. THURSDAY
THURSDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m. FRIDAY
FRIDAY	OPEN 8:00 a.m.	CLOSE 1:00 a.m. SATURDAY
SATURDAY	OPEN 8:00 a.m.	CLOSE 1:00 a.m. SUNDAY

No on-sale shall be allowed from 8:00 p.m. on December 24 until 8:00 a.m. December 26, except that if December 26 is a Sunday, Sunday requirements shall be followed, or before 3:00 p.m. on Memorial Day (Decoration Day).

There shall be no customers allowed on the premises of any on-sale liquor establishment one-half hour after the closing time and there shall be no employees of any on-sale liquor establishment on the premises one (1) hour after the closing time.

**Subd. 2 Off-sale.** No off-sale shall be made before 8:00 a.m. or after 10:00 p.m. Monday through Saturday. No off-sale of intoxicating liquor shall be made on Thanksgiving Day; Christmas Day, December 25; or after 8:00 p.m. Christmas Eve, December 24.

**Subd. 3 Sundays.** No on- or off-sale of intoxicating liquor shall be made on Sunday.

**405.05 Conditions of Operation and Restrictions on Consumption.**

**Subd. 1 Exclusive Liquor Sales.** No business other than the sale of liquor shall be carried on in the dispensary except the retail sale of cigars, cigarettes, all forms of tobacco, food, and soft drinks and both on-sale and off-sale.

**Subd. 2 Credit.** No liquor or beer or other merchandise shall be sold on credit.

**Subd. 3 Minors.** No liquor or beer shall be sold or served to a minor, directly or indirectly. No minor shall misrepresent his age for the purpose of obtaining liquor or beer.

**Subd. 4 Intoxicated Persons.** No liquor or beer shall be sold or served to an intoxicated person.

**Subd. 5 Gambling Devices.** No illegal gambling device shall be kept, operated, permitted, maintained or used on the premises.

**Subd. 6 Inspections.** The premises occupied by these dispensaries shall be duly inspected by the Council or its designee at least once a month and as many other times as council or its designee deems necessary to see that said premises are in a sanitary condition.

### **Section 410 - Beer/Malt Liquor**

**410.01 Definition of Terms.** As used in this section, the terms below shall be defined as follows:

**Subd. 1 Person.** As used in this section, the term "person" shall mean and include a natural person of either sex, persons, co-partnerships corporations and associations of persons; and shall include the agent or manager of any of the aforesaid. The singular number shall include the plural, and the masculine pronoun shall include the feminine and neuter.

**Subd. 2 Malt Liquor or Beer.** "Malt liquor" or "beer" shall mean any potable malt beverage with an alcoholic content of more than one-half of one per cent by volume and not more than three and two-tenths per cent by weight.

**Subd. 3 Bona Fide Club.** A "bona fide club" shall mean an incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which:

- (1) has more than 50 members
- (2) has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members;
- (3) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

**Subd. 4 Original Package.** "Original package" as used in this section shall mean the bottle or sealed container in which the liquor is placed at the place of manufacture.

**Subd. 5 Cafe or Restaurant.** "Cafe" or "restaurant" as used in this section shall mean any place where preparing and serving lunches or meals to the public to be consumed on the premises constitutes the major business thereof.

**Subd. 6 Beer Store.** "Beer store" shall mean an establishment used exclusively for the retail sale of beer, with the incidental sale of tobacco and soft drinks.



**410.02 License Required.**

**Subd. 1 Licenses.** No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any beer within the City without first having received a license as hereinafter provided. Licenses shall be of three kinds: 1) regular on-sale; 2) temporary on-sale; 3) off-sale.

**Subd. 2 Regular On-Sale.** Regular on-sale Beer licenses shall be granted only to clubs. On-sale licenses shall permit the sale of beer for consumption on the premises only.

**Subd. 3 Temporary On-Sale.** Temporary on-sale licenses shall be granted only to clubs or charitable, religious or non-profit organizations for the sale of beer for consumption on the premises only.

**Subd. 4 Off-Sale.** Off-sale licenses shall permit the sale of beer at retail, in the original package, for consumption off the premises only.

**410.03 License Applications.**

**Subd. 1 Form.** Every application for a license to sell beer shall be made to the Clerk-Treasurer/Administrator on a form supplied by the City and containing information that the Clerk-Treasurer/Administrator or the Council may require. It shall be unlawful to make any false statement in an application. Every application for the issuance or renewal of a license shall include a copy of each summons received by the applicant under Minn. Stat. § 340A.802 during the preceding year.

**Subd. 2 Proof of Financial Responsibility.** Prior to the issuance of a beer license, the applicant shall demonstrate proof of financial responsibility as defined in Minn. Stat. § 340A.409, Subd. 1, with reference to liability under the Minn. Stat. § 340A.801. The proof shall be filed with the commissioner of public safety except that if a license involves sales of beer of a prospective vendor who is not required by law to file such proof with the commissioner of public safety, the proof shall be filed with the Clerk-Treasurer/Administrator. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minn. Stat. § 340A.409.

**Subd. 3 Approval of Security.** Liability insurance policies required by this Section, but not by state law, shall be approved as to form by the city attorney. Operation of a business licensed by this Section without having on file with the state insurance commissioner or the City at all times effective security as required in Section 400.03, Subd. 2 is a cause for revocation or suspension of the license.

**410.04 License Fees.**

**Subd. 1 Payment Required.** Each application for a license under this section shall be accompanied by payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the Clerk-Treasurer/Administrator shall refund the amount paid.

**Subd. 2 Expiration; Pro Rata Fees.** Every license, except a temporary license, shall expire on the last day of December in each year. Each license, except a temporary license, shall be issued for a period of one year, except that if a portion of the license year has elapsed when the license is granted, the license shall be issued for the remainder of the year for a pro rata fee. In computing the fee, any unexpired fraction of a month shall be counted as one month. A temporary license shall be issued for a specific period in which a special event to which the sale is incident is being held. This period shall be stated on the license.

**Subd. 3 Fees.** The fee for any license shall be as set forth by ordinance or resolution adopted from time to time by the Council.

**Subd. 4 Refunds.** No part of the fee paid for any license issued under this Section shall be refunded except in the following instances upon application to the Council within sixty (60) days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, if:

- A. The business ceases to operate because of destruction or damage;
- B. The licensee dies;
- C. The business ceases to be lawful for a reason other than a license revocation; or
- D. The licensee ceases to carry on the licensed business under the license.

**410.05 Granting of License.**

**Subd. 1 Investigation and Hearing.** The Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After such investigation and hearing, the Council shall grant or refuse the application in its discretion.

**Subd. 2 Transfers.** Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the Council.

**410.06 Persons Ineligible for License.** No license shall be granted to or held by any person who:

- A. Is under 21 years of age;
- B. Has, within five years prior to the application for such license, been convicted of a felony or of violating any law of this state or local ordinance relating to the manufacture, sale, distribution or possession for sale or distribution of intoxicating liquors and cannot show competent evidence under Minn. Stat. § 364.03 of sufficient rehabilitation and present fitness to perform the duties of a beer licensee;
- C. Is a manufacturer of beer or is interested in the control of any place where beer is manufactured;
- D. Is not a citizen or resident alien, or a non-resident of the City;
- E. Is not of good moral character;
- F. Is not the proprietor of the establishment for which the license is issued.

**410.07 Places Ineligible for License.**

**Subd. 1 Conviction or Revocation.** No license shall be granted for sale on any premises where a licensee has been convicted of the violation of this Section, or of the state beer or liquor law, or where any license has been revoked for cause until one year has elapsed after such conviction or revocation.

**Subd. 2 Prohibited in Certain Areas.** No license shall be granted for any place or in any area prohibited by State law.

**Subd. 3 Six Months Prior Eligibility.** No regular on-sale license shall be granted for a business or club which has not been in operation and eligible to receive a license for at least six months immediately preceding the application for a license.

**410.08 Conditions of License.**

**Subd. 1 General Conditions.** Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this Section and of any other applicable ordinance of the City or state law.

**Subd. 2 Insurance.** Compliance with financial responsibility requirements of state law and of this Section is a continuing condition of any license granted pursuant to this Section.

**Subd. 3 Sales to Minors or Obviously Intoxicated Persons.** No beer shall be sold or served to any obviously intoxicated person or to any person under 21 years of age.

**Subd. 4 Consumption by Minors.** No person under the age of 21 years shall be permitted to consume beer on the licensed premises.

**Subd. 5 Employment of Minors.** No person under the age of 18 years shall be employed on the premises of a beer store.

**Subd. 6 Gambling.** No illegal gambling or illegal gambling device shall be permitted on any licensed premises.

**Subd. 7 Interest of Manufacturers or Wholesalers.** No manufacturer or wholesaler of beer shall have any ownership of, or interest in, an establishment licensed to sell at retail contrary to the provisions of Minn. Stat. § 340A.301, Subd. 7. No retail licensee and manufacturer or wholesaler of beer shall be parties to any exclusive purchase contract. No retail licensee shall receive any benefits contrary to law from a manufacturer or wholesaler of beer and no such manufacturer or wholesaler shall confer any benefits contrary to law upon a retail licensee.

**Subd. 8 Sales of Intoxicating Liquor.** No licensee who does not hold a consumption and display permit shall sell or permit the consumption or display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this Section.

**Subd. 9 Searches and Seizures.** Any peace officer may enter, inspect and search the premises of a licensee during business hours without a search and seizure warrant and may seize all intoxicating liquors found on the licensed premises in violation of Section 410.08, Subd. 8.

**Subd. 10 Licensee's Responsibility.** Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverages by any employee authorized to sell such beverages is the act of the licensee.

**Subd. 11 Banquet Rooms.** A regular on-sale license shall entitle the holder to serve beer in a separate room of the licensed premises for banquets or dinners at which are present not fewer than ten (10) persons.

#### **410.09 Hours of Operation.**

**Subd. 1 On-sale.** All on-sale must be between the hours of operation as set forth:

MONDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m.	TUESDAY
TUESDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m.	WEDNESDAY
WEDNESDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m.	THURSDAY

THURSDAY	OPEN 8:00 a.m.	CLOSE 12:30 a.m.	FRIDAY
FRIDAY	OPEN 8:00 a.m.	CLOSE 1:00 a.m.	SATURDAY
SATURDAY	OPEN 8:00 a.m.	CLOSE 1:00 a.m.	SUNDAY

No on-sale shall be allowed from 8:00 p.m. on December 24 until 8:00 a.m. December 26, except that if December 26 is a Sunday, Sunday requirements shall be followed, or before 3:00 p.m. on Memorial Day (Decoration Day).

There shall be no customers allowed on the premises of any on-sale establishment one-half hour after the closing time and there shall be no employees of any on-sale establishment on the premises one (1) hour after the closing time.

**Subd. 2 Off-sale.** No off-sale shall be made before 8:00 a.m. or after 10:00 p.m. Monday through Saturday. No off-sale of liquor shall be made on Thanksgiving Day; Christmas Day, December 25; or after 8:00 p.m. Christmas Eve, December 24.

**410.10 Clubs.** No club shall sell beer except to members and to guests in the company of members.

**410.11 Restrictions on Purchase and Consumption.**

**Subd. 1 Purchasing.** It shall be unlawful for any person:

- A. Under the age of 21 years to purchase or attempt to purchase beer; or
- B. To induce a person under the age of 21 years to purchase or procure beer.

**Subd. 2 Possession.** It shall be unlawful for a person under the age of 21 years to possess beer.

**Subd. 3 Entering Licensed Premises.** It shall be unlawful for a person under the age of 21 years to enter an establishment licensed under this Section in order to purchase beer or have beer served or delivered.

**Subd. 4 Misrepresentation of Age.** It shall be unlawful for a person under the age of 21 years to misrepresent his or her age for the purpose of purchasing beer.

**Subd. 5 Proof of Age.** Proof of age for purchasing or consuming beer may be established only by a valid driver's license or Minnesota identification card, or in the case of a foreign national by a valid passport.

**Subd. 6 Consumption Prohibited--Where.** It shall be unlawful for any person to consume beer in any theater, recreation hall or center, dance hall, ball park or other place of public gathering used for the purpose of entertainment, amusement or playing of games.

**410.12 Suspension and Revocation.** The Council shall either suspend for up to 60 days or revoke any beer license or impose a civil fine not to exceed \$2,000, for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minn. Stat. § 14.57 to 14.69 of the administrative procedure act. The lapse of required dram shop insurance or bond or withdrawal of a required deposit of cash or securities, shall effect an immediate suspension of any license issued pursuant to this Section without further action of the Council. Notice of cancellation, lapse of a current liquor liability policy or bond or withdrawal of deposited cash or securities 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 bond, or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon, and if such a request is made in writing to the Clerk-Treasurer/Administrator, a hearing shall be granted within 10 days or such longer period as may be required. Any suspension under this paragraph shall continue until the Council determines that the financial responsibility of this Section has again been met.

#### **Section 415 - Violations/Enforcement**

**415.01 Enforcement.** It shall be the duty of all police officers of the City to enforce the provisions of this Chapter to search premises and seize evidence of law violation and preserve the same as evidence against any person alleged to be violating this Chapter; and to prepare the necessary processes and papers therefor.

**415.02 Penalty.** Any person violating any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction therefor, shall be punished by a fine of not more than \$700 or imprisonment in the City lockup (or County Jail) not to exceed 90 days, or both, plus the cost of prosecution in any case.