

CHAPTER XII

INTOXICATING LIQUOR, BEER AND WINE

(Repealed, Ord. 93-01, Sec. 1)

(Added, Ord. 93-01, Sec. 2)

(Amended, Ord. 2001-01, Sec. 2)

Section 1200 - Intoxicating Liquor, Beer and Wine

1200.01. Provision of state law adopted. The provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sale, financial responsibility of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor, beer and wine are adopted and made a part of this code as if set out in full, except that the following definitions shall apply: (Amended, Ord. 2001-01, Sec. 3)

Beer. "Beer" or "3.2 beer" means any potable malt beverage with an alcoholic content of more than 1/2 of 1% by volume and not more than 3.2% by weight. (Added, Ord. 2001-01, Sec. 3)

Club. "Club" means any organization defined in Minnesota Statutes, section 340A.101, subdivision 7. (Added, Ord. 2001-01, Sec. 3)

Liquor license. "Liquor license" means any license to sell liquor, beer or wine pursuant to this section. (Added, Ord. 2001-01, Sec. 3)

Off-sale. "Off-sale" means the sale of liquor, beer or wine in original packages for consumption outside the licensed premises. (Added, Ord. 2001-01, Sec. 3)

On-sale. "On-sale" means the sale of liquor, beer or wine for consumption on the licensed premises only. (Amended, Ord. 2001-01, Sec. 3)

Restaurant. "Restaurant" means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly served at tables to the general public, and having seating capacity for guests of not less than 50 guests at one time. (Amended, Ord. 2001-01, Sec. 3)

Wine. "Wine" is the product made from the normal alcoholic fermentation of grapes or other agricultural products, including still wine, sparkling and carbonated wine, wine made from condensed grape must, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, in each instance containing not less than 1/2 of 1% nor more than 24% alcohol by volume for nonindustrial use. Wine does not include distilled spirits. (Added, Ord. 2001-01, Sec. 3)

1200.03. License required. Subdivision 1. General requirement. No person, except a wholesale or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the city any intoxicating liquor, beer or wine without a license to do so as provided in this section. Liquor licenses shall be of nine kinds: 1) "on-sale" intoxicating liquor, 2) "on-sale" 3.2 beer, 3) temporary "on-sale" intoxicating liquor, 4) temporary "on-sale" 3.2 beer, 5) "on-sale" wine, 6) "on-sale" intoxicating liquor, 7) "off-sale" 3.2 beer, 8) "club", and 9) Sunday "on-sale". (Amended, Ord. 2000-12, Sec. 1; Ord. 2001-01, Sec. 3)

Subd. 2. On-sale intoxicating liquor licenses. "On-sale" intoxicating liquor licenses shall be issued only to restaurants and shall permit "on-sale" of liquor only.

Subd. 3. On-sale 3.2 beer licenses. "On-sale" beer licenses shall be issued only to restaurants and shall permit "on-sale" of beer only. (Amended, Ord. 2001-01, Sec. 4)

Subd. 4. Temporary on-sale intoxicating liquor licenses. Subject to the approval of the commissioner of public safety, temporary "on-sale" intoxicating liquor licenses shall be issued only to clubs or charitable, religious, or other nonprofit organizations in existence for at least three years. A temporary "on-sale" intoxicating liquor license authorizes the on-sale of intoxicating liquor in connection with a social event within the city sponsored by the licensee and subject to restrictions imposed by the state liquor act.

Subd. 5. Temporary on-sale 3.2 beer licenses. Temporary "on-sale" 3.2 beer licenses shall be issued only to clubs or charitable, religious, or nonprofit organizations for the sale of 3.2 beer for consumption on the premises only.

Subd. 6. On-sale wine licenses. "On-sale" wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes, section 340A.404, subdivision 5, and shall permit only the sale of wine for consumption in the licensed premises only and in conjunction with the sale of food. (Amended, Ord. 2001-01, Sec. 5)

Subd. 7. Off-sale intoxicating liquor licenses. "Off-sale" intoxicating liquor licenses shall be issued only to drug stores and exclusive liquor stores and shall permit "off-sales" of liquor only. The city shall not issue more than three "off-sale" intoxicating liquor licenses.

Subd. 8. Off-sale 3.2 beer licenses. "Off-sale" 3.2 beer licenses shall be issued only to drug stores, grocery stores, exclusive liquor stores, and establishments licensed for on-sale liquor or beer, and shall permit "off-sales" of beer only. (Amended, Ord. 2001-01, Sec. 6)

Subd. 9. Club licenses. Club licenses for the "on-sale" of intoxicating liquor shall be issued only to incorporated clubs or congressionally chartered veterans organizations 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. A bona fide guest is a member, relative of a member, or friend of a member, who is specifically invited to the club by a member for the specific day on which the guest visits the club. A license will not be issued to a club that discriminates against members, applicants for membership or guests on the basis of race.

Subd. 10. Sunday "on-sale" licenses. Sunday "on-sale" licenses shall be issued only to restaurants that have received an "on-sale" liquor license under subdivision 2 of this section. Sunday "on-sale" licenses shall permit the sale of liquor for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays. (Added, Ord. 2000-12, Sec. 2; Amended, Ord. 2005-04, Sec. 1)

1200.05. Application for license. Subdivision 1. Filing. Every application for a license shall be verified and filed with the city clerk-treasurer 30 days before city council action is required. (Amended, Ord. 2001-01, Sec. 7)

Subd. 2. Information required; all applicants. In addition to the information which may be required by the state commissioner of public safety and the state bureau of criminal apprehension, the application shall contain the following information:

- (a) whether the applicant is a natural person, corporation, partnership or other form of incorporation;
- (b) type of license the applicant seeks;
- (c) the exact legal description of the premises to be licensed together with a site plan of the area showing dimensions and location of buildings, well, septic system, parking lots, lighting, signs and other facilities;
- (d) the amount of the investment that the applicant has in the business, building, premises, fixtures, furniture, stock in trade, etc. and proof of the source of such money;
- (e) the names and addresses of all persons other than the applicant who have any financial interest in the business, buildings, premises, fixtures, furniture, stock in trade and the nature of such interest, amount thereof, terms of payment or other reimbursement. This shall include, but not be limited to, any lessees, lessors, mortgages, mortgagors, lenders, lienholders, trustees, trustors and persons who have co-signed notes or otherwise loaned, pledged or extended security for any indebtedness of the applicant but shall not include persons owning or controlling less than a 5% interest in the business, if the business is a corporation;

- (f) the names, residences and business addresses of three persons who are residents of the state of Minnesota of good moral character, not related to the applicant or financially interested in the premises or business and who may be referred to as the applicant's character or in the case where information is required of a manager, the manager's character.
- (g) whether or not all real estate and personal property taxes for the premises to be licensed which are due and payable have been paid and if not paid, the years and amounts which are unpaid.
- (h) copies of each summons received by the applicant under Minnesota Statutes, section 340A.801 (dram shop) during the preceding year.

Subd. 3. Information required: natural persons. If the applicant is a natural person, the application shall include the following information:

- (a) true name, place and date of birth and street residence address of applicant;
- (b) whether applicant has ever used or been known by a name other than applicant's true name and, if so, what was such name or names and information concerning dates and places where used;
- (c) the name of the business if it is to be conducted under a designation, name or style other than the full individual name of the applicant. In such case, a copy of the certification, as required by Minnesota Statutes, chapter 333 certified by the district court administrator's office shall be attached to the application;
- (d) whether applicant is married or single;
- (e) whether applicant is a registered voter and if so, where;
- (f) street addresses at which the applicant lived during the preceding five years;
- (g) kind, name and location of every business or occupation applicant has been engaged in during the preceding five years;
- (h) names and addresses of applicant's employers and business partners, if any, for the preceding five years;
- (i) whether applicant has ever been convicted of any felony, crime or violation on any law involving liquor. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had;

- (j) whether applicant has ever been engaged as any employee or in operating a saloon, bar, hotel, restaurant, cafe, tavern or other business of a similar nature. If so, applicant shall furnish information as to the time, place and length of time.
- (k) whether applicant has ever been in the military service. If so, applicant shall, upon request, exhibit all discharges.

Subd 4. Information required: partnerships. If the applicant is a partnership, the names and addresses of all partners and all information concerning each partner as is required of a natural person in subdivision 3 shall be provided. A managing partner or partners shall be designated. The interest of each partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application and if the partnership is required to file a certificate as to a trade name under the provisions of Minnesota Statutes, chapter 333, a copy of such certificate certified by the district court administrator's office shall be attached to the application. (Amended, Ord. 2001-01, Sec. 8)

Subd. 5. Information required: corporations, limited liability companies and other organizations. If the applicant is a corporation or other organization, the following information is required:

- (a) name and state of incorporation;
- (b) a true copy of certificate of incorporation, articles of incorporation or association agreement and by-laws, and if a foreign corporation, a certificate of authority as described in Minnesota Statutes, chapter 303;
- (c) the name of the manager or proprietor or other agent in charge of the premises to the licensed, giving all information about said person as is required of a natural person in subdivision 3;
- (d) the application shall contain a list of all persons who singly or together with their spouses or a parent, brother, sister or child of either of them own or control an interest in said corporation or association in excess of 5% or who are officers of said corporation or association, together with their addresses and all information as is required of a natural person in subdivision 3.

Subd. 6. Information required: club licenses. If the application is for a club license, the following information is required:

- (a) the name of the club;
- (b) date that club was first incorporated. True copies of the articles of incorporation, by-laws and the names and addresses of all officers, executive committee and board of directors shall be submitted;

- (c) a sworn statement that the club has been in existence for more than three years. The statement shall be made by a person who has personal knowledge of the facts stated therein. In the event that no person can make such a statement, satisfactory documentary proof may be submitted in support of such facts;
- (d) the number of members;
- (e) the name of the manager, proprietor or other person who shall be in charge of the licensed premises together with the same information concerning such person as is required of a natural person as set forth in subdivision 3.

Subd. 7. Information required; on-sale licenses. (Added, Ord. 2001-01, Sec. 9)

- (a) Whenever the application for an "on-sale" license or for a transfer thereof is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. (Added, Ord. 2001-01, Sec. 9)
- (b) An applicant for an "on-sale" license shall submit a floor plan of the dining room or dining rooms which shall be open to the public, shall show dimensions and shall indicate the number of persons intended to be served in each of said rooms. (Added, Ord. 2001-01, Sec. 9)

1200.07 Fees. Subdivision 1. Receipt to accompany application. All applications for a liquor license shall be accompanied by a receipt from the city clerk-treasurer for the required annual fee, paid in advance. No application for license shall be considered unless and until the fees therefor have been paid into the city's general fund. Upon denial of any application for a license, the city clerk-treasurer shall refund the amount paid.

Subd. 2. Amount of fees. The amount of the license fees shall be set by resolution of the city council and shall be in addition of the fee required by the commissioner of public safety, if any.

Subd. 3. Terms and conditions of fees. The fees shall cover, and each license shall be issued for a period of one year, except that if the application is made during the license year, a license may 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. All licenses shall expire on the last day of March of each year.

Subd. 4. Refunds. No refund of any fee shall be made except as authorized by statute.

1200.09. Granting of licenses. Subdivision 1. Preliminary investigation. On an initial application for an "on-sale" liquor license and on application for transfer of an existing "on-sale" liquor license, the applicant shall pay with their application fee an investigation fee of \$100, if the applicant has been a resident of the city of Independence for more than two years, or \$500 in all other cases, and the city shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the commissioner of public safety along with the additional information required by subsection 1200.05. If the council determines or if the commissioner of public safety on its own initiative determines that a comprehensive background and investigation of the applicant is necessary, the council may conduct the investigation itself or contract with the commissioner of public safety for the investigation. In addition, an investigation may be required prior to renewal of an existing "on-sale" liquor license when the council deems it in the public interest. If an investigation outside the state is required, the applicant shall be charged the actual cost of investigation, not to exceed \$10,000 which shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted. (Amended, Ord. 2001-01, Sec. 10)

Subd. 2. Hearing and issuance. The city council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to subdivision 1. 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 discretion, grant or refuse the application. No "on-sale" wine license or "off-sale" license shall become effective until it, together with the security furnished by the applicant, has been approved by the commissioner of public safety.

Subd. 3. Financial responsibility. No liquor license may be issued, maintained, or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability under Minnesota Statutes, section 340A.801. Such proof shall be filed with the commissioner of public safety and the city council. Applicants for liquor licenses to whom the requirement for proof of financial responsibility applies include applicants for beer or wine licenses with sales of less than \$10,000.00 of wine per year. The minimum requirement for proof of financial responsibility may be given by filing: (Amended, Ord. 2001-01, Sec. 11)

- (a) a certificate that there is in effect for the license period an insurance policy or pool providing at least \$500,000 of coverage for all damages, \$500,000 any occurrence and an annual aggregate policy limit of at least \$500,000;
- (b) a bond or a surety company with minimum coverages as provided in clause (a); or
- (c) a certificate of the state treasurer that the licensee has deposited with the state treasurer \$500,000 in cash or securities which may be legally purchased by savings banks or for trust funds having a market value of \$500,000.

Subd. 4. Person and premises licensed; transfer. Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without city council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license, and a transfer of stock without prior council approval is a ground for revocation of the license.

Subd. 5. Persons ineligible for license. No license shall be granted to or held by any person:

- (a) under 21 years of age;
- (b) who is not of good moral character and repute;
- (c) who, if an individual, is an alien;
- (d) who has been convicted within five years prior to the application for such license, of any 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;
- (e) who has a direct or indirect interest in a manufacturer, brewer, or wholesaler;
- (f) who has had an intoxicating liquor or nonintoxicating liquor license revoked within five years of the license application;
- (g) who is directly or indirectly interested in any other establishment to which an "on-sale" license has been issued by any governmental authority within a radius of 50 miles;
- (h) who is the spouse of a person ineligible for a license pursuant to the provisions of this subdivision and who, in the judgment of the council, based on a reasonable factual basis, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license;
- (i) who does not reside within 50 miles of the city of Independence;
- (j) who, if a corporation, does not have a manager who is not eligible pursuant to the provisions of this subsection. (Added, Ord. 2001-01, Sec. 12)

1200.11 Places ineligible for license. Subdivision 1. General prohibition. No license shall be granted for any place or business ineligible for such a license under state law.

Subd. 2. Time in business. No license shall be issued to any business, except an exclusive liquor store, until it has been in operation for one year.

Subd. 3. Delinquent taxes and charges. No license shall be granted or renewed for operation on any premises on which taxes, assessments, or other financial claims of the city are delinquent and unpaid.

Subd. 4. Distance from school or church. No license shall be granted within 500 feet of any school or within 500 feet of any church.

1200.13. Conditions of license. Subdivision 1. In general. Every license is subject to the conditions in the following subdivisions and all other provisions of this section and of any other applicable ordinance, state law or regulation.

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. 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 in the establishment is the act of the licensee.

Subd. 4. Inspections. Every licensee shall allow any peace officer, health officer or properly designed officer or employee of the city to enter, inspect and search the premises of the licensee during business hours without a warrant.

Subd. 5. Fundraisers and contributions. No fundraiser or other political rally for the candidate of any political office which is sponsored by the licensee or vendor of a licensee shall be conducted on the licensed premises. Licensees shall not contribute to the election campaign of any person running for the city of Independence city council or mayor.

Subd. 6. License must be posted. All licensed premises shall have the license posted in a conspicuous place at all times. (Added, Ord. 2001-01, Sec. 13)

Subd. 7. Limits on sales. No alcohol shall be sold or furnished or delivered to any intoxicated person, to any person under 21 years of age or to any person to whom sale is prohibited by state law. (Added, Ord. 2001-01, Sec. 14)

Subd. 8. Employment of minors. No person under 18 years of age shall be employed in any establishment in which alcohol is sold "on-sale" except that persons under 18 years of age may be employed to perform the duties of bussing or washing dishes in places defined as a restaurant in which alcohol is sold "on-sale". (Added, Ord. 2001-01, Sec. 15)

Subd. 9. Gambling prohibited. No licensee shall keep, possess, or operate or permit the keeping, possession or operation of any gambling device or apparatus on the licensed premises and shall not permit any gambling therein. (Added, Ord. 2001-01, Sec. 16)

Subd. 10. Prostitution prohibited. No licensee shall knowingly permit the licensed premises or any room in those premises or any adjoining building as a resort for prostitutes or to be used for the sale, exchange or dealing in any controlled substance within the meaning of chapter 152 of Minnesota Statutes. (Added, Ord. 2001-01, Sec. 17)

1200.14. Restrictions on purchase and consumption. Subdivision 1. Misrepresentation. No person under 21 years of age shall misrepresent their age for the purpose of obtaining liquor, beer, or wine nor shall they enter any premises licensed for the retail sale of liquor, beer, or wine for the purpose of purchasing or having served or delivered to them any such liquor, beer or wine, nor shall any such person purchase, attempt to purchase, consume, or have another person purchase any liquor, beer or wine for them. (Added, Ord. 2001-01, Sec. 18)

Subd. 2. Delivery to minors. No person under 21 years of age shall receive delivery of liquor, beer, or wine in the licensed premises or any other place. No person shall induce a person under the age of 21 years to purchase or procure or obtain liquor, beer, or wine. (Added, Ord. 2001-01, Sec. 18)

Subd. 3. Drivers license or state identification as prima facie evidence. Any person who may appear to the licensee, licensee's employees or agents to be under the age of 21 years shall, upon demand of the licensee, licensee's employee or agent produce and permit to be examined a valid Minnesota driver's license or Minnesota identification card. In every proceeding before the city council relating to the sale or furnishing of liquor, beer, or wine to persons under the age of 21 years, the fact that the minor involved has obtained and presented to the licensee, the licensee's agent or employee, a valid Minnesota driver's license or Minnesota identification card from which it appears that said person was 21 years of age 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. (Added, Ord. 2001-01, Sec. 18)

Subd. 4. Proof of age. Proof of age for purposes of consuming, purchasing, or possessing liquor, beer or wine, the consumption, sale or possession of which is regulated by age may only be established by a valid driver's license or a current identification card issued pursuant to Minnesota Statutes, section 171.07. (Added, Ord. 2001-01, Sec. 18)

1200.15. Suspension and revocation. The council shall either suspend for up to 60 days or revoke any liquor 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 revocations shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minnesota Statutes, sections 14.57 to 14.69 of the administrative procedure act. Lapse of required dram shop insurance shall effect an immediate suspension of any license issued pursuant to this section without further action of the city 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, a hearing shall be granted within ten days or such longer period as may be requested. A suspension under this paragraph shall continue until the city council determines that the financial responsibility requirements of this section have again been met.

1200.17. Penalty. Any person violating any provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$700 or imprisonment for not more than 90 days, or both, plus the cost of prosecution to any case.

Section 1205 - 3.2 Percent Malt Liquor and Bottle Clubs

(Amended, Ord. No. 98-07, Sec. 1)

(Repealed, Ord. No. 2001-01, Sec. 1)