

CHAPTER 110: ALCOHOLIC BEVERAGES

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GENERAL PROVISIONS

§ 110.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

ALCOHOLIC BEVERAGE. Any beverage containing more than one-half of 1% alcohol by volume, including, but not limited to, 3.2% malt liquor, wine and liquor as defined in this section.

APPLICANT. Any person making an application for a license under this chapter.

APPLICATION. A form with blanks or spaces thereon, to be filled in and completed by the applicant as his or her request for a license, furnished by the city and

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uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

3.2 PERCENT MALT LIQUOR. Malt liquor containing not less than one-half of 1% alcohol by volume nor more than 3.2% alcohol by weight. (This definition includes so-called malt coolers with the alcoholic content limits stated herein.)

BREW PUB. A facility that includes a restaurant that seats 25 guests at one time and manufactures fewer than 3500 barrels of malt liquor in a year for consumption on the premise. The off-sale of malt liquor is restricted to containers known as growlers meeting the definition and requirements of Minnesota Statutes.

BREWER. A person who manufactures 3.2 percent malt liquor or intoxicating malt liquor for sale.

CLUB. 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; and

(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. The club or congressionally chartered veterans' organization must have been in existence for at least three years.

COMMISSIONER. The Minnesota Commissioner of Public Safety.

EXCLUSIVE LIQUOR STORE. An establishment used exclusively for the sale of liquor except for the incidental sale of ice, tobacco, 3.2 percent malt liquor, beverages for mixing with liquor and soft drinks may also be sold, and the establishment may offer recorded or live entertainment and make available coin-operated amusement devices. **EXCLUSIVE LIQUOR STORE** also includes an on-sale or combination on-sale and off-

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sale liquor establishment which sells food for on-premise consumption when authorized by the city.

GROWLER. A reusable container for the purchase of malt liquor, at off-sale, from a brew pub that holds 64 ounces or 750 millimeters. At the time of sale said growler must be sealed and have information affixed to it identifying it as malt liquor and meet the requirements of Minnesota Statutes Section 340A.301, subdivision 7(b), as may be amended.

HOTEL. An establishment where food and lodging are regularly furnished to transients and which has:

(1) A resident proprietor or manager;

(2) A dining room serving the general public at tables and having facilities for seating at least 30 guests at one time; and

(3) At least ten guest rooms.

INTOXICATING MALT LIQUOR. Malt beverages containing in excess of 3.2 percent of alcohol by weight.

LICENSE. A document, issued by the city, to an applicant permitting him or her to carry on and transact the business stated therein.

LICENSE FEE. The money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

LICENSED PREMISES. The premises described in the issued license.

LICENSEE. An applicant who, pursuant to his or her approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the city for carrying on the business stated therein.

LIQUOR. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. (This definition includes so-called wine coolers and malt coolers with the alcoholic content limits stated herein.)

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MALT LIQUOR. Any malt liquor, ale or other beverage made from malt by fermentation and containing not less than one-half of 1% alcohol by volume.

MANUFACTURER. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces alcoholic beverages for sale.

MINOR. Any natural person who has not attained the age of 21 years.

OFF-SALE. The sale of alcoholic beverages in original packages for consumption off the licensed premises only.

ON-SALE. The sale of alcoholic beverages for consumption on the licensed premises only.

PACKAGE and **ORIGINAL PACKAGE.** Any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

RESTAURANT. 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 consumed while seated at a single location. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for the purposes of this chapter.

SALE, SELL and **SOLD.** All barbers and all manners or means of furnishing alcoholic beverages to persons, including the furnishing in violation or evasion of law.

WHOLESALE. Any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.

WINE. A beverage made without rectification or fortification by the fermentation of sound ripe grapes, grape juice, other fruits or honey and also carbonated wine, wine made from condensed grape must, wine made from other agricultural products, imitation wine, compounds sold as wine, vermouth, cider and/or perry and sake, containing not less than one-half of 1% nor more than 24% alcohol by volume. (This

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definition includes so-called wine coolers with the alcoholic content limits stated herein.) (Prior Code, § 5.01) (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.002 APPLICATIONS AND LICENSES UNDER THIS CHAPTER; PROCEDURE AND ADMINISTRATION.

(A) *Application.* All applications shall be made at the office of the City Clerk-Treasurer upon forms prescribed by the city, or if by the Commissioner, then together with the additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant.

(B) *False statements.* It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in the application, or any willful omission to state any information called for on the application form shall, upon discovery of the falsehood, work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.

(C) *Action.*

(1) *Granting.* The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications including proposed license periods must be consistent with this chapter. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before consideration by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

(2) *Issuing.* If an application is approved, the City Clerk-Treasurer shall forthwith issue a license pursuant thereto in the form prescribed by the city or the Commissioner, as the case may be, and upon payment of the license fee. All licenses shall be on a calendar year basis unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described. No off-sale license, club license, on-sale growler license, or temporary or annual

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consumption and display license shall become effective until it, together with proof of financial responsibility furnished by the applicant, has been approved by the Commissioner.

(3) *Transfer.* A license shall be transferable between persons upon consent of the Council. No license shall be transferable to a different location without prior consent of the Council and payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this section.

(4) *Refusal and termination.* The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall terminate only by expiration or revocation.

(5) *Public interest.* No license under this chapter may be issued, transferred or renewed if the results of any investigation show, to the satisfaction of the Council, that the issuance, transfer or renewal would not be in the public interest.

(6) *Suspension and revocation.*

(a) Suspension or revocation of a license, including civil penalties, shall be governed by M.S. § 340A.304, as it may be amended from time to time. Notwithstanding the presumptive penalties set forth in this chapter, nothing in this chapter shall restrict or limit the authority of the city to suspend up to 60 days, revoke the license, assess a civil fine not to exceed \$2,000 to impose conditions or take any adverse action in accordance with law, provided that the licensee has been afforded an opportunity for a hearing. 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 conducted by the city pursuant to M.S. §§ 14.57 *et seq.*, as it may be amended from time to time, of the Administrative Procedure Act.

(b) Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall affect an immediate suspension of any license issued pursuant to this chapter without further action of the City Council. Notice of cancellation, lapse or 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 licenses. The holder of the license who has received notice of lapse or required insurance or bond, or withdrawal of a required deposit, or of suspension or

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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 the longer period as may be requested. Any suspension under this section shall continue until the City Council determines that the financial responsibility requirements of this chapter have again been met.

(c) *Penalties for Violations.*

(1) *Criminal Penalties.* Any person violating any provision of this ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or imprisonment in the county jail for not more than 90 days, or both, plus the cost of prosecution in any case.

(2) *Civil Penalties.* The following civil penalties, including presumptive civil penalties, are applicable to all on and off sale liquor licenses issued by the City, including, but not limited to intoxicating liquor, wine, strong malt liquor, and 3.2 percent malt liquor. The minimum penalties for convictions or violations must be presumed as follows (unless specified, numbers below indicated consecutive day's suspension).

The following violations require revocation of the license on the first violation:

- a. Commission of a felony related to the licensed activity;
- b. Sale of alcoholic beverages while license is under suspension;

Any violation not listed in the previous sections would be heard by the Council and it would review all information and circumstances and apply the following presumptive penalties. Licensees have the right to request a hearing before the City Council if not in agreement with the presumptive penalty. Such requests for hearing must be made within 20 days of service of the violation notice. If the license holder does not request a hearing that shall constitute a waiver and the penalty shall become effective upon expiration of the 20 day notice period.

Presumptive penalties are as follows:

Type of License Held	1st Violation	2nd Violation	3rd Violation	4th Violation
On-sale intoxicating liquor	\$500 and training	\$1,000 and training	\$1,500 and 7 day suspension	\$2,000 and Revocation
Off-sale intoxicating liquor	\$500 and training	\$1,000 and training	\$1,500 and 7 day suspension	\$2,000 and Revocation

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Multiple violations referred to above shall be considered and counted within a two year period commencing with the first violation. If the City revokes a license, the license holder may not apply for any liquor license within 2 years of revocation. Suspension of the license shall commence and payment of the civil fine shall be due on the Monday following final disposition. In the case of any uncontested violation where the license holder has not requested a hearing, the suspension shall commence and payment of the civil fine shall be due immediately after expiration of the 20 days notice period. Further, "Training" shall mean participation by the licensee and employee(s) in training concerning liquor and malt liquor sales regulations and restrictions, the adequacy of which shall be determined by the Breezy Point Police Department.

(D) *Duplicate licenses.* Duplicates of all original licenses under this chapter may be issued by the City Clerk-Treasurer without action by the Council, upon licensee's affidavit that the original has been lost and upon payment of a fee to be set from time to time by resolution for issuance of the duplicate. All duplicate licenses shall be clearly marked "Duplicate".

(E) *Posting.* All licensees shall conspicuously post their licenses in their places of business.

(F) *Persons disqualified.*

(1) No license under this chapter may be issued to:

(a) A person not a citizen of the United States or a resident alien;

(b) A person who, within five years of the license application, has been convicted of a willful violation of a federal or state law, or local ordinance governing the manufacture, sale, distribution or possession for sale or distribution, of alcoholic beverages;

(c) A person who has had an alcoholic beverage license revoked within five years of the license application, or to any person who, at the time of the violation, owns any interest, whether as a holder of more than 5% of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business or firm in which any person is in any manner interested;

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(d) A person under the age of 21 years; or

(e) A person not of good moral character and repute.

(2) No person holding a license from the Commissioner.

(Prior Code, § 5.02) (Ord. 05-04-07, passed 5-7-2007, Ord. 10-007, 3rd Series, passed 5-03-2010, Ord. 10-007, 3rd Series, passed 5-03-2010, Ord. 11-08, 3rd Series, passed 8-05-2011) (Ord. 13-04, 3rd Series, passed 5-06-2013) Penalty, see § 110.999

§ 110.003 RENEWAL LICENSE APPLICATIONS.

(A) Applications for renewal of all licenses under this chapter shall be made at least 30 days prior to the date of expiration of the license, and shall contain the information as is required by the city.

(B) This time requirement may be waived by the Council for good and sufficient cause.

(Prior Code, § 5.03)

§ 110.004 DELINQUENT TAXES, CHARGES OR CODE VIOLATIONS.

No license under this chapter shall be granted for operation on any premises upon which taxes, assessments or installments thereof, or other financial claims of the city, are owed and are delinquent and unpaid. In addition licenses may be considered for non-renewal to those businesses who have code violations at the time of renewal or have exceeded one violation in the past year.

(Prior Code, § 5.04) (Ord. 10-007, 3rd Series, passed 5-03-2010)

§ 110.005 CONDITIONAL LICENSES.

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place the special conditions and restrictions, in addition to those stated in this chapter, upon any license as it, in its discretion, may deem reasonable and justified.

(Prior Code, § 5.05)

§ 110.006 PREMISES LICENSED.

Unless expressly stated therein, a license issued under the provisions of this chapter

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shall be valid only for space that is compact and contiguous, situated on the premises described in the license. All transactions relating to a sale under the license must take place within the licensed premises specified in the license application. For golf courses with on-sale licenses the licensed premises means the entire golf course except for areas where motor vehicles are regularly parked or operated.

(Prior Code, § 5.06) (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.007 UNLAWFUL ACTS.

(A) *Consumption.* It is unlawful for any person to consume, or any licensee to permit consumption of 3.2 percent malt liquor, wine or liquor on licensed premises more than 30 minutes after the hour when a sale thereof can legally be made.

(B) *Closing.* It is unlawful for any person, other than an on-sale licensee or his or her bona fide employee actually engaged in the performance of his or her duties, to be on premises licensed under this chapter, more than 30 minutes after the legal time for making licensed sales. Provided, however, that this section shall not apply to licensees, employees of licensees and patrons on licensed premises for the sole purpose of preparing, serving or consuming food or beverages other than malt liquor, wine or liquor.

(Prior Code, § 5.07) Penalty, see § 110.999

LICENSING AND REGULATION

§ 110.025 CONDUCT ON LICENSED PREMISES.

Except as herein provided, every licensee under this chapter shall be responsible for the conduct of his or her place of business and shall maintain conditions of sobriety and order therein.

(Prior Code, § 5.08)

§ 110.026 SALE BY EMPLOYEE.

Any sale of an alcoholic beverage in or from any premises licensed under this chapter by any employee authorized to make the sale in or from the place, is the act of the employer as well as of the person actually making the sale and every employer is liable to all of the penalties, except criminal penalties, provided by law for the sale, equally with the person actually making the sale.

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(Prior Code, § 5.09)

§ 110.027 LICENSE CONDITION AND UNLAWFUL ACT.

(A) All premises licensed under this chapter shall at all times be open to inspection by any police officer to determine whether or not this chapter and all other laws are being observed. All persons, as a condition to being issued the license, consent to the inspection by the officers and without a warrant for searches or seizures.

(B) It is unlawful for any licensee, agent or employee of a licensee, to hinder or prevent a police officer from making the inspection.

(Prior Code, § 5.10) Penalty, see § 110.999

§ 110.028 FINANCIAL RESPONSIBILITY OF LICENSEES.

(A) *Proof.* No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility, imposed by statute, by filing with the city:

(1) A certificate that there is in effect an insurance policy or pool providing minimum coverages determined by the city;

(2) A bond of a surety company with minimum coverages as provided in division (A)(1) above; or

(3) A certificate of the State Treasurer that the licensee has deposited with him or her \$100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.

(B) *Exception.* This section does not apply to on-sale 3.2 percent Malt Liquor Licensees with sales of 3.2 percent malt liquor of less than \$25,000 for the preceding year, nor to off-sale 3.2 percent Malt Liquor Licensees with sales of 3.2 percent malt liquor of less than \$50,000 for the preceding year, nor does it apply to holders of On-sale Wine Licensees with sales of wine of less than \$25,000 for the preceding year. An affidavit of the licensee shall be required to establish the exemption under this division.

(C) *Documents submitted to Commissioner.* All proofs of financial responsibility and exemption affidavits filed with the city under this section shall be submitted by the city to the Minnesota Commissioner of Public Safety.

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(Prior Code, § 5.11) (Ord. 13-04, 3rd Series, passed 5-06-2013)
Penalty, see § 110.999

§ 110.029 INSURANCE CERTIFICATE REQUIREMENTS.

(A) Whenever an insurance certificate is required by this chapter, the applicant shall file with the City Clerk-Treasurer a certificate of insurance showing:

- (1) The limits are at least as high as required;
- (2) Coverage is effective for at least the license term approved; and

(3) The insurance will not be cancelled or terminated without 30-days' written notice served upon the City Clerk-Treasurer.

(B) Cancellation or termination of the coverage shall be grounds for license revocation.

(Prior Code, § 5.12)

§ 110.030 MINORS AS DEFINED IN § 110.01; UNLAWFUL ACTS.

(A) *Consumption.* It is unlawful for any:

(1) Licensee to permit any minor to consume alcoholic beverages on licensed premises; and

(2) Minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of the parent or guardian.

(B) *Purchasing.* It is unlawful for any:

(1) Person to sell, barter, furnish or give alcoholic beverages to a minor unless the person is the parent or guardian of the minor, and then only for consumption in the household of the parent or guardian;

(2) Minor to purchase or attempt to purchase any alcoholic beverage; and

(3) Person to induce a minor to purchase or procure any alcoholic beverage.

(C) *Possession.* It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or

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guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his or her parent or guardian.

(D) *Entering licensed premises.* It is unlawful for any minor, as defined in this chapter, to enter licensed premises for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of 18 years to enter licensed premises for the following purposes:

(1) To perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute;

(2) To consume meals; and

(3) To attend social functions that are held in a portion of the establishment where liquor is not sold. It is unlawful for a licensee to permit a person under the age of 18 years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or in the company of a parent or guardian.

(E) *Misrepresentation of age.* It is unlawful for a minor to misrepresent his or her age for the purpose of purchasing an alcoholic beverage.

(F) *Proof of age.* Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license, a Minnesota identification card, or, in the case of a foreign national, by a valid passport.
(Prior Code, § 5.13) Penalty, see § 110.999

§ 110.031 GAMBLING PROHIBITED.

It is unlawful for any licensee to keep, possess or operate, or permit the keeping, possession or operation on licensed premises of dice or any other gambling device, or permit raffles to be conducted, except as authorized in Minnesota Statutes 609.761.

(Prior Code, § 5.14) (Ord. 13-04, 3rd Series, passed 5-06-2013) Penalty, see § 110.999

§ 110.032 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS.

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It is unlawful for any person to consume or possess in an unsealed container, any alcoholic beverage on any city park, street, public property or private parking lot to which the public has access, except on the premises when and where permission has been specifically granted or licensed by the Council. Provided that this section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of the vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

(Prior Code, § 5.15) Penalty, see § 110.999

§ 110.033 LICENSE FEES; FIXING AND REFUNDMENT.

(A) *Fixing fees.* Except as otherwise specifically provided, all fees provided for in this chapter, including, but not by way of limitation, license fees, investigation and administration fees, shall be fixed and determined by the Council, adopted by resolution and uniformly enforced. The fees may, from time-to-time, be amended by the Council by resolution. A copy of the resolution shall be kept on file in the office of the City Clerk-Treasurer and open to inspection during regular business hours. For the purpose of fixing the fees, the Council may categorize and classify, provided, that the categorization and classification shall be included in the resolution authorized by this section.

(B) *Refund.* A pro-rata share of an annual license fee for a license to sell liquor or 3.2 percent malt liquor, either on-sale or off-sale, shall be refunded to the licensee, or to his or her estate, if:

- (1) The business ceases to operate because of destruction or damage;
- (2) The licensee dies; or
- (3) The business ceases to be lawful for a reason other than a license revocation or suspension.
- (4) The licensee ceases to carry on the licensed business under the license through a transfer of the license to a new licensee.

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(Prior Code, § 5.16) (Ord. 13-04, 3rd Series, passed 5-06-2013)

3.2 PERCENT MALT LIQUOR

§ 110.050 3.2 PERCENT MALT LIQUOR LICENSE REQUIRED.

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of 3.2 percent malt liquor, as part of a commercial transaction, without a license therefore from the city.

(B) This section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding 3.2 percent Malt Liquor Licenses from the city.

(C) Annual on-sale 3.2 percent Malt Liquor Licenses may be issued only to golf courses, drug stores, restaurants, hotels, clubs and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

(D) Any person licensed to sell liquor on-sale shall not be required to obtain an On-sale 3.2 percent Malt Liquor License, and may sell 3.2 percent malt liquor on-sale without an additional license.

(E) Any person licensed to sell liquor off-sale shall not be required to obtain an Off-sale 3.2 percent Malt Liquor License, and may sell 3.2 percent malt liquor off-sale without an additional license.

(F) 3.2 percent Malt Liquor Licenses shall fall into the categories of an annual 3.2% On-Sale, 3.2% Off-Sale, Combination 3.2% On and Off-sale, or Temporary 3.2% License.

(Prior Code, § 5.30) (Ord. 13-04, 3rd Series, passed 5-06-2013)

Penalty, see § 110.999

§ 110.051 TEMPORARY 3.2 PERCENT MALT LIQUOR LICENSE.

(A) *Applicant.* A club or charitable, religious or non-profit organization shall qualify for a temporary On-sale 3.2 percent Malt Liquor License.

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(B) *Conditions.*

(1) An application for a temporary license shall state the exact dates and place of proposed temporary sale.

(2) No applicant shall qualify for a temporary license for more than a total of seven days in any calendar year.

(3) The Council may, but at no time shall it be under any obligation whatsoever, to grant a Temporary 3.2 percent Malt Liquor License on premises owned or controlled by the city. Any license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of \$100,000 for injury to any one person and \$300,000 for injury to more than one person, and \$10,000 for property damage, naming the city as an insured during the license period. The license shall be issued only on the condition that the applicant will not sell in excess of \$25,000 (retail value) worth of 3.2 percent malt liquor in any calendar year, and thereupon shall be exempt from proof of financial responsibility as provided for herein.

(Prior Code, § 5.31) (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.052 HOURS AND DAYS OF 3.2 PERCENT MALT LIQUOR SALES.

No sale of 3.2 % malt liquor shall be made between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 2:00 a.m. and 10:00 a.m. on Sunday.

(Prior Code, § 5.32) (Ord. passed 7- -2003; Ord. 111A, passed 5-21-2004; Ord. 05-05-07, passed 5-7-2007) (Ord. 13-04, 3rd Series, passed 5-06-2013)

Penalty, see § 110.999

§ 110.053 3.2 PERCENT MALT LIQUOR LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

It is unlawful for any:

(A) Person who has not attained the age of 18 years to be employed to sell or serve 3.2 percent malt liquor in any on-sale establishment;

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(B) Person to knowingly induce another to make an illegal sale or purchase of 3.2 percent malt liquor;

(C) Licensee to sell or serve 3.2 percent malt liquor to any person who is obviously intoxicated;

(D) Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises;

(E) Licensee to sell 3.2 percent malt liquor on any day, or during any hour, when the sales are not permitted by law;

(F) Licensee to allow consumption of 3.2 percent malt liquor on licensed premises on any day when sales of 3.2 percent malt liquor are not permitted by law; and

(G) Person to purchase 3.2 percent malt liquor on any day, or during any hour, when sales of 3.2 percent malt liquor are not permitted by law.

(Prior Code, § 5.33) (Ord. 13-04, 3rd Series, passed 5-06-2013) Penalty, see § 110.999

§ 110.056 BREW PUB LICENSE REQUIRED.

(A) A Brew Pub License may be issued for On-sale of intoxicating malt liquor subject to the following criteria:

(1) Possesses a liquor brewer/manufacturer license issued by the state.

(2) Facility includes a restaurant that seats at least 25 guests at one time.

(3) Manufacturers fewer than 3500 barrels of malt liquor in a year, at any one licensed premise, for consumption on the premise.

(4) Does not have an ownership interest, in whole or in part, in any other licensed intoxicating liquor or malt liquor manufacturer, brewer, importer or wholesaler, except for a similarly licensed restaurant-based brew pub. Licensee cannot be an officer, director, agent, or employee of a licensed manufacturer, brewer, importer or wholesaler.

(Ord. 13-04, 3rd Series, passed 5-06-2013)

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§ 110.057 GROWLER OFF-SALE LICENSE REQUIRED.

(A) Growler Off-sale License. With the approval of the city and the Commissioner of Public Safety, a Brew Pub may be granted a Growler Off-sale Malt Liquor License providing it has a Brew Pub On-sale License and manufacturers less than 3500 barrels of malt liquor per year of which only 500 barrels may be sold in off-sale.

(B) No off-sale shall be made outside of the legal hours and days of liquor sales, as set forth in § 110.073 of this chapter. Malt liquor sold off-sale under this Section must be removed from the premises before closing time of off-sale liquor. (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.060 WINE LICENSE REQUIRED

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of wine, as part of a commercial transaction, without a license therefore from the city.

(B) On-Sale Wine Licenses are authorized for restaurants that seat at least 25 guests at one time, a theater, or a licensed bed and breakfast facility, who only serves registered guests, with approval of the Commissioner. Such a license permits the sale of wine up to 14% alcohol by volume for consumption with the sale of food. Exemptions to the Wine License requirement for a bed and breakfast facility are available under Minnesota Statutes if certain criteria are met.

(C) A holder of an On-sale Wine License and an On-sale 3.2 percent Malt Liquor License, whose gross receipts are at least 60 percent attributable to the sale of food, may sell intoxicating malt liquors at on-sale without an additional license. (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.061 TEMPORARY OFF-SALE WINE LICENSE

A Temporary Off-sale Wine License, with the approval of the city and Commissioner of Public Safety, may be issued for the off-sale of wine at auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three consecutive days, and provided not more than 600 cases of wine are sold at auction. (Ord. 13-04, 3rd Series, passed 5-06-2013)

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§ 110.062 HOURS AND DAYS OF WINE SALES

No on-sale of wine shall be made between the hours of 2:00 a.m. and 8:00 a.m. on the days Monday through Saturday, nor between 2:00 a.m. and 10:00 a.m. Sunday. (Ord. 13-04, 3rd Series, passed 5-06-2013)

LIQUOR

§ 110.070 LIQUOR LICENSE REQUIRED.

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of liquor, as part of a commercial transaction, without a license therefore from the city.

(B) This section shall not apply:

(1) To the potable liquors as are intended for therapeutic purposes and not as a beverage;

(2) To industrial alcohol and its compounds not prepared or used for beverage purposes;

(3) To wine in the possession of a person duly licensed under this chapter as an on-sale wine licensee;

(4) To sales by manufacturers to wholesalers duly licensed as such by the Commissioner; or

(5) To sales by wholesalers to persons holding liquor licenses from the city.

(C) The city may issue annual on-sale liquor licenses only to the following:

(1) Hotels;

(2) Restaurants;

(3) Clubs or congressionally chartered veterans' organizations, provided that

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liquor sales will be made only to members and bona fide guests; and

(4) Exclusive liquor stores.

(D) The city may issue annual Off-sale Liquor Licenses to exclusive liquor stores and drug stores. Any person licensed to sell liquor on-sale shall not be required to obtain an On-sale 3.2 percent Malt Liquor License, and may sell 3.2 percent malt liquor on-sale without an additional license. Any person licensed to sell liquor off-sale shall not be required to obtain an Off-sale 3.2 percent Malt Liquor License, and may sell 3.2 percent malt liquor off-sale without an additional license.

(Prior Code, § 5.40) (Ord. 13-04, 3rd Series, passed 5-06-2013)

Penalty, see § 110.999

§ 110.071 SUNDAY SALES.

The electorate of the city having heretofore authorized the same at a general or special election, a Sunday on-sale liquor license may be issued to hotels, restaurants or clubs, as defined in this chapter, which have on-sale licenses and which also have facilities for serving not less than 30 guests at one time. The hours of the sales shall be from 8:00 a.m. to 2:00 a.m. the following day, in conjunction with the serving of food, provided that the licensed establishment is in conformance with the Minnesota Clean Indoor Air Act, being M.S. §§ 144.411 through 144.417, as they may be amended from time to time.

(Prior Code, § 5.41) (Ord. passed 7- -2003; Ord. 111A, passed 5-21-2004; Ord. 05-05-07, passed 5-7-2007; Ord. 15-03, 3rd Series, passed 6-1-2015)

§ 110.072 TEMPORARY LIQUOR LICENSE.

(A) *License authorized.* Notwithstanding any provision of the City Code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. The license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the city, for liquor catering services.

(B) *Applicant.* The applicant for a license under this section must be a club or charitable, religious or other non-profit organization in existence for at least three years.

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(C) *Terms and conditions of license.*

(1) No license is valid until approved by the Commissioner.

(2) No license shall be issued for more than three consecutive days.

(3) All licenses and licensees are subject to all provisions of statutes and the City Code relating to liquor sale and licensing. The licensee shall provide proof of financial responsibility coverage and, in the case of catering by a full-year on-sale licensee, the caterer shall provide proof of the extension of the coverage to the licensed premises.

(4) Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.

(5) A single organization may receive no more than 12 day's worth of temporary licenses per year.

(Prior Code, § 5.42) (Ord. 13-04, 3rd Series, passed 5-06-2013)

§ 110.073 HOURS AND DAYS OF LIQUOR SALES.

No sale of liquor for consumption on the licensed premises shall be made between 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 2:00 a.m. and 8:00 a.m. Sunday (if the premises are licensed for Sunday sales pursuant to § 110.071). No off-sale shall be made before 8:00 a.m. or after 10:00 p.m. on Monday through Saturday; on Thanksgiving Day, Christmas Day (December 25); or after 8:00 p.m. Christmas Eve (December 24). Off-sale on Sundays shall be allowed in accordance with state law. Malt Liquor in growlers may only be sold at off-sale on Sundays between the hours of 8:00 a.m. and 10:00 p.m.

(Prior Code, § 5.43) (Ord. passed 7- -2003; Ord. 111A, passed 5-21-2004; Ord. 05-05-07, passed 5-7-2007) (Ord. 13-04, 3rd Series, passed 5-06-2013; Ord. 15-03, 3rd Series, passed 6-01-2015; Ord. 17-02, 3rd Series, passed 04-03-2017)

Penalty, see § 110.999

§ 110.074 LIQUOR LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

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(A) *Limitations on issuance of licenses to one person or place.*

(1) No off-sale liquor license may be issued to any one person for more than one place in the city. Any person holding an interest in two or more of the licenses in the city shall be deemed to hold more than one license.

(2) For the purpose of this division, the term ***INTEREST***:

(a) Includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor establishment, and a person who receives money from time to time directly or indirectly from a licensee, in the absence of consideration and excluding gifts or donations, has a pecuniary interest in the retail business; and

(b) Does not include loans, rental agreements, open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures, supplies to the establishment, an interest in a corporation owning or operating a hotel but having at least 150 or more rental units holding a liquor license in conjunction therewith or 10% or less interest in any other corporation holding a license.

(3) In determining whether an interest exists, the transaction must have been bona fide and the reasonable value of the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this division must be considered.

(B) *Licenses in connection with premises of another.* A liquor license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this chapter. This division does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien or a person who has been convicted of a crime other than a violation of this chapter.

(C) *Off-sale licenses where 3.2 percent malt liquor is sold.* An off-sale liquor license may not be issued to a place where 3.2 percent malt liquor is sold for consumption on the premises. This division does not apply to those places where both an on-sale and off-sale license, or a combination license, have been issued.

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(D) *Employment of minors.* No person under 18 years of age may be employed in a place where liquor is sold for consumption on the premises, except persons under 18 years of age may be employed as musicians or in bussing or washing dishes in a restaurant or hotel that is licensed to sell liquor and may be employed as waiters or waitresses at a restaurant or hotel where only wine is sold, provided that the person under the age of 18 may not serve or sell any wine.

(E) *Unlawful acts.* It is unlawful for any:

(1) Licensee to sell, offer for sale or keep for sale, liquor in any original package which has been refilled or partly refilled;

(2) Licensee to display liquor to the public during hours when the sale of liquor is prohibited;

(3) Person to hold more than one license. For the purpose of this division, any person owning a beneficial interest of 5%, or more, of any licensed establishment shall be considered a licensee;

(4) Person to knowingly induce another to make an illegal sale or purchase of liquor;

(5) Licensee to sell liquor on any day, or during any hour, when sales of liquor are not permitted by law;

(6) Person to purchase liquor on any day, or during any hour, when sales of liquor are not permitted by law; and

(7) Licensee to sell or serve liquor to any person who is obviously intoxicated.

(F) *Samples.* It is lawful for an off-sale licensee to provide samples of wine, liqueurs and cordials which the licensee currently has in stock and is offering for sale to the general public without obtaining an additional license, provided the wine, liqueur and cordial samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 50 milliliters of wine per variety per customer and 25 milliliters of liqueur or cordial per variety per customer.

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(G) *Drug stores.* No liquor license may be issued to a person operating a drug store unless the person has operated it for at least two years, or has purchased a drug store that has been in continuous operation for two or more years.

(H) *Number of licenses.* The Council shall issue no more than six on-sale liquor licenses.

(Prior Code, § 5.44) (Ord. 13-04, 3rd Series, passed 5-06-2013)

Penalty, see § 110.999

Statutory reference:

Restrictions on number of intoxicating liquor licenses issued, see M.S. § 340A.413

MISCELLANEOUS PROVISIONS

§ 110.090 CONSUMPTION AND DISPLAY.

(A) *Consumption and display license required.* It is unlawful for any business establishment or club, not holding an on-sale liquor license, to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale or otherwise dispose of any liquid for the purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to the members, without a license therefore from the city.

(B) *Consumption and display restrictions and regulations.*

(1) *Eligible licensees.* If the applicant is otherwise eligible, licenses may be issued only to:

(a) Persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this chapter or other law relating to the sale or furnishing of alcoholic beverages;

(b) A restaurant;

(c) A hotel;

(d) A 3.2 percent Malt Liquor Licensee;

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(e) A resort as defined by statute; or

(f) A club or an unincorporated club otherwise meeting the definition of a club, provided, that no license may be issued to a club holding an on-sale liquor license.

(2) *Unlawful act.* It is unlawful to sell liquor on licensed premises.

(3) *License expiration.* In order to coordinate the expiration of a consumption and display license with a state permit, all licenses shall expire on March 31 of each year.

(4) *State permit required.* Licenses shall be issued only to holders of a consumption and display permit from the Commissioner.

(5) *Lockers.* A club to which a license is issued under this section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.

(6) *Hours and days.* No license may permit a person to consume or display liquor, and no person may consume or display liquor between 1:00 a.m. and 8:00 a.m. Monday through Saturday or 1 a.m. and 12:00 noon on Sundays. (Prior Code, § 5.60) (Ord. passed 7- -2003; Ord. 111A, passed 5-21-2004; Ord. 05-05-07, passed 5-7-2007) (Ord. 13-04, 3rd Series, passed 5-06-2013) Penalty, see § 110.999

§ 110.091 CONSUMPTION AND DISPLAY; ONE-DAY LICENSE.

(A) *License required.* Any non-profit organization desiring to serve liquids for the purpose of mixing with liquor and permitting the consumption and display of liquor in conjunction with a social activity sponsored by it, shall first obtain a license therefore from the city. It is unlawful for any such organization to fail to obtain the license.

(B) *Term.* The term of the license shall be one day only.

(C) *Limitation on number.* The city shall issue no more than ten licenses in any calendar year.

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(D) *License fee.* The fee for the one-day license is \$25.

(E) *Approval.* In addition to Council approval, the license must be approved by the Commissioner of Public Safety.

(Prior Code, § 5.61) Penalty, see § 110.999

§ 110.092 NUDITY OR OBSCENITY PROHIBITED.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context indicates or requires a different meaning.

NUDITY. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

OBSCENE PERFORMANCE. A play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

OBSCENITIES. Those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning, or that in context are clearly used for their bodily, sexual or excretory meaning.

SADO-MASOCHISTIC ABUSE. Flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT. Human masturbation, sexual intercourse or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

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SEXUAL EXCITEMENT. The condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(B) *Unlawful act.* It is unlawful for any person issued a license provided for in this chapter to permit upon licensed premises any nudity, obscene performance or continued use of obscenities by any agent, employee, patron or other person.

(Prior Code, § 5.70) Penalty, see § 110.999

§ 110.999 PENALTY.

Any person violating any provision of this chapter shall be subject to § 10.99.