

CHAPTER VI.
LIQUOR AND BEER
Part 1. Liquor Licensing, Regulation and Consumption.

601.01 **Short Title**

This Ordinance shall be known, cited and referred to as the *Ordinance for Liquor Licensing, Regulation, and Consumption* except as referred to herein, where it shall be known as “this Ordinance.”

601.02 **Adoption of State Law by Reference**

The provisions of Minnesota Statutes, Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Ordinance as if set out in full. It is the intention of the City Council that all future amendments to Minnesota Statutes, Chapter 340A, are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinance is adopted.

601.03 **Definitions**

In addition to the definitions contained in Minnesota Statutes, Section 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this Ordinance:

LIQUOR, as used in this Ordinance, without modification by the words "intoxicating" or "3.2 percent malt", includes both intoxicating liquor and 3.2 percent malt liquor.

PUBLIC PLACE, as used in this Ordinance, includes all outdoor places owned by or open to the general public and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

RESTAURANT means an eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this term in this Ordinance, an establishment shall have a license from the state as required by Minnesota Statutes, Section 157.16, as it may be amended from time to time, and meet the definition of either a "small establishment", "medium establishment" or "large establishment" as defined in Minnesota

Statutes, Section 157.16, subdivision 3d, as it may be amended from time to time. 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 purposes of this chapter unless it meets the definitions of "small establishment", "medium establishment" or "large establishment".

601.04 **Severability**

Every section, provision, sentence, or phrase of this Ordinance is separate from every other section, provision, sentence, or phrase of this Ordinance. If any section, provision, sentence, or phrase is adjudicated to be invalid by a court of competent jurisdiction, preempted by state or federal law, or otherwise held invalid, such judgment shall not invalidate any other section, provision, sentence, or phrase of this Ordinance.

601.05 **Consumption in Public Places**

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this Ordinance or where the consumption and display of liquor is lawfully permitted.

Consumption of intoxicating liquor or 3.2 percent malt liquor at the Winthrop City Hall and other Municipal owner buildings is allowed without a permit if the consumption is in conjunction with a private event, not open to the public, does not involve the sale of intoxicating liquor or 3.2 percent malt liquor, and is approved by the Council prior to the event. In such instances, other provisions of this Ordinance remain applicable.

601.06 **Number of Licenses Which May Be Issued**

The City does not choose to limit the number of off-sale intoxicating liquor licenses, on-sale club intoxicating liquor licenses, combination on-sale/off-sale intoxicating liquor licenses, wine licenses, or on or off sale 3.2 percent malt liquor licenses that may be issued. The City shall not issue more than seven (7) On-sale intoxicating liquor licenses. The City shall not issue more than 12 days worth of temporary on-sale intoxicating liquor licenses per year per, per organization or location. The City shall not issue more than ten one-day temporary consumption and display permits per organization

601.07 **Term and Expiration of Licenses**

Each license shall be issued for a maximum period of one (1) year. All licenses, except temporary licenses, shall expire on December 31 of each year. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying City consent to the permit, shall expire on March 31 of each year.

601.08 Kinds of Liquor Licenses

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

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

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

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994.

(E) General on-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by Minnesota Statutes, Section 340A.101, as it may be amended from time to time, and this Ordinance: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores.

- (i) Club licenses may be issued only with the approval of the Commissioner of Public Safety.
- (ii) The Council may, in its sound discretion, authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the City under the provisions of Minnesota Statutes, Section 340A.404, as it may be amended from time to time.
- (iii) The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of Minnesota Statutes, Section 340A.404, subdivision 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by Minnesota Statutes, Section 340A.504, subdivision 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant, as defined in Section 103 of this Ordinance, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food.

(G) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.

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

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of Minnesota Statutes, Section 340A.404, subdivision 5, as it may be amended from time to time, and which meet the definition of restaurant in Section 3 of this Ordinance; and to licensed bed and breakfast facilities which meet the criteria in Minnesota Statutes, Section 340A.401, subdivision 1, as it may be amended from time to time. The holder of an on-sale wine license who also holds an on sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

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

601.09 **License Fees; Pro Rata**

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

(B) The fee for an off-sale intoxicating liquor license shall be \$100.

(C) The fee for an on-sale intoxicating liquor license shall be \$2,000.

(D) The fee for a club license shall not exceed the amount provided for in Minnesota Statutes, Section 340A.408, subdivision 2(b), as it may be amended from time to time.

(E) The fee for a Sunday on-sale intoxicating liquor license, if allowed by proper voter approval, shall be \$25.

(F) The fee for a combination on- and off-sale intoxicating liquor license shall be \$2100.

(G) The fee for an on-sale wine license shall be \$700.

(H) The additional fee for a consumption and display permit shall be \$200. Single day consumption and display permits shall be \$25.

(I) The fee for an on-sale 3.2 percent malt liquor license shall be \$100. The Council may, in its sound discretion, issue a seasonal on-sale 3.2 percent malt liquor license with a fee prorated on a quarterly basis.

(J) The fee for an off-sale 3.2 percent malt liquor license shall be \$25.

(K) The fee for a temporary 3.2 percent malt liquor license shall be \$5 per day.

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

(M) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

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

(O) A refund of a pro rata share of an annual license fee may occur only if authorized by Minnesota Statutes Section 340A.408, subdivision 5.

As amended October 22, 2008.

601.10 **Council Discretion to Grant or Deny a License**

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

601.11 **Application for License**

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

(B) *Financial responsibility.* Prior to the issuance of any license under this Ordinance, the applicant shall demonstrate proof of financial responsibility as defined in Minnesota Statutes, Section 340A.409, as it may be amended from time to time, with regard to liability under Minnesota Statutes, Section 340A.801, as it may be amended from time to time. This proof will be filed with the City and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to Minnesota Statutes, Section 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this Ordinance without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

601.12 **Description of Premises**

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

601.13 **Applications for Renewal**

At least 45 days before a license issued under this Ordinance is to be renewed, an application for renewal shall be filed with the City. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

601.14 **Transfer of License**

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

601.15 **Investigation**

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500, which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on sale intoxicating liquor license or an on sale wine license.

601.16 **Hearing and Issuance**

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

601.17 **Restrictions on Issuance**

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

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

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

601.18 **Conditions of License**

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

(A) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Ordinance and the law equally with the employee.

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

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

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

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

601.19 Hours and Days of Sale

(A) The hours of operation and days of sale shall be those set by Minnesota Statutes, Section 340A.504, as it may be amended from time to time, with the exception that the “on-sale” of 3.2 malt liquor or intoxicating liquor may not be made after 1 a.m. It is the intent of the City through this provision to not extend bar closing times from 1 a.m. to 2 a.m.

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

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

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

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license. *As amended August 4th, 2003.*

601.191: Outdoor seating/serving

Any licensee wishing to provide an outdoor seating area whereby customers can sit and eat/drink shall include specifically in its license application a description of the outdoor area. Any outdoor area must be fenced on all sides. The fencing must be at 4 feet high and constructed in such a way that beverages cannot be passed between the fencing. The fencing shall also be of such material so as to screen the seating area from public sight. As Amended October 1st, 2007

609.20 Minors on Premises

(A) No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restaurant, hotel, motel or other multipurpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

(B) It is unlawful for a person under the age of 21 years to enter an establishment licensed for the sale of alcoholic beverages or any municipal liquor store for the purpose of purchasing or having served or delivered any alcoholic beverage. Notwithstanding this provision, a person 18, 19, or 20 years of age may enter an establishment licensed under this chapter to:

- (1) Perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by Minn. Stat. § 340A.412, subd. 10 or any other provision of Minnesota law, as amended from time to time
- (2) Consume meals;
- (3) Attend Social functions that are held in a portion of the establishment where liquor is not sold under circumstances or where the licensed establishment is rented out to a private individual(s) or public/civic for dances, anniversaries, reunions, or other similar social or family gatherings.

(C) A person show has not attained the age of 21 is permitted in a licensed establishment prior to 10 p.m.

As amended July 19th, 2004.
As amended September 13th, 2004.

601.21 **Restriction on Purchase and Consumption**

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

601.22 **Suspension and Revocation**

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

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or Minnesota Statutes, Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. Revocations shall occur within 60 days following a violation for which the revocation is imposed.

For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 112.04, the license shall be revoked.

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

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

For a second violation within any three year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

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

For a fourth violation within any three year period, the license shall be revoked.

The council shall select the day or days during which the license will be suspended.

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

(D) The provisions of Section 609.23 pertaining to criminal and civil penalties may be imposed in addition to or in lieu of any suspension or revocation under this Ordinance.

601.23 **Penalties**

(A) Any person violating the provisions of this Ordinance or Minnesota Statutes, Chapter 340A, as it may be amended from time to time, or any rules promulgated under that Chapter is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of Minnesota Statutes, Chapter 340A and of this Ordinance as provided by the minimum schedule of presumptive civil penalties. These civil penalties shall be in addition to any criminal penalties imposed under (A) or any suspension or revocation imposed under Section 319. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, Minnesota Statutes, Sections 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties in addition to any suspensions which must be imposed unless the license is revoked:

For the first violation within any three year period, \$500.

For the second violation within any three year period, \$1,000.

For the third and subsequent violations within any three year period, \$2,000 for each violation.

(C) The term “violation” as used in this section and in Section 319 includes any and all violations of the provisions of this chapter, or of Minnesota Statutes, Chapter 340A, as it may be amended from time to time or any rules promulgated under that

Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three year period.

SECTION II. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and adoption and publication as provided in law.

SECTION III. SUMMARY APPROVED

The Council hereby determines that the text of the summary of this Ordinance marked "Official Summary of Ordinance No. 250," and a copy of which is attached to this Ordinance, clearly informs the public of the intent and effect of this Ordinance. The Council further determines that publication of the title and this summary will clearly inform the public of the intent and effect of this Ordinance. The Clerk shall file a copy of this Ordinance and the summary in the Clerk's office which shall available for inspection by any person during regular office hours. A copy of this Ordinance shall be available in the community library, if there is one, or if not, in any other public location which the council designates.

SECTION IV. REPEALER

Sections 602, 603, and 604 of the City Code are Hereby Repealed.
As Amended May 5th, 2003.