

SUB-ANALYSIS

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CHAPTER 5

REGULATIONS FOR THE POSSESSION, SALE AND CONSUMPTION OF INTOXICATING LIQUOR AND 3.2 PERCENT MALT LIQUOR

SEC. 5.01. ADOPTION OF STATE LAW BY REFERENCE. The provisions of M.S. Ch. § 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 Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. § 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

SEC. 5.02. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW. The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this Chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. § 340A, as it may be amended from time to time.

SEC. 5.03. DEFINITIONS. In addition to the definitions contained in M.S. § 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this Chapter:

LIQUOR. As used in this Chapter, without modification by the words An "intoxicating" or a "3.2 percent malt" includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. 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 section, an establishment shall have a license from the state as required by M.S. § 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 M.S. § 157.16, subd. 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 a "small establishment", "medium establishment" or "large establishment".

SEC. 5.04. NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

1. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this Chapter. This is to protect and assist the owners, operators, and employees of the establishment, as well as

patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Chapter, as set forth in this section, reflects the prevailing community standards of the city.

2. 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.

3. A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Chapter or the imposition of a civil penalty under the provisions of Section 5.99.

SEC. 5.05. CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY, AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS.

Subd. 1. General Prohibitions. Except as permitted in Subds. 2 and 3 below, it is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any (1) City park, (2) street, (3) public property, or (4) private parking lot to which the public has access, except on such 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 such 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.

Subd. 2. Permits Allowed. Permits may be granted by the City Council to incorporated organizations, organized under the laws of the State for civic, fraternal or social purposes, for intellectual improvement, or a congressionally chartered veterans' organization, but not for business purposes, for the possession and consumption of beer, including alcoholic beverage beer, in designated areas in City parks upon submission of an Application therefore and upon payment of the requisite fee.

Subd. 3. Application. All applications for permits shall be made at the office of the Hibbing Parks and Recreation Department upon forms prescribed by the City. The application, at a minimum, will require information as follows: purpose for the request, dates and times requested, designated area requested, proof of insurance by the

organization, numbers of persons expected to attend, designation of a specific responsible person(s) at least one of whom will be in attendance on all dates and at all times requested. The Applicant organization will be asked to acknowledge that the use of City park facilities for the purpose requested carries risk of personal injury and property damage and the organization and any participants Release and Discharge the City of Hibbing, its agents and employees from liability for injuries or damages including any losses caused by the negligence or strict liability of the City and the organization and participants agree not to sue or make a claim against the City, its agents or employees and to hold them harmless and indemnify them from all claims and suits that may be brought as a result of use of the facilities. The Applicant organization will also be advised of and will be required to follow all rules of the City with regard to such use of City parks as is established from time to time.

Subd. 4. Permit Fee. Applications shall be accompanied by a permit fee. The permit fees shall be adopted by Resolution of the Council and may be amended from time to time in the same manner.

SEC. 5.06. RAFFLES, SILENT AUCTIONS AND FUND RAISING EVENTS FOR CHARITABLE PURPOSES OF WINE, BEER OR INTOXICATING LIQUORS. No person shall conduct a silent auction, raffle or other fund raising event pursuant to Minn. Stat. § 340A.707 with prizes or awards of wine, beer or intoxicating liquors without notifying the city clerk of the event at least ten days prior to the occurrence of the event. The event holder shall provide the city with the following information: the person or organization holding the event, the day, time and location of the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awarded as prizes, and the charitable purposes to which the event proceeds will be donated.

SEC. 5.07. NUMBER OF LICENSES WHICH MAY BE ISSUED. State law establishes the number of liquor licenses that a city may issue. The Council is not required to issue the full number of licenses that it has available.

SEC. 5.08. TERM AND EXPIRATION OF LICENSES. Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire as follows:

| | |
|-------------------------|--------------|
| Intoxicating Liquor | January 31st |
| Wine | January 31st |
| 3.2 Percent Malt Liquor | April 1st |

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.

SEC. 5.09. KINDS OF LIQUOR LICENSES. The Council is authorized to issue the following licenses and permits, up to the number specified in Section 5.07.

(A) 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, 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) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this Chapter: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans organizations, theaters and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 5.10 of this Chapter shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time. 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 M.S. § 340A.404, subd. 4b, as it may be amended from time to time. 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 M.S. § 340A.404, subd. 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. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in Section 5.3 of this Chapter, 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) Intentionally left blank.

(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: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in Section 5.3; to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.401, subd. 1, as it may be amended from time to time and to theaters that meet the criteria of M.S. § 340A.404(b), 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.

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. Consumption and display permits shall expire on March 31 of each year.

- (L) Intentionally left blank.
- (M) Intentionally left blank.
- (N) Intentionally left blank.
- (O) Intentionally left blank.
- (P) Intentionally left blank.

(Q) Brewer taproom licenses, with the approval of the Commissioner of Public Safety, issued to brewers who met the criteria established at Minn. Stat. § 340A.301, Subd. 6, Clause (C), (I) or (J), as it may be amended from time to time. Nothing in this subdivision precludes the holder of a brewer taproom license from also holding a license to operate a restaurant at the brewery.

SEC. 5.10. LICENSE FEES; PRO RATA.

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

(B) 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 Chapter. 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.

The liquor license fees as of the effective date of this Ordinance are as follows:

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|---|-----------|
| 1. 3.2 percent malt liquor on-sale - clubs . . | \$ 100.00 |
| 2. 3.2 percent malt liquor on-sale - all others | 140.00 |

| | | |
|-----|--|----------|
| 3. | 3.2 percent malt liquor off-sale | 90.00 |
| 4. | Temporary 3.2 percent malt liquor | 35.00 |
| 5. | Off-sale intoxicating liquor | 200.00 |
| 6. | On-sale intoxicating liquor - clubs: | |
| | Membership 200 or less | 300.00 |
| | Membership 201 to 500 | 500.00 |
| | Membership 501 to 1000 | 650.00 |
| 7. | On-sale intoxicating liquor - other | 1,875.00 |
| 8. | Community festival license - per event . . . | 35.00 |
| 9. | Daily sports or convention facilities intoxicating liquor | 35.00 |
| 10. | Sunday on-sale intoxicating liquor | 185.00 |
| 11. | Temporary on-sale intoxicating liquor - per day | 35.00 |
| 12. | On-sale wine licenses | 190.00 |
| 13. | One day consumption and display | 35.00 |
| 14. | Consumption and display | 300.00 |
| 15. | Brewer taproom | 175.00 |

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

(D) 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.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, subd. 5, as it may be amended from time to time.

(F) Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in Minn. Stat. § 340A.408 if at the time of initial application or renewal they:

(1) Agree to have a private vendor approved by the city train all employees within 60 days of hire and annually thereafter in laws pertaining to the sale alcohol, the rules for identification checks, and the responsibilities of establishments serving intoxicating liquors;

(2) Post a policy requiring identification checks for all persons appearing to be 30 years old or less;

(3) Establish a written cash award and incentive program to award employees who catch underage drinkers and a written penalty program to punish employees in the event of a failed compliance check;

(4) Failure to abide by the provisions of this paragraph may result in suspension of the license until the conditions of the fee reduction are met and may result in suspension and/or revocation of the license pursuant to Section 5.23 of this Chapter.

SEC. 5.11. 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 Chapter.

SEC. 5.12. APPLICATION FOR LICENSE.

(A) **Form.** Every application for a license issued under this Chapter 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 Chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 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 M.S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this Chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

SEC. 5.13. 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.

SEC. 5.14. APPLICATIONS FOR RENEWAL. At least 90 days before a license issued under this Chapter 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.

SEC. 5.15. TRANSFER OF LICENSE. No license issued under this Chapter 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.

SEC. 5.16. 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 \$210.00 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$210.00, 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.

SEC. 5.17. 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.

SEC. 5.18. RESTRICTIONS ON ISSUANCE.

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

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) 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.

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

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this Chapter or to the renewal of an existing license.

(F) No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

SEC. 5.19. 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) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

(B) 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 Chapter and the law equally with the employee.

(C) Every licensee shall allow 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 without a warrant.

(D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

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

(F) Failure by an off-sale intoxicating liquor license who has received a fee reduction pursuant to Section 5.10 (f) of this Chapter to abide with the provisions of Section 5.10 (f).

SEC. 5.20. HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

(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.

SEC. 5.21. 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, host or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

SEC. 5.22. RESTRICTIONS 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 M.S. § 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.

SEC. 5.23. 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 Chapter relating to liquor. 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, M.S. §§ 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) Presumptive Civil Penalties.

1. Purpose. The purpose of this Section 5.23 (B) is to establish a standard by which the City Council determines the length of license suspensions and the propriety of revocations, and shall apply to all premises licensed under this Chapter. These penalties are presumed to be appropriate for every case; however, the Council may deviate in an individual case where the Council finds that there exist substantial reasons making it more appropriate to deviate, such as, but not limited to, a licensee's efforts in combination with the State or City to prevent the sale of alcohol to minors. When deviating from these standards, the Council will provide written findings that support the penalty selected.

2. Minimum Penalties for Violations. The minimum penalties for convictions or violations must be presumed as follows (unless specified, numbers below indicate consecutive days' suspension):

a. The following violations require revocation of the license on the first violation.

- Commission of a felony related to the licensed activity.
- Sale of alcoholic beverages while license is under suspension.
- Sale of intoxicating liquor where only license is for beer or wine.

b. The following violations fall under the regular penalty grid.

- Sale of alcoholic beverages to under-age persons.
- Sale of alcoholic beverages to obviously intoxicated person.
- After hours sale/display/consumption of alcoholic beverage.
- Illegal gambling on premises.
- Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages (on-sale allowing off-sale).

REGULAR PENALTY GRID:

| | |
|--------------------------|---|
| 1st Violation | \$500 fine and mandatory training of employees and employer |
| 2nd Violation in 4 years | \$1000 fine. 10 day license suspension and mandatory training of employees and employer |
| 3rd Violation in 6 years | \$2000 fine. 30 day license suspension and mandatory training of employees and employer |
| 4th Violation in 8 years | Revocation of license. |

c. Best Practices Establishments. Establishments entering into an agreement with the Police Department as a Best Practice Establishment will use the Best Practices Penalty Grid for the following violations:

- Sale of alcoholic beverages to under-age persons.
- Sale of alcoholic beverages to obviously intoxicated person.
- After hours sale/display/consumption of alcoholic beverage.
- Illegal gambling on premises.
- Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages (on-sale allowing off-sale).

BEST PRACTICES PENALTY GRID:

| | |
|--------------------------|--|
| 1st Violation | \$500 fine. |
| 2nd Violation in 3 years | \$1000 fine and off Best Practices Program for 1 year |
| 3rd Violation in 5 years | \$1000 fine and 15 day suspension of license and off Best practices Program for 1 year |
| 4th Violation in 7 years | Revocation of license. |

Any establishment signing on to the Best Practices Establishment Agreement will not have any violations deleted from their record for purposes of this Section and will not have the benefit of the Best Practices Penalty Grid until one year after they sign the Agreement.

d. Any violation not listed in the previous information would be heard by the Council and they would review all information and circumstances and determine a penalty with the maximum fine of \$2,000 and/or 60-day suspension or determine the license should be revoked.

e. First violations will be heard by an administrative hearing officer designated by the City Council with the presumptive penalty given to license holders. For Best Practice establishments first and second violations would be handled by an administrative hearing officer. License holders have the right to request a hearing before the City Council if not in agreement with the presumptive penalty. If the administrative hearing officer and licensee agree on the presumptive penalty, the same will be reported to the City Council in a staff report.

3. **Multiple Violations.** At a licensee's first appearance before the Council, the Council must act upon all of the violations that have been alleged in the notice sent to the licensee. The Council in that case must consider the presumptive penalty for each violation under the first violation row above. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the Council's discretion.

4. **Subsequent Violations.** Violations occurring after the notice of hearing has been mailed, but prior to the hearing, must be treated as a separate violation and dealt with as a second appearance before the Council, unless the City Administrator and licensee agree in writing to add the violation to the first appearance. The same procedure applies to a second, third, or fourth appearance before the Council.

5. **Subsequent Appearances.** Upon a second, third, or fourth appearance before the council by the same licensee, the Council must impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, the Council may consider the amount of time elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this Section.

6. **Other Penalties.** Nothing in this Section shall restrict or limit the authority of the council to suspend up to sixty (60) days, revoke the license, impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions, or take any other action in accordance with law; provided, that the license holder has been afforded an opportunity for a hearing in the manner provided in this Chapter.

7. 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 Chapter 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 division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this Chapter have again been met.

(D) The provisions of Section 5.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this Chapter.

SEC. 5.24. CATERER'S PERMIT. Any restaurant that holds an on-sale Liquor license issued by the City may also be issued a caterer's permit by the Commissioner. The holder of a caterer's permit may sell liquor as an incidental part of a food service that serves prepared meals at a place other than the premises for which the holder's on-sale liquor license is issued.

Subd. 1. The restrictions and regulations which apply to the sale of liquor and licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the licensee is operating other than on the licensed premises under a caterer's permit.

Subd. 2. Any act which if done on the licensed premises would be grounds for cancellation or suspension of the on-sale license, is grounds for cancellation of both the on-sale and caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

Subd. 3. The permittee shall notify the Chief of Police, prior to any catered event, where the event will take place.

Subd. 4. If the primary license ceases to be valid for any reason, the caterer's permit ceases to be valid.

Subd. 5. Caterer's permits are subject to all laws and provisions governing the sale of liquor except those laws and provisions which by their nature are not applicable.

Source: Ordinance No. 409, 2nd Series
Effective Date: 09-07-2012

Sections 5.25 through 5.98 reserved for future use.

(Pages 172 through 231 reserved.)

SEC. 5.99. PENALTIES.

(A) Any person violating the provisions of this Chapter or M.S. Ch. 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 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 M.S. Ch. 340A, as it may be amended from time to time, and of this Chapter. 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, M.S. §§ 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 which must be imposed in addition to any suspension unless the license is revoked:

(1) For the first violation within any three-year period, \$500.

(2) For the second violation within any three-year period, \$1,000.

(3) For the third and subsequent violations within any three-year period, \$2,000.

(C) The term "violation" as used in Section 5.23 includes any and all violations of the provisions in this section, or of M.S. Ch. 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. Revocation shall occur within 60 days following a violation for which revocation is imposed.

Source: Ordinance No. 409, 2nd Series
Effective Date: 09-07-2012