

ORDINANCE NO. ____, THIRD SERIES

CITY OF ORONO
HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE AMENDING TITLE IV BUSINESS, LICENSING, LIQUOR
REGULATION PERTAINING TO TYPES OF LICENSES

THE CITY COUNCIL OF ORONO ORDAINS:

SECTION 1. Chapter 34 of the Orono City Code shall be amended to read as follows:

Chapter 34 - ALCOHOLIC BEVERAGES^[1]

ARTICLE I. - IN GENERAL

Sec. 34-1. – Adoption of State Law.

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. 34-12. - Definitions.

The definitions in Minn. Stat. ch. 340A, as they may be amended from time to time, are hereby adopted by reference and are made a part of this Chapter as if set out in full apply to this ~~chapter~~. In addition, the following words, terms and phrases, when used in this chapter and in city code section 70-253, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.~~

~~*Alcoholic beverage* means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.~~

Applicant means any person making an application for a license under this chapter.

~~*Application* means a form with blanks or spaces on the form, to be filled in and completed by the applicant as his request for a license, furnished by the city and uniformly required.~~

~~*Club* means 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 30 members.~~
- ~~(2) Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members.~~
- ~~(3) Is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.~~

Display means the keeping, storing, or permitting to be kept or stored of an alcoholic beverage which has been poured, dispensed or has had its package seal broken on, in, or at any table, booth, bar or other area of a ~~licensed~~ premises accessible to the general public, except when the alcoholic beverage is stored in a normal storage area during nonsale hours.

~~*Financial interest* includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor establishment but does not include bona fide loans, bona fide rental agreements, bona fide open accounts or other obligations held with or without security arising out of the ordinary in the regular course of business of selling or leasing merchandise, fixtures or supplies to such a business or ten percent or less interest of any other corporation holding a license.~~

~~*Fraternal club* means a club which serves only members and their guests and which uses any profits derived from liquor sales principally for sponsoring activities beneficial to the community and not for the profit of any individual.~~

~~*Gambling devices* means a contrivance which for a consideration affords the player an opportunity to obtain something of value, other than free plays, automatically from the machine or otherwise, the award of which is determined principally by chance.~~

Gathering means a group of three or more persons who have assembled or gathered together for a social occasion or other activity.

Host means to aid, conduct, sponsor, organize, supervise, control, or allow a gathering.

~~*Intoxicating liquor* means ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.~~

License means a document, issued by the city, to an applicant permitting him to carry on and transact the business stated in the license.

License fee means 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 in the license.

Licensee means an applicant who, pursuant to his approved application, holds a valid, current, unexpired license, which has neither been revoked nor suspended, from the city for carrying on the business stated in the license.

~~*Off-sale* means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.~~

~~*On-sale* means the sale of alcoholic beverages for consumption on the licensed premises only.~~

~~*Package* means a sealed or corked container of alcoholic beverages.~~

Parent means a person having the following relationship to a juvenile:

- (1) A natural parent, adoptive parent, or step-parent;
- (2) A legal guardian; or
- (3) A person to whom legal custody has been given by order of a court.

Nudity means 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 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 means 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 sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

Obscenities means 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.

Person means an individual, partnership, co-partnership, corporation, or an association of one or more individuals. "Person" does not include a city, county, or state agency.

Premises means any location, including a home, yard, farm, field, land, apartment, condominium, hotel room, or other dwelling unit, or a hall or meeting room, park, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented, or used with or without permission or compensation.

Restaurant means any establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public, and which has seating facilities for seating not less than 30 guests at one time.

Sadomasochistic abuse means 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.

Sale, sell and *sold* mean all barters and all manners or means of furnishing ~~3.2 percent malt liquor, wine or liquor~~ an alcoholic beverage to persons, including such furnishing in violation or evasion of law.

Sexual conduct means 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.

Sexual excitement means 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.

~~State established legal drinking age~~ means 21 years of age.

~~3.2 percent malt liquor~~ means malt liquor containing not less than one half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight.

Underage person means an individual under 21 years of age.

Sec. 34-3. - One-day permits.

(a) Any nonprofit 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 permit from the city. It is unlawful for any such organization to fail to obtain such permit. The term of such permit shall be one day only. No more than ten permits shall be issued in any calendar year.

(b) The fee for such permit is as established by ordinance.

(c) In addition to council approval, such permit must be approved by the state commissioner of public safety.

~~Wine~~ means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, sherry and sake, in each instance containing not less than one half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. ~~Wine does not include distilled spirits as defined in Minn. Stat. 340A.101.~~

Sec. 34-2. -- Applicability of chapter.

~~This chapter does not apply to:~~

~~(1) — Medicines intended for therapeutic purposes and not intended as a beverage;~~

~~(2) — Industrial alcohol designed for mechanical, chemical, scientific, pharmaceutical or industrial purposes; or~~

~~(3) — Nonpotable compounds or preparations containing alcohol.~~

Sec. 34-3. — Consumption and possession of beer, wine or liquor on streets and public property.

~~(a) It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any street or other public property except city parks and other public property when and where permission has been specifically granted or licensed by the council. This section shall not apply to the possession of an unsealed container in a motor vehicle on streets or public property 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.~~

~~(b) No license or permit shall be granted under this section unless and until the permittee or licensee, as the case may be, has filed with the city a certificate of public liability insurance on which the city or other owner of the property is a named insured providing umbrella or all perils coverage in the amount of \$1,000,000.00. Nor shall such license or permit be granted until the permittee or licensee, as the case may be, agrees in writing to pay for all expenses incident to cleaning up all resulting refuse and debris.~~

~~Sec. 34.4. Consumption and possession of beer, wine or liquor on private parking lots.~~

~~It is unlawful for any person to consume or possess in an unsealed container any alcoholic beverage on any privately owned parking lot which is clearly signposted prohibiting such possession and consumption. This section shall not apply to the possession of an unsealed container in a motor vehicle on privately owned parking lots 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.~~

~~Sec. 34.5. Underaged persons [AS1].~~

~~(a) Consumption:~~

~~(1) It is unlawful for any:~~

~~a. Retail intoxicating liquor or 3.2 percent malt liquor licensee or bottle club permit holder under Minn. Stat. § 340A.414 to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises; or~~

~~b. Person under the age of 21 years to consume any alcoholic beverages. If proven by a preponderance of the evidence, it is an affirmative defense to a violation of this clause that the defendant consumed the alcoholic beverage in the household of the defendant's parent or guardian and with the consent of the parent or guardian.~~

~~(2) An offense under subsection (a)(1)b of this section may be prosecuted either in the jurisdiction where consumption occurs or the jurisdiction where evidence of consumption is observed.~~

~~(3) As used in this section, the term "consume" includes the ingestion of an alcoholic beverage and the physical condition of having ingested an alcoholic beverage.~~

~~(b) Purchasing:~~

- (1) ~~It is unlawful for any person:~~
- a. ~~To sell, barter, furnish or give alcoholic beverages to a person under 21 years of age;~~
 - b. ~~Under the age of 21 years to purchase or attempt to purchase any alcoholic beverage unless under the supervision of a responsible person over the age of 21 for training, educational or research purposes. Prior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county or local health departments; or~~
 - c. ~~To induce a person under the age of 21 years to purchase or procure any alcoholic beverage, or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification card, or other form of identification by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage.~~
- (2) ~~If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subsection (b)(1) of this section that the defendant is the parent or guardian of the person under 21 years of age and that the defendant gave or furnished the alcoholic beverage to that person solely for consumption in the defendant's household.~~
- (c) ~~*Possession.* It is unlawful for a person under the age of 21 years to possess any alcoholic beverage with the intent to consume it at a place other than the household of the person's parent or guardian. Possession at a place other than the household of the parent or guardian creates a rebuttable presumption of intent to consume it at a place other than the household of the parent or guardian. This presumption may be rebutted by a preponderance of the evidence.~~
- (d) ~~*Entering licensed premises.* It is unlawful for a person under the age of 21 years to enter an establishment licensed for the sale of alcoholic beverages for the purpose of purchasing or having served or delivered any alcoholic beverage notwithstanding this section.~~
- (e) ~~*Misrepresentation of age.* It is unlawful for a person under the age of 21 years to claim to be 21 years old or older for the purpose of purchasing alcoholic beverages.~~
- (f) ~~*Proof of age; defense.*~~
- (1) ~~Proof of age for purchasing or consuming alcoholic beverages may be established only by one of the following:~~
 - a. ~~A valid driver's license or identification card issued by this or another state, or a province of Canada, and including the photograph and date of birth of the licensed person;~~
 - b. ~~A valid military identification card issued by the United States Department of Defense; or~~
 - c. ~~In the case of a foreign national, from a nation other than Canada, by a valid passport.~~
 - (2) ~~In a prosecution under subsection (b)(1)a of this section, it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in subsection (f)(1) of this section in selling, bartering, furnishing or giving the alcoholic beverage.~~
- (g) ~~No person under the age of 18 shall be employed to sell or serve 3.2 percent malt liquor in any on-sale establishment.~~

Sec. 34-6. -- Sales to obviously intoxicated persons[AS2].

~~No person may sell, give, furnish, or in any way procure for another alcoholic beverages for the use by an obviously intoxicated person.~~

Sec. 34-7. -- Inducing another to make illegal purchase or sale.

~~No person shall knowingly induce another to make an illegal sale or purchase of intoxicating liquor or 3.2 percent malt liquor.~~

Sec. 34-8. -- Social host ordinance.

~~[(a) -- Generally.]~~

~~(1) -- It is unlawful for any person under the age of 21 to consume or possess alcohol.~~

~~a. -- Consumption of alcohol by persons under the age of 21 is harmful to those persons and constitutes a potential threat to public health from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.~~

~~b. -- Alcohol is also an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.~~

~~c. -- As a result, gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of 21 should be prevented as much as possible.~~

~~d. -- Gatherings involving underage possession and consumption often occur outside the presence of parents or other responsible adults. However, there are times when a parent or other adult is present and condones the activity, and in some circumstances provides the alcohol.~~

~~e. -- Although furnishing alcohol to an underage person is a crime, it is difficult to prove, and an ordinance is necessary to help further combat underage consumption.~~

~~f. -- A deterrent effect will be created by holding a person criminally responsible for hosting a gathering where underage possession or consumption occurs.~~

~~(2) -- The purpose of this section is to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and to hold persons criminally responsible who host gatherings where persons under 21 years of age possess or consume alcohol, regardless of whether the person hosting the gathering supplied the alcohol or was present.~~

~~(3) -- The city council intends that this section should not target parents who may have alcoholic beverages on their premises but who have issued a standing order that alcohol is not to be consumed by underage persons on those premises.~~

~~[(b)] -- Prohibited acts.~~

~~(1) -- It is unlawful for a person to host or allow a gathering on any premises if:~~

~~a. -- The person knows that alcohol or alcoholic beverages will be present; and~~

- ~~b.—The person knows that an underage person will attend, or is likely to attend; and~~
- ~~c.—The person fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages by an underage person; and~~
- ~~d.—An underage person consumes an alcoholic beverage, or possesses an alcoholic beverage with the intent to consume it, at the gathering.~~

~~(2)—Examples of reasonable steps include:~~

- ~~a.—Directing, on a one-time basis or as a standing order, that no consumption of alcohol and alcoholic beverages is allowed; or~~
- ~~b.—Controlling access to alcohol and alcoholic beverages; or~~
- ~~c.—Checking identification of attendees to determine age; or~~
- ~~d.—Supervising the activities of underage persons at the gathering either in person or through a responsible adult.~~

~~(3)—A person is not criminally responsible under this section if the person does not know that a gathering will occur, or does not know that alcoholic beverages will be present, or does not know that an underage person will be or is likely to be present. However, if a person has the knowledge specified in paragraph (1) above, a person who hosts a gathering does not have to be present at the gathering to be criminally responsible.~~

~~(4)—A person is criminally responsible for violating paragraph (1) above if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the prohibited act.~~

~~[(e)]—Exceptions:~~

- ~~(1)—This section does not apply to conduct of an underage person that is permitted by his or her parent and occurs in the parent's household.~~
- ~~(2)—This section does not apply to a legally protected religious observance.~~
- ~~(3)—This section does not apply when an underage person is lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.~~
- ~~(4)—This section does not apply to the holder of a liquor license issued under Title III of this Code, but it does apply to a person who hosts a gathering at such a liquor establishment.~~

Sec. 34-144. — Nudity or obscenity prohibited.

~~(a) — *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~*Nudity* means 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 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 means 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 sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

Obscenities means 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.

Sadomasochistic abuse means 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 means 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.

Sexual excitement means 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 article to permit upon licensed premises any nudity, obscene performance or continued use of obscenities by any agent, employee, patron or other person.

Secs. 34-9—34-40. -- Reserved.

ARTICLE II. - ~~RETAIL SALES~~LICENSING

DIVISION 1. - ~~GENERALLY~~

Sec. 34-41. - ~~Revocation or suspension of licenses and permits.~~

(a) ~~On a finding that the license holder has sold alcoholic beverages to another retail licensee for the purpose of resale, purchased alcoholic beverages from another retail licensee for the purpose of resale, conducted or permitted the conduct of gambling on the licensed premises in violation of the law, failed to remove or dispose of alcoholic beverages when ordered by the commissioner to do so under Minn. Stat. § 340A.508, subd. 3, or failed to comply with an applicable statute, rule or ordinance relating to alcoholic beverages, the city division may revoke the license, suspend the license or permit for up to 60 days, impose a civil penalty of up to \$2,000.00 for each violation, or impose any combination of these sanctions. No suspension or revocation takes effect until the license holder has been given an opportunity for a hearing under Minn. Stat. §§ 14.57—14.69. This section does not require a hearing before an employee of the office of administrative hearings. Imposition of a penalty or suspension by either the issuing authority or the commissioner does not preclude imposition of an additional penalty or suspension by the other so long as the total penalty or suspension does not exceed the stated maximum.~~

(b) ~~Multiple violations are computed by checking the time period of the three years immediately prior to the date of the most current violation.~~

(c) ~~The presumed penalties for violations are as follows:~~

1st violation	\$500.00
2nd violation	\$1,000.00 and 3 day license suspension
3rd violation	\$2,000.00 and 2 week suspension
4th violation	License revocation

~~The penalty for violations without a presumptive penalty shall be determined by the city council.~~

(d) ~~Nothing in this section shall restrict or limit the authority of the council to suspend the license or permit for up to 60 days, impose a civil penalty of up to \$2,000.00 for each violation, impose any combination of these sanctions, 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.~~

Sec. 34-42. - ~~One-day permits.~~

(a) ~~Any nonprofit 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 permit from the city. It is unlawful for any such organization to fail to obtain such permit. The term of such permit shall be one day only. No more than ten permits shall be issued in any calendar year.~~

(b) — The fee for such permit is as established by resolution.

(c) — In addition to council approval, such permit must be approved by the state commissioner of public safety.

~~Secs. 34-43 — 34-65. — Reserved.~~

~~DIVISION 2. -- LICENSE~~^[2]

Sec. 34-~~1066~~. - Required.

- (a) ~~It is unlawful for any person to sell, or keep or offer for sale, any alcoholic beverage at retail without a license from the city.~~
- (b) ~~The following types of licenses may be issued by the city:~~
- ~~(1) On-Sale Intoxicating Liquor License to a hotel, restaurant, bowling center, club or congressionally chartered veterans organizations as allowed by law, or exclusive liquor store for the sale of alcoholic beverages for consumption only on the licensed premises.~~
 - ~~(2) On-Sale 3.2 Percent Malt Liquor License to drugstores, 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, for the sale of 3.2 percent malt liquor beverages for consumption only on the licensed premises.~~
 - ~~(3) Off-Sale Intoxicating Liquor License for the sale of alcoholic beverages for consumption only off the licensed premises.~~
 - ~~(4) Off-Sale 3.2 Percent Malt Liquor License for the sale of 3.2 percent malt liquor beverages for consumption only off the licensed premises.~~
 - ~~(5) Temporary On-Sale Intoxicating Liquor License for the sale of alcoholic beverages for consumption at the location specified in the license.~~
 - ~~(6) Temporary On-Sale 3.2 Percent Malt Liquor License for the sale of 3.2 percent malt liquor beverages for consumption at the location specified in the license.~~
 - ~~(7) On-Sale Wine License for the sale of wine of up to 24 percent alcohol by volume for consumption only on the licensed premises.~~
 - ~~(8) Sunday On-Sale Intoxicating Liquor license for the sale of alcoholic beverages for consumption only on the licensed premises on Sundays.~~
 - ~~(9) Sunday On-Sale 3.2 Percent Malt Liquor license for the sale of 3.2 percent malt liquor beverages for consumption only on the licensed premises on Sundays.~~

~~Sec. 34-67. -- Exemption for bed and breakfast facilities~~^[AS3].

- (a) ~~For purposes of this section, the term "bed and breakfast facility" means a place of lodging that:~~
- ~~(1) Provides not more than eight rooms for rent to no more than 20 guests at a time;~~
 - ~~(2) Is located on the same property as the owner's personal residence;~~
 - ~~(3) Provides no meals, other than breakfast served to persons who rent rooms; and~~
 - ~~(4) Was originally built and occupied as, or was converted to, a single family residence prior to being used as a place of lodging.~~
- (b) ~~No license under this article is required for a bed and breakfast facility to provide at no additional charge to a person renting a room at the facility not more than two glasses per day each containing not more than four fluid ounces of wine. Wine so furnished may be consumed only on the premises of the bed and breakfast facility.~~
- (c) ~~A bed and breakfast facility may furnish wine under subsection (b) of this section only if the facility is registered with the commissioner.~~

Sec. 34-~~68~~11. - Application.

- (a) All applications for a license required by this division shall be made at the office of the city clerk upon forms prescribed by the proper department of the state, together with such additional information as the council may desire and if not so prescribed, then upon forms furnished by the city. Information required may vary with the type of business organization making application. All questions asked or information required shall be answered fully and completely by the applicant.
- (b) It is unlawful to make a false statement or an omission upon any application form. Any false statement or any willful omission ~~to state any information called for~~ on such application form shall, ~~upon discovery of such falsehood, work as~~ be grounds for automatic ~~refusal-denial or revocation~~ of license ~~or, if already issued, shall render any license issued void and of no effect to protect the applicant from prosecution for violation of this chapter.~~

Sec. 34-~~69~~12. - Application fee.

At the time of the initial application for an on-sale intoxicating liquor license, applicants shall pay to the city the fees as provided for in the current city fee ordinance duly adopted by the council, which fee shall be considered an application fee, not refundable to the applicant. At any time an additional investigation is required because of a change in the ownership or control of a partnership or corporation or because of an enlargement, alteration or extension of premises previously licensed, the licensee shall pay an additional investigation fee.

Sec. 34-~~70~~13. - Investigation and issuance.

- (a) *Investigation.* All applications for a license required by this division shall be referred to the chief of police and to such other city departments as the council shall deem necessary, for verification and investigation of the facts set forth in the application. The chief of police shall cause to be made such investigation of the information as shall be necessary and shall make a written recommendation and report, which shall include a list of all violations of federal or state law or municipal ordinances by the applicant, to the council.
- (b) *Hearing.* Upon receipt of the written report and recommendation by the chief of police and within 30 days thereafter, the city clerk shall publish a notice of hearing at least ten days prior to the date set for hearing. The hearing notice shall set forth the day, time and place of hearing; the name of the applicant; the place where the business is to be conducted; and such other information as the council may direct. At such hearing all persons desiring to be heard shall have such opportunity, and the council may thereafter grant or deny the license. If the license is granted, the council may withhold its issuance until the applicant has qualified in all respects for the license. If the premises to be licensed are not complete at the time that the hearing is conducted, the council may grant the license but shall withhold its issuance until the premises have been completed in accordance with the representations made by the applicant. The license fee shall be due as of the date the license is granted. If a license has been granted but its issuance has been withheld pending completion of the premises to be licensed, and if the licensee does not proceed with reasonable dispatch to ready the premises, the council may rescind the action granting the license. Such action shall not be taken, however, without giving the licensee at least ten days' notice of the time and place of a hearing on the proposed rescission.

- (c) *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 half the license fee, and the investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before approval of the issuance 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. The city clerk shall, within ten days after the issuance of any license under this section, submit to the proper department of the state the full name and address of each person granted a license, the trade name, the effective license date, and the date of expiration of the license. He shall also submit to the proper department of the state any change of address, transfer, cancellation or revocation of any license by the council during the license period.
- (d) *Issuing.* If an application is approved, the city clerk shall forthwith issue a license in the form prescribed by the city or the proper department of the state, as the case may be, and upon payment of the second half of the license fee. All licenses shall be on a calendar year basis unless otherwise specified in this division. 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 described in the license.

Sec. 34-71.— Persons eligible.

(a) ~~No license may be issued to a:~~

~~(1) Person under 21 years of age;~~

~~(2) Person who has had an intoxicating liquor or 3.2 percent malt liquor 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 five percent of the capital stock of a corporation licensee, as a partner or otherwise, on the premises or in the business conducted on the premises, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested;~~

~~(3) Person not of good moral character and repute; or~~

~~(4) Person who has a direct or indirect interest in a manufacturer, brewer, or wholesaler.~~

~~(b) In addition, no new retail license may be issued to, and the council may refuse to renew the license of, a person who, within five years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of an alcoholic beverage.~~

Sec. 34-72.— Prohibited interests by wholesalers.

~~No license shall be issued pursuant to the provisions of this division if the issuance would result in a violation of Minn. Stat. § 340A.301, subd. 7.~~

Sec. 34-73.— Intoxicating liquor licenses in connection with premises of another.

~~An intoxicating 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 article. This section~~

does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a noncitizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this chapter.

Sec. 34-74.— Off-sale intoxicating liquor licenses where 3.2 percent malt liquor is sold.

An off-sale intoxicating liquor license may not be issued to a place where 3.2 percent malt liquor is sold for consumption on the premises. This section does not apply to those places where both an on-sale and off-sale license or a combination license have been issued under Minn. Stat. § 340A.406.

Sec. 34-75.— Drugstores.

No intoxicating liquor license may be issued to a person operating a drugstore unless the person has operated it for at least two years or has purchased a drugstore that has been in continuous operation for two or more years.

Sec. 34-76.— Exclusive liquor stores.

(a) Except as otherwise provided in this section, an exclusive liquor store may sell only the following items:

(1) Alcoholic beverages;

(2) Tobacco products;

(3) Ice;

(4) Beverages for mixing with intoxicating liquor;

(5) Soft drinks;

(6) Liqueur-filled candies;

(7) Food products that contain more than one-half of one percent alcohol by volume;

(8) Cork extraction devices;

(9) Books and videos on the use of alcoholic beverages;

(10) Magazines and other publications published primarily for information and education on alcoholic beverages; and

(11) Home brewing equipment.

(b) An exclusive liquor store that has an on-sale, or combination on-sale and off-sale license may sell food for on-premises consumption when authorized by the city.

(c) An exclusive liquor store may offer live or recorded entertainment.

Sec. 34-77.— On-sale wine licenses.

(a) An on-sale wine license with the approval of the commissioner to a restaurant having facilities for seating at least 25 guests at one time may be issued. A wine license permits the sale of wine of up to 14 percent alcohol by volume for consumption with the sale of food. A

wine license authorizes the sale of wine on all days of the week unless the city restricts the license's authorization to the sale of wine on all days except Sundays.

(b) — An on-sale wine license may be issued with the approval of the commissioner to a licensed bed and breakfast facility. A license under this subsection authorizes a bed and breakfast facility to furnish wine only to registered guests of the facility.

Sec. 34-78. — Limitations on issuance of off-sale liquor licenses to one person or place.

(a) — No more than one off-sale intoxicating liquor license to any one person or for any one place may be issued.

(b) — The same business name shall not be used by more than one off-sale intoxicating liquor licensee.

(c) — For purposes of this section, the term "person" means:

(1) — A holder of an off-sale intoxicating liquor license;

(2) — An officer, director, agent or employee of a holder of an off-sale intoxicating liquor license; or

(3) — An affiliate of a holder of an off-sale intoxicating liquor license, regardless of whether the affiliation is corporate or by management, direction or control.

Sec. 34-79. — Establishments eligible for on-sale intoxicating liquor licenses.

An on-sale intoxicating liquor license may be issued by the city to the following establishments located within its jurisdiction:

(1) — Hotels;

(2) — Restaurants;

(3) — Bowling centers;

(4) — Clubs or congressionally chartered veterans organizations with the approval of the commissioner, provided the organization has been in existence for at least three years and liquor sales will only be to members and bona fide guests; and

(5) — Exclusive liquor stores.

Sec. 34-80. — Establishments eligible for 3.2 percent malt liquor licenses.

On-sale 3.2 percent malt liquor licenses may only be issued to drugstores, 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.

Sec. 34-~~814~~. - Location restrictions for off-sale liquor licenses; maximum number of off-sale liquor licenses.

(a) No establishment for which an off-sale liquor license is issued shall be located within 500 feet of an institution of public education whose primary purpose is education of individuals in grades kindergarten through 12. No establishment for which an off-sale liquor license is issued shall be located within one-half mile of any previously existing establishment holding such a license.

(b) No more than two off-sale liquor licenses shall be in effect in the city at the same time.

Sec. 34-8215. - Temporary 3.2 percent malt liquor licenses.

~~(a) — A club or charitable, religious, or nonprofit organization may be issued a temporary on-sale license for the sale of 3.2 percent malt liquor. The temporary license may authorize the sale of 3.2 percent malt liquor in any school or school buildings. Temporary licenses are subject to the terms set by the city.~~

~~(b) — Any person licensed to sell intoxicating liquor at on-sale shall not be required to obtain an on-sale license under this section and may sell 3.2 percent malt beverages at on-sale without further license. Any person licensed to sell intoxicating liquor at off-sale shall not be required to obtain an off-sale license under this section, and may sell 3.2 percent malt beverages at off-sale without further license.~~

(c) — An application for a temporary license shall state the exact dates and place of proposed temporary sale. No applicant shall qualify for a temporary license for more than a total of seven days in any calendar year. 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 such 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 \$300,000.00 for injury to any one person and \$500,000.00 for injury to more than one person, naming the city as an insured during the license period.

Sec. 34-83. — Zoning compliance required.

~~No license shall be granted for use in any premises that does not or will not comply with the city's zoning regulations set forth in chapter 78.~~

Sec. 34-8416. - License limited to space specified; inspection.

Unless expressly stated therein, a license issued under the provisions of this division shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure. The premises shall have an exclusive entrance from or exit to the exterior of the building at which the licensed premises are located. Entrances from or exits to a public concourse or public lobby meet this requirement.

~~(1) — All premises licensed under this division shall at all times be open to inspection by any police officer or other individuals with enforcement powers to determine whether or not this chapter and all other laws are being observed. Consent to such inspection by the~~

~~licensee shall be a condition of each license granted. Police officers or other individuals with enforcement powers shall not need a search warrant for such inspections.~~

~~(2) It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer or other individuals with enforcement powers from making such inspection.~~

Sec. 34-8517. - Resident manager or agent.

Before an on-sale intoxicating liquor license is issued under this division to an individual who is a nonresident of the city, to more than one individual whether or not they are residents of the city, or to a corporation, partnership or association, the applicant shall appoint in writing a natural person who lives within 25 miles of the licensed establishment in the city as its manager or agent. Such manager or agent shall, by the terms of his written consent, take full responsibility for the conduct of the licensed premises and serve as agent for service of notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation and other attributes, could qualify individually as a licensee. If such manager or agent ceases to live within 25 miles of the city or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

~~Sec. 34-86. - Corporate applicants and licensees.~~

~~A corporate applicant, at the time of application, shall furnish the city with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the city clerk of any change in legal ownership, or beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares, shall be deemed equivalent to a transfer of the license issued to the corporation; and any such license shall be revoked 30 days after any such change in ownership or beneficial interest of shares unless the council has been notified of the change in writing and has approved it by appropriate action. The council, or any officer of the city designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders; and the council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the council on notice to the licensee.~~

Sec. 34-8718. - Financial responsibility of licensees.

(a) *Proof.* Prior to the issuance of any license under this ordinance, the applicant shall demonstrate proof of financial responsibility as defined in Minn. Stat. § 340A.409, as it may be amended from time to time, with regard to liability under Minn. Stat. § 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 Minn. Stat. § 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. No 3.2 percent malt liquor, wine or liquor license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility imposed by Minn. Stat. § 340A.801 by filing a certificate that there is in effect an insurance policy or pool providing minimum coverages of \$100,000.00 because of bodily injury to any one person in any one occurrence, \$300,000.00 because of bodily injury to two or more persons in any one occurrence, in the amount of \$10,000.00 because of injury to or destruction of property of others in any one occurrence, \$100,000.00 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, \$300,000.00 for loss of means of support of two or more persons in any one occurrence. An annual aggregate policy limit for dramshop liability of not less than \$300,000.00 per policy year may be included in the policy provisions.

~~(b) — Insurance not required. Subsection (a) of this section does not apply to licensees who by affidavit establish that they are:~~

~~(1) — On sale 3.2 percent malt liquor licensees with sales of less than \$25,000.00 of 3.2 percent malt liquor for the preceding year;~~

~~(2) — Off sale 3.2 percent malt liquor licensees with sales of less than \$50,000.00 of 3.2 percent malt liquor for the preceding year;~~

~~(3) — Holders of on-sale wine licenses with sales of less than \$25,000.00 for wine for the preceding year; or~~

~~(4) — Holders of temporary wine licenses issued under law.~~

~~(c) — Insurance certificate requirements. Whenever an insurance certificate is required by this division, the applicant shall file with the city clerk a certificate of insurance showing that the limits are at least as high as required, that coverage is effective for at least the license term approved, and that such insurance will not be canceled or terminated without 30 days' written notice served upon the city clerk. Cancellation or termination of such coverage shall be grounds for license revocation.~~

~~(d) — 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 commissioner.~~

Sec. 34-88. — License subject to all ordinances.

Every license required by this division shall be granted subject to the provisions of this chapter and all other applicable provisions of this Code and other laws relating to the operation of the licensed business.

Sec. 34-89. — State permit as prerequisite.

No license required by this division shall be effective until a permit shall be issued to a licensee under the laws of the United States if such permit is required under such laws or under state law.

Sec. 34-133. - Racial discrimination; clubs.

No retail license to sell alcoholic beverages may be issued or renewed to a club which discriminates against members or applicants for membership or guests of members on the basis of race.

Sec. 34-90. -- License fees.

All licenses provided for in this chapter shall be issued only upon payment in full of license fees established by resolution.

Sec. 34-91. -- Termination.

Licenses shall terminate only by expiration or revocation.

Sec. 34-92. -- Expiration.

All licenses issued pursuant to the provisions of this division expire one year from the date of issue.

Sec. 34-9319. - Renewal.

(a) Application for renewal of all licenses under this division shall be made at least 60 days prior to the date of expiration of the license and shall contain such information as is required by the city. This time requirement may be waived by the council for good and sufficient cause. Applications for renewal ~~Persons for renewal of application~~ are subject to all the requirements for the original issuance of a license, except the public hearing requirement which is an optional requirement to be established at the discretion of the city council.

(b) — No on-sale intoxicating liquor license renewal application shall be considered by the council until the applicant has filed with the city clerk a statement made by a certified public accountant, setting forth the total gross sales and the total food sales of the restaurant for the 12-month period immediately preceding the date for filing renewal applications.

Sec. 34-94. -- License refund in certain cases.

(a) — If during the license year the licensed premises shall be destroyed or so damaged by fire or otherwise that the licensee shall cease to carry on the licensed business, or if the business of the licensee shall cease by reason of his illness or death, or if it shall become unlawful for the licensee to carry on the licensed business under his license, except when such license is revoked, the city shall, upon the happening of any such event, refund to the licensee, or to his estate, such part of the license fee paid by him as corresponds to the time such license had yet to run.

(b) — In the event of death of the licensee, his personal representative is hereby authorized to continue operation of the business for not more than 90 days after the death of such licensee.

Sec. 34-~~95~~20. - Transfer.

A license shall be transferable between persons upon consent of the council and payment of the required investigation fee. 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. 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. 34-~~96~~21. - Posting.

All licensees shall conspicuously post their licenses in their places of business.

Sec. 34-~~97~~22. - Duplicate licenses.

Duplicates of all original licenses issued under this division may be issued by the city clerk without action by the council upon the licensee's affidavit that the original has been lost, and upon payment of a fee in the amount established by resolution for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE."

Sees. 34-98 — 34-120. — Reserved. Sec. 34-23. - Revocation or suspension of licenses and permits.

(a) On a finding that a licensee has failed to comply with an applicable statute, rule or ordinance relating to alcoholic beverages, the city may revoke the license, suspend the license, impose a civil penalty of up to \$2,000.00 for each violation, or impose any combination of these sanctions. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. 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, Minn. Stat. §§ 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. Non-payment of the penalty is grounds for suspension or revocation of the license.

(b) Multiple violations are computed by checking the time period of the three years immediately prior to the date of the most current violation.

(c) The presumed penalties for violations are as follows:

<u>1st violation</u>	<u>\$500.00</u>
<u>2nd violation</u>	<u>\$1,000.00 and 3 day license suspension</u>
<u>3rd violation</u>	<u>\$2,000.00 and 2 week suspension</u>
<u>4th violation</u>	<u>License revocation</u>

(d) 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 due to lapse of insurance 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 thirty days. Any suspension under this subsection shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met

(e) Nothing n this section shall restrict or limit the authority of the council to take any other action in accordance with law.

ARTICLE III. - DIVISION 3. -- OPERATIONAL RESTRICTIONS AND REQUIREMENTS

Sec. 34-~~12150~~. - General responsibility.

- (a) Every licensee is responsible for the conduct in the licensed establishment, and any sale of alcoholic beverage by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee for the purposes of all provisions of this chapter.
- (b) Sales of any alcoholic beverage in or from any premises licensed under this chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as of the person actually making the sale, and every such employer is liable for all of the penalties provided by law for such sale equally with the person actually making the sale.

Sec. 34-~~12251~~. - Zoning requirements.

Notwithstanding any section in this chapter to the contrary, all premises that are licensed must be located in zoning districts in which they are permitted and must be in compliance with the zoning regulations set forth in chapter 78.

~~Sec. 34-123. -- Possession by 3.2 licensee of liquor license required.~~

~~No 3.2 malt liquor licensee shall, during the effective period of such license, be the owner or holder of a federal retail liquor dealer's tax stamp for the sale of intoxicating liquor unless such owner or holder also holds an intoxicating liquor license from the city; and ownership or holding of such license shall be grounds for immediate revocation, without a hearing. Any person who sells 3.2 percent malt liquor while holding or exhibiting in his place of business a federal retail liquor dealer special tax stamp without having an intoxicating license shall be guilty of a misdemeanor.~~

~~Sec. 34-124. -- Availability of records.~~

~~The business records of a licensee under this article, including federal and state tax returns, shall be available for inspection by the council, or other duly authorized representative of the city, at all reasonable times.~~

~~Sec. 34-125. -- Alteration of premises.~~

~~Any proposed enlargement, alteration or extension of premises of a licensee under this article shall be reported to the city clerk at or before the time application is made for a building permit.~~

Sec. 34-~~12652~~. - Hours and days of sale.

- (a) *3.2 percent malt liquor*. No on-sale of 3.2 percent malt liquor may be made between 1:00 a.m. and 8:00 a.m. on Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday. Additionally, a Sunday on-sale license may be issued to holders of an on-sale 3.2 percent malt liquor license, to serve 3.2 percent malt liquor between the hours of 10:00 a.m.

Sunday and 1:00 a.m. Mondays with the incidental sale of tobacco and soft drinks, provided that the licensee establishment is in conformance with the Minnesota Clean Indoor Air Act.

- (b) *Intoxicating liquor; on sale.* No sale of intoxicating liquor for consumption on the licensed premises may be made:
 - (1) Between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday;
 - (2) After 1:00 a.m. on Sundays, except as provided by subsection (c) of this section;
- (c) *Intoxicating liquor; Sunday sales; on sale.*
 - (1) A restaurant, club, bowling center, or hotel with a seating capacity for at least 30 person and which holds an on-sale intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 12:00 noon on Sundays and 1:00 a.m. on Mondays.
 - (2) Notwithstanding anything in subsection (c) of this section to the contrary, a Sunday on-sale license may be issued to hotels, motels and restaurants which have on-sale liquor licenses, to serve liquor between the hours of 10:00 a.m. Sunday and 1:00 a.m. Mondays in conjunction with the serving of food, provided that the licensee establishment is in conformance with the Minnesota Clean Indoor Air Act.
- (d) *Alcoholic beverages; off-sale.* No off-sale of alcoholic beverages may be made :
 - (1) On Sundays, except between the hours of 11:00 a.m. and 6:00 p.m.;
 - (2) Before 8:00 a.m. on Monday through Saturday;
 - (3) After 8:00 p.m. on Monday through Thursday and after 10:00 p.m. on Friday and Saturday, provided that an establishment may sell intoxicating liquor until 10:00 p.m. on December 31 and July 3, and on the day preceding Thanksgiving day, unless otherwise prohibited under subsection (d)(1) of this section;
 - (4) On Thanksgiving Day;
 - (5) On Christmas Day;
 - (6) After 8:00 p.m. on Christmas Eve, December 24.
- (e) ~~*Bottle clubs.* No establishment licensed under Minn. Stat. § 340A.414 may permit a person to consume or display intoxicating liquor, and no person may consume or display intoxicating liquor between 1:00 a.m. and 12:00 noon on Sundays, and between 1:00 a.m. and 8:00 a.m. on Monday through Saturday.~~
- (f) *Delivery to off-sale licensees.* No delivery of an alcoholic beverage ~~alcohol~~ to an off-sale licensee may be made by a wholesaler or accepted by an off-sale licensee on Sunday. No order solicitation or merchandising may be made by a wholesaler on a Sunday.

Sec. 34-~~127~~53. - Restrictions on activities when sales not permitted.

- (a) *Consumption.* It is unlawful for any person to consume on on-sale license premises, or any licensee to permit consumption of, any alcoholic beverage on licensed premises more than 20 minutes after the hour when a sale can legally be made.

- (b) *Removal of containers.* It is unlawful for any on-sale licensee to permit any glass, bottle or other container containing any alcoholic beverage to remain upon any table, bar, stool or other place where customers are served more than 20 minutes after the hour when a sale can legally be made.
- (c) *Closing.* It is unlawful for any person, other than an on-sale licensee's bona fide employee actually engaged in the performance of his duties, to be on premises licensed under this chapter more than 30 minutes after the legal time for making licensed sales; however, this subsection 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 nonintoxicating malt liquor, wine or liquor.
- (d) *Display.* No person shall display any alcoholic beverage to the public in any manner in an on- or off-sale licensed operation during the hours in which consumption is not permitted.

Sec. 34-128. -- Service by underaged persons.

No person under 18 years of age may serve or sell intoxicating liquor in a retail intoxicating liquor establishment.

Sec. 34-129. -- No liquor in licensed restaurants.

No person shall consume or carry any alcoholic beverage to or into any restaurant with the purpose of consumption in the restaurant.

Sec. 34-130~~54~~. - Sale in hotel guest rooms.

No sale of intoxicating liquor shall be made to or in guest rooms of hotels unless the rules of such hotels provide for service of food in guest rooms and unless the sale accompanies and is incidental to the regular service of meals to guests in the hotel.

Sec. 34-131. -- Removal of wine from restaurant.

A restaurant licensed to sell intoxicating liquor or wine at on-sale may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided the bottle has been opened and the contents partially consumed. A removal of a bottle under the conditions described in this section is not an off-sale of intoxicating liquor and may be permitted without additional license.

Sec. 34-132. -- Notice posting.

Premises licensed for the retail sale of alcoholic beverages and a municipal liquor store must post and maintain in a conspicuous place within the licensed premises clearly visible to consumers one sign 14½ inches wide by eight inches high, as designed by the commissioners of health and public safety, which incorporates the following information:

- (1) — The penalties of driving while under the influence of alcohol;

(2) — Penalties for serving alcoholic beverages to a person who is obviously intoxicated or under 21 years of age; and

(3) — A warning statement regarding drinking alcohol while pregnant.

Sec. 34-133. — Racial discrimination; clubs.

No retail license to sell alcoholic beverages may be issued or renewed to a club which discriminates against members or applicants for membership or guests of members on the basis of race.

Sec. 34-134. — Gambling prohibited.

(a) — No retail establishment licensed to sell alcoholic beverages may keep, possess, operate, or permit the keeping, possession or operation on the licensed premises of dice or any gambling device as defined in Minn. Stat. § 349.30, or permit gambling in the establishment except as provided in this section.

(b) — Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of the gambling equipment is authorized by Minn. Stat. ch. 349, a tribal ordinance in conformity with the Indian Gaming Regulatory Act, or a tribal state compact authorized under Minn. Stat. § 3.9221.

(c) — Lottery tickets may be purchased and sold within the licensed premises as authorized by the director of the lottery under Minn. Stat. ch. 349A.

Sec. 34-135. — Coin-operated devices.

Coin-operated amusement devices may not be made available in establishments licensed solely for the off sale of intoxicating liquor or municipal stores which sell only at off sale. An establishment holding a combination on sale and off sale license or a municipal liquor store which sells at on sale and off sale and which makes coin-operated devices available shall keep such devices to the greatest extent possible in that area of the establishment where on sales are made.

Sec. 34-136. — Wine tastings.

(a) — *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Wine tasting means an event of not more than four hours' duration at which persons pay a fee or donation to participate, and are allowed to consume wine by the glass without paying a separate charge for each glass.

(b) — *Authorized.*

(1) — A charitable, religious or other nonprofit organization may conduct a wine tasting on premises the organization owns or leases or has use donated to it, or on the licensed premises of a holder of an on-sale intoxicating liquor license that is not a temporary license, if the organization holds a temporary on-sale intoxicating liquor

license and complies with this section. An organization holding a temporary license may be assisted in conducting the wine tasting by another nonprofit organization.

(2) An organization that conducts a wine tasting under this section may use the net proceeds from the wine tasting only for:

a. The organization's primary nonprofit purpose; or

b. Donation to another nonprofit organization assisting in the wine tasting, if the other nonprofit organization uses the donation only for that organization's primary nonprofit purpose.

(3) No wine at a wine tasting under this section may be sold, or orders taken, for off-premises consumption.

(4) Notwithstanding any other law, an organization may purchase or otherwise obtain wine for a wine tasting conducted under this section from a wholesaler licensed to sell wine; and the wholesaler may sell or give wine to an organization for a wine tasting conducted under this section and may provide personnel to assist in the wine tasting. A wholesaler who sells or gives wine to an organization for a wine tasting under this section must deliver the wine directly to the location where the wine tasting is conducted.

(5) This section does not prohibit or restrict a wine tasting that is located on on-sale premises where:

a. No charitable organization is participating; or

b. The proceeds are for a designated charity but where the tasting is primarily for educational purposes.

Sec. 34-137. Sales of ethyl alcohol and neutral spirits prohibited.

(a) *Ethyl alcohol; neutral spirits.* No person may sell at retail for beverage purposes ethyl alcohol or neutral spirits, or their substitutes, possessing the taste, aroma and characteristics generally attributed to ethyl alcohol or neutral spirits. Nothing in this section prohibits the manufacture or sale of other products obtained by use of ethyl alcohol or neutral spirits as defined in United States Treasury Department, Bureau of Internal Revenue, regulations 125, article II, Standards of Identity for Distilled Spirits.

(b) *Maximum alcohol content.* No person may sell for beverage purposes any spirits, distilled from grain or corn, with an alcohol content of 80 percent or more, which equals 160 proof or more, unless such spirits have been aged in wood casks for not less than two years.

Sec. 34-138. Certain sizes may be sold.

An off-sale retailer of intoxicating liquor may sell distilled spirits in bottles of 50 milliliters.

Sec. 34-139. Containers brought into premises.

A licensed retailer of alcoholic beverages may prohibit any person from bringing into the licensed premises any container of alcoholic beverages, or from consuming from such a container on the licensed premises, without the licensee's permission.

Sec. 34-140. -- Refilling bottles.

It is unlawful for a person to sell, offer for sale, or keep for sale alcoholic beverages in a package or bottle which has been refilled or partly refilled.

Sec. 34-141. -- Samples authorized.

Off-sale licensees may provide samples of malt liquor, wine, liqueurs, cordials and distilled spirits 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, cordial and distilled spirits samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 100 milliliters of malt liquor per variety per customer, 50 milliliters of wine per variety per customer, 25 milliliters of liqueur or cordial, and 15 milliliters of distilled spirits per variety per customer.

Sec. 34-142. -- Liqueur-filled candy.

Liqueur-filled candy may only be sold in an exclusive liquor store.

Sec. 34-143. -- Bottle clubs.

(a) — No business establishment or club that does not hold an on-sale intoxicating liquor license shall directly or indirectly allow the consumption and display of alcoholic beverages or knowingly serve any liquid for the purpose of mixing with intoxicating liquor without the permit required by state law.

(b) — Every bottle, container or other receptacle containing liquor stored by a member of a bottle club shall have attached to it a label signed by the member of the club and shall be kept in a locker designated to the use of such member; and no other liquor shall be on bottle club premises.

(c) — It is unlawful for any club member under the state established legal drinking age to be assigned a locker for the storage of liquor or to consume or display liquor on any premises under control by such club.

(d) — Liquor sold, served or displayed in violation of this section shall be subject to seizure for purposes of evidence.

Sec. 34-144. -- Nudity or obscenity prohibited.

(a) — *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Nudity means 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 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* means 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 sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.~~

~~*Obscenities* means 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.~~

~~*Sadomasochistic abuse* means 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* means 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.~~

~~*Sexual excitement* means 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 article to permit upon licensed premises any nudity, obscene performance or continued use of obscenities by any agent, employee, patron or other person.~~

Sec. 34-55. - Nudity or obscenity prohibited.

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

SECTION 12. Chapter **34-70, Article V** of the Orono City Code shall be amended **by the addition of a new Division 3** to read as follows:

DIVISION 3. - ALCOHOL

Sec. 34-370-250. - Consumption and possession of beer, wine or liquor on streets and public property.

- (a) It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any street or other public property except city parks and other public property when and where permission has been specifically granted or licensed by the council. This section shall not apply to the possession of an unsealed container in a motor vehicle on streets or public property 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.
- (b) No license or permit shall be granted under this section unless and until the permittee or licensee, as the case may be, has filed with the city a certificate of public liability insurance on which the city or other owner of the property is a named insured providing umbrella or all perils coverage in the amount of \$1,000,000.00. Nor shall such license or permit be granted until the permittee or licensee, as the case may be, agrees in writing to pay for all expenses incident to cleaning up all resulting refuse and debris.

Sec. 34-470-251. - Consumption and possession of beer, wine or liquor on private parking lots.

It is unlawful for any person to consume or possess in an unsealed container any alcoholic beverage on any privately owned parking lot which is clearly signposted prohibiting such possession and consumption. This section shall not apply to the possession of an unsealed container in a motor vehicle on privately owned parking lots 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.

Sec. 34-770-252. - Inducing another to make illegal purchase or sale.

No person shall knowingly induce another to make an illegal sale or purchase of intoxicating liquor or 3.2 percent malt liquor.

Sec. 70-253. - Social host ordinance.

(a) Generally.

- (1) It is unlawful for any person under the age of 21 to consume or possess an alcoholic beverage.
- a. Consumption of alcohol by persons under the age of 21 is harmful to those persons and constitutes a potential threat to public health from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.
 - b. Alcohol is also an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.
 - c. As a result, gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of 21 should be prevented as much as possible.

d. Gatherings involving underage possession and consumption often occur outside the presence of parents or other responsible adults. However, there are times when a parent or other adult is present and condones the activity, and in some circumstances provides the alcohol.

e. Although furnishing alcohol to an underage person is a crime, it is difficult to prove, and an ordinance is necessary to help further combat underage consumption.

f. A deterrent effect will be created by holding a person criminally responsible for hosting a gathering where underage possession or consumption occurs.

(2) The purpose of this section is to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and to hold persons criminally responsible who host gatherings where persons under 21 years of age possess or consume alcohol, regardless of whether the person hosting the gathering supplied the alcohol or was present.

(3) The city council intends that this section should not target parents who may have alcoholic beverages on their premises but who have issued a standing order that alcohol is not to be consumed by underage persons on those premises.

(3) The definitions in City Code Section 34.1 shall apply to this section.

(b) *Prohibited acts.*

(1) It is unlawful for a person to host or allow a gathering on any premises if:

a. The person knows that alcohol or alcoholic beverages will be present; and

b. The person knows that an underage person will attend, or is likely to attend; and

c. The person fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages by an underage person; and

d. An underage person consumes an alcoholic beverage, or possesses an alcoholic beverage with the intent to consume it, at the gathering.

(2) Examples of reasonable steps include:

a. Directing, on a one-time basis or as a standing order, that no consumption of alcohol and alcoholic beverages is allowed; or

b. Controlling access to alcohol and alcoholic beverages; or

c. Checking identification of attendees to determine age; or

d. Supervising the activities of underage persons at the gathering either in person or through a responsible adult.

(3) A person is not criminally responsible under this section if the person does not know that a gathering will occur, or does not know that alcoholic beverages will be present, or does not know that an underage person will be or is likely to be present. However, if a person has the knowledge specified in paragraph (1) above, a person who hosts a gathering does not have to be present at the gathering to be criminally responsible.

(4) A person is criminally responsible for violating paragraph (1) above if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the prohibited act.

(c) Exceptions.

(1) This section does not apply to conduct of an underage person that is permitted by his or her parent and occurs in the parent's household.

(2) This section does not apply to a legally protected religious observance.

(3) This section does not apply when an underage person is lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

(4) This section does not apply to the holder of a liquor license issued under Title III of this Code, but it does apply to a person who hosts a gathering at such a liquor establishment.

SECTION 23. EFFECTIVE DATE: This ordinance shall take effect immediately upon its passage and publication.

ADOPTED this _____ day of _____, 2019 on a vote of ___ ayes and ___ nays by the City Council of Orono, Minnesota.

ATTEST:

Anna Carlson, City Clerk

Dennis Walsh, Mayor

Ordinance published in The Laker and The Pioneer newspapers the week of _____, 2019.