

PURCHASING AND LICENSING COMMITTEE

11-009-0

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 8, SECTIONS 8-9, 8-13, 8-25, 8-40, 8-45, 8-50, 8-52, 8-54, 8-56, 8-57, 8-58, 8-62 AND 8-68 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 8-9 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-9. Suspension and revocation of licenses; civil penalty; presumptive penalties.

(a) When it comes to the attention of the alcohol, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcohol, gambling and tobacco commission may call for a hearing to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee-1

(1) Any hearing called pursuant to the provisions of this Section shall be held before the alcohol, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated thereunder. At such hearing, the commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council-1

(2) At the completion of the hearing and delibera-

tions, the commission shall direct the city clerk to prepare a report to the city council which shall consist of the commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The council shall also receive a copy of the transcript of the commission's hearing and any exhibits introduced as evidence-1

(3) The city council shall not render a decision on the matter until at least ten days after it has received the report of the alcohol, gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the alcohol, gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter-1

(4) The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees

or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board or the police in any investigation and the refusal to admit police officers into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

(9) The filing of a license application containing information or statements known by the applicant to be false;

(10) The failure to follow the procedures applicable to the use of a caterer's permit issued by the state;

(c) The city council may, for the causes enumerated above, revoke a license, suspend a license for up to 60 days, or impose a civil penalty, not to exceed \$2,000 for each violation, or any combination of these sanctions. No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action. Absent significant aggravating or mitigating circumstances, the presumptive penalties for violations shall be as follows:

(1) First offense - \$500 civil penalty;

(2) Second offense within one year of the occurrence

of the first offense - ~~\$750~~ \$1,000 civil penalty and one day license suspension;

(3) Third offense within two years of the occurrence of the first offense - \$12,000 civil penalty and five day license suspension;

(4) Fourth offense within ~~two~~ three years of the occurrence of the first offense - ~~\$1,500~~ 2,000 civil penalty and 30 day license suspension;

(5) Fifth offense within four years of the occurrence of the first offense - license revocation;

(d) The city council may request that the alcohol, gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The commission shall conduct any hearings so requested.

Section 2. That Section 8-13 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

Sec. 8-13. Definitions.

For the purposes of this Division, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(a) Alcoholic beverages. Distilled, fermented, spirituous, vinous, and malt beverages containing .5 percent or more of ethyl alcohol by weight which are potable for consumption by human beings;

(b) At retail. Such term means for use or consumption by the purchaser and not for resale;

(c) Bed and breakfast establishment. Any bed and breakfast inn authorized by Section 50-35 of this Code or other residential, owner occupied, historically or architecturally unique, overnight lodging facility that serves meals to its guests and which is

authorized or allowed by local law and is found by the alcoholic beverage board to be the functional equivalent of a bed and breakfast inn;

(d) Club. Any corporation duly organized under the laws of the state for civic, fraternal, social or business purposes, or for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization which shall have more than 50 members and which shall, for more than a year, have owned, hired or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, whose affairs and management are conducted by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents or employees is paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body;

(e) Exclusive liquor store. An establishment used exclusively for the sale of intoxicating liquor for consumption off or away from the licensed premises where sold, and the sale of ice, soft drinks and cigarettes;

(f) Hotel. Any establishment having a resident proprietor or manager, where, in consideration of payment therefor, food and lodging are regularly furnished to transients, which maintains not less than 50 guest rooms with bedding and other suitable and

necessary furnishings in each room, which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and the usual service and which maintains, under the same management and control as the rest of the establishment and has as an integral part thereof, a dining room with appropriate facilities for seating not less than 30 guests at one time and where the general public is, in consideration of payment therefor, served with meals at tables;

(g) Intoxicating liquor. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight;

(h) Manufacturer. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces intoxicating liquors for sale;

(i) Malt liquor. Any beer, ale or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume;

(j) Theater. A building containing an auditorium in which live dramatic, musical, dance or literary performances are regularly presented to holders of tickets purchased for those performances. A theater shall not include an adult entertainment establishment as defined by Section 5-17(b) of this Code;

(k) 3.2 percent malt liquor. Any malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight;

(l) Off sale. The sale of alcoholic beverages in original packages in retail stores for consumption off or away from the premises where sold;

(m) On sale. The sale of alcoholic beverages by the glass for consumption on the premises only;

(n) Package or original package. Any container or receptacle holding alcoholic beverages, which container or receptacle is corked or sealed;

(o) Public place. Any place that the general public can occupy as a matter of right or any place that is open to the general public by invitation, either for business purposes or otherwise;

(p) Restaurant. Any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals and for seating not less than 25 guests at one time and where, in consideration of payment therefor, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests and a principal part of the business of which is the serving of foods. One or more bowling alleys maybe included in the licensed premises of a restaurant if table service is available throughout the licensed premises;

(q) Sale, sell, dispense or sold. All barters and all manners or means of furnishing alcoholic beverages for a consideration. Such term shall include all transactions, whether for cash, credit or other considerations and shall include transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the

consideration is called a "donation" or used to purchase any ticket, token or other object redeemable for alcoholic beverages;

(r) Security personnel. Any person licensed by the state as a protective agent or the employees of a protective agent providing protective agent services in compliance with state law, or persons licensed as peace officers by the state and employed by the city as police officers;

~~(r)~~ (s) Wholesaler. Any person engaged in the business of selling alcoholic beverages to retail dealers;

~~(s)~~ (t) Wine. 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, perry 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 by Minnesota Statutes, Chapter 340A.101, Subd. 9.

Section 3. That Section 8-25 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-25. Music, dancing and entertainment restrictions.

~~During the hours alcoholic beverages are sold or served~~ Except as provided in this Section, on sale establishments may permit music, theatrics, floor shows or entertainment ~~of any kind~~ upon the licensed premises, ~~except~~ Adult entertainment, late hours entertainment and dancing participated in by the public are prohibited except as authorized pursuant to Section 8-40 and Chapter

5, Article IV of this Code.

Section 4. That Section 8-40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-40. Dancing and late hours entertainment licenses for liquor establishments.

(a) No person licensed to sell alcoholic or 3.2 malt liquor beverages on sale shall allow ~~any~~ dancing participated in by the public or late hours entertainment on said the licensed premises unless ~~such person has first received~~ a license has been issued pursuant to this Section;

(b) A ~~danceing~~ license, whether an annual, seasonal or a one day license, shall entitle the on sale licensee holder to have dancing participated in by the public on the licensed premises. ~~The annual fee for a dancing license shall be set in accordance with Section 31-6(a) of this Code. The fee shall be prorated in the same manner as liquor licenses;~~

~~(c)~~ (1) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have dancing participated in by members and guests, without securing a ~~danceing~~ license;

(2) The term of the annual dance license shall be the same as the term of the on sale license. The term of the seasonal license is limited to the months of May through August;

(3) The fee for any dance license shall be set in accordance with Section 8-56(d). The fee for the annual license shall be prorated in the same manner as on sale licenses;

(4) The procedures and standards applicable to the issuance of the late hours entertainment license, where applicable, shall apply to the issuance of the annual or seasonal dance license;

(5) The city clerk is authorized to issue the one day dance license. The following procedures and standards are applicable to the issuance of the one day dance license:

(A) No license shall be issued unless an application for the license is received by the city clerk at least sixty (60) days prior to the event date;

(B) The license is subject to approval by the police and fire departments. Such approval is subject to, but not limited to, the following standards:

1. No license shall be issued in an area or under circumstances that would result in the disturbance of adjoining properties or the surrounding neighborhood;

2. The police and fire departments shall apply the same considerations applicable to the late hours entertainment license;

3. The license may contain conditions and limitations concerning security for the event and the hours during which the dancing event may be held; however, the license shall not authorize dancing after the time authorized for the sale of alcohol;

4. The city clerk shall notify the licensee in writing of the action taken on the application by any reasonable means, including but not limited to, the United States mail or electronic transmission. The licensee may appeal the action of the city clerk to the alcohol, gambling and tobacco commission.

The appeal is subject to the following procedures:

(i) The appeal shall be made in writing within seven days after written notice of the action is issued and filed with the city clerk. The issues on appeal shall be limited to the issues presented in the written appeal;

(ii) In deciding the appeal the commission shall apply the same criteria required of the city clerk;

(iii) The decision of the commission shall be the final decision of the city subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01;

(iv) The failure of the applicant to submit an application sufficiently in advance of the proposed dance event to allow for an appeal is the sole responsibility of the applicant;

~~(d) Notwithstanding any provision of this Section or Chapter to the contrary, seasonal dancing licenses covering the months of May through August, or a one day dance license, may be issued to any on sale licensee for a fee set in accordance with Section 31-6(a) of this Code;~~

~~(e)~~ (c) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale alcoholic beverage licenses or 3.2 malt liquor beverages if they meet the criteria set forth in this paragraph Section 8-40(d). ~~Such~~ The late hours entertainment license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when

sales of alcoholic beverages are required to cease. The fee for such license shall be set in accordance with Section ~~31-6(a)~~ 8-56(d); ~~of this Code.~~

(d) The annual and seasonal dance license and the late hours entertainment license shall be subject to the following procedures and standards:

(1) Every application for such license shall be investigated by the police and fire departments and alcohol, gambling and tobacco commission;

(2) No license shall be issued in an area or under circumstances where the dancing or late hours entertainment would disturb adjoining properties or the surrounding neighborhood;

(3) In their investigation and recommendations, the police and fire departments and the alcohol, gambling and tobacco commission shall consider, without limitation:

~~(1)~~ (A) The proximity of the establishment to residences and residentially zoned property;

~~(2)~~ (B) The character of the neighborhood surrounding the establishment;

~~(3)~~ (C) Parking facilities at the establishment;

~~(4)~~ (D) The acoustic properties of the building housing the establishment;

~~(5)~~ (E) The past record of the establishment;
and

~~(6)~~ (F) Any past complaints from adjoining property owners;

(4) The license may contain conditions and limitations concerning types of entertainment and hours of entertainment or dancing;-

(5) No entertainment or dancing shall be allowed after 3:00 a.m.;

(6) All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section;-

(7) During all times when dancing or late hours entertainment is conducted on the licensed premise the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 5. That Section 8-45 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-45. Same--same--Duluth Entertainment Convention Center.

(a) Except as provided in Minnesota Statutes Section 340A.404, Subd. 4a(a), An on sale intoxicating liquor license may be issued for the premises known as the Duluth Entertainment Convention Center. Such license shall be issued in accordance with the statutes and ordinances applicable to the issuance of on sale intoxicating liquor licenses in the city of Duluth and shall limit the sale of intoxicating liquor to members and guests of any person or organization leasing space in the Duluth Entertainment Convention Center for the purpose of conducting any convention, banquet, conference, meeting or social affair, and shall prohibit the sale of intoxicating liquor to the public or to any persons attending or

participating in any amateur hockey game, or elementary or secondary school or college athletic event being held on the Duluth Entertainment Convention Center premises-;

(b) Such license may only be used on the premises known as the Duluth Entertainment Convention Center and may be issued to the Duluth state convention center administrative board or to any person having an agreement with the Duluth state convention center administrative board for the operation of the food and/or beverage concession therein. Notwithstanding any ordinance to the contrary, the holder of such license may subcontract with an independent contractor to operate the liquor concession in any part or all of the arena-auditorium facilities. The annual fee for such license shall be as set forth in Section 8-56.

Section 6. That Section 8-50 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-50. To whom licenses issued--temporary 3.2 percent malt liquor.

(a) For purposes of this Section, the following words and phrases shall have the following meanings:

(1) Charitable organization. An ~~organization~~ association or corporation which is registered and in good standing with the Minnesota secretary of state, and which engages in solicitation of funds, on a permanent basis, for any charitable, benevolent, philanthropic, patriotic or eleemosynary purposes-;

(2) Religious organization. An ~~organization~~ association or corporation which is affiliated with a national or regional religious denomination, registered and in good standing with the

Minnesota secretary of state and which maintains an established church and congregation in the city;-

(3) Nonprofit organization. An ~~organization~~ association or corporation which is registered and in good standing with the Minnesota secretary of state, and which is neither designed for nor results in any private pecuniary gain, either directly or indirectly, for any of its members;

(b) Notwithstanding any provisions of the Duluth City Code to the contrary, temporary on sale 3.2 percent malt liquor licenses may be issued to clubs, charitable organizations, religious organizations and other nonprofit organizations permitting such club or organization to sell 3.2 percent malt beverage on sale. The license shall be issued for a limited length of time, not to exceed 14 days, and shall identify the effective dates and the precise premises where such 3.2 percent malt liquor is to be sold. The fee for such license shall be set in accordance with Section 31-6(a) of this Code;

(c) ~~Such license shall be issued for a limited length of time, not to exceed 14 days, and such license shall state on its face the specific dates on which it is valid. All applications for licenses issued pursuant to this Section are subject to the following requirements:~~

(1) Applications shall be made to and filed with the city clerk on forms provided by the city clerk;

(2) The application for such license and the license itself shall specifically state identify the precise premises where such 3.2 percent malt liquor is to be sold;-

(3) If the licensed premises are to be located outdoors, the application shall include a fencing and signage plan designed to clearly identify the outdoors area of the licensed premise;

~~(4) The license application shall be accompanied by insurance~~ If insurance is required under the provisions of Minnesota Statutes, Chapter 340A, the license application shall be accompanied by proof of insurance on a form acceptable to the city;
~~The fee for such license shall be set in accordance with Section 31-6(a) of this Code.~~

(5) The license said fee and cash deposit shall be paid to the city clerk at the time of the application is filed;
~~All applications for such licenses shall be made to and filed with the city clerk on forms provided by the city clerk. Such license shall not be transferable. No license shall be issued under this Section if it appears that the issuance of such license will endanger the health, safety or morals of the public. Licensed premises outside of buildings shall be clearly indicated;~~

~~(d) The chief of police shall designate or approve one or more security personnel to police premises licensed pursuant to this Section at times when 3.2 percent malt liquor is sold on such premises. The fees and expenses for such personnel shall be paid by the licensee. All licenses issued pursuant to this Section are subject to the following conditions:~~

(1) The license shall not be transferable;

(2) No license shall be issued under this Section if it appears that the issuance of the license will endanger the

health, safety or morals of the public, violate applicable zoning regulations or disturb the neighborhood;

(3) Licensed premises located outdoors shall be clearly identified with fencing and signage. The fencing and signage plan shall be approved by the chief of police;

(4) When 3.2 percent malt liquor is sold the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 7. That Section 8-52 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

Sec. 8-52. Terms and conditions of on sale licenses.

On sale intoxicating and 3.2 percent malt liquor licenses shall be issued subject to the following terms and conditions:

(a) No on sale license shall be granted to any applicant or for any premises if, in the judgment of the city council, the operations of the proposed establishment are likely to become a public nuisance or detrimental to public morals;

(b) No dancing shall be conducted on the licensed premises ~~between the hours of 1:00 a.m. and 8:00 a.m. on any day,~~ unless the establishment has been granted a ~~late hours entertainment~~ license under the provisions of Section 8-40. ~~of this Chapter;~~

~~(c) The chief of police, under the direction of the administrative assistant, shall designate a suitable person to act as an officer of the law on the licensed premises during the hours when dancing is conducted on such premises. The fees of such person or officer shall be paid by the licensee. In case any person not a~~

~~public officer shall be designated as such officer of the law, the person to whom such permit has been issued shall be responsible for the officer's acts and conduct. There shall be no liability for the acts and conduct of the designated officer on the part of any city employee designating such officer under the provisions of this Division.~~

Section 8. That Section 8-54 of the Duluth City Code, 1959, is hereby amended to read as follows:

Sec. 8-54. License not effective beyond space for which granted; exceptions-~~concurrent~~ sidewalk use permit.

(a) Licensed premises. No license shall be effective beyond the compact and contiguous space named therein for which the same was granted. In addition, the following standards and procedures apply:

(1) If any part of the serving area of the licensed premises is outside of a fully enclosed building, that part must comply with all the conditions set out in Section 8-54(b) or (c) or (d) that apply to the area-;

(2) ~~In addition,~~ At the time of application or at any time an outdoor area is licensed, its operation is subject to the power of the chief of police to approve the operation, set hours of operation, set days of operation, based upon an administration review and application of uniform regulatory criteria established by the police department, which pertains to public safety, convenience, compliance with laws, neighborhood conditions, noise, parking and health-;

(3) Licensed premises shall include the entire parcel

of land on which the establishment is located; ~~provided,~~ however, ~~that~~ no sales or service shall take place outside the designated serving areas approved by the city council in the licensing procedure unless such sales and/or service is authorized on a temporary basis for a special event by city council resolution and shall be subject to any conditions and limitations the council deems appropriate;

(4) Before any temporary service area is authorized, the licensee shall make application to the city clerk. The application shall include the following:

(A) ~~accompanied by~~ Payment of the appropriate fee; ~~and including~~

(B) ~~a~~ A diagram of the proposed area;

(C) Specification of the time and date of the event; and

(D) ~~f~~Fencing, signage and security measures proposed to be taken; ~~to the city clerk.~~

(5) ~~Thereafter,~~ ~~t~~The alcohol, gambling and tobacco commission shall review the matter application for temporary service area and make any recommendation(s) it deems appropriate to the city council;

(6) The fee for temporary expansions shall be set in accordance with Section 31-6(a) of this Code for the first day of the event and for each day thereafter. If the application is denied, all but a portion of the fee, set in accordance with Section 31-6(a) of this Code, shall be refunded to the applicant;

(7) No temporary expansion of service area shall be

granted for a period of time greater than three consecutive days;

(b) ~~Concurrent Sidewalk~~ use permit for licensed premises. The licensed premise shall not include those areas of the business premise for which a sidewalk use permit has been issued pursuant to Section 50-37.12 unless the licensee ~~if any part of a licensed premises is located upon an area for which a concurrent use permit has been issued to the licensee under Section 45-103, or its successor, the use of that permitted area, and the concurrent use permit conditions, shall comply~~ complies with the following:

(1) The area may be part of the licensed premises only if no privately-owned property is reasonably available to the licensee that could be used, instead, as an outdoor licensed premises;

(2) The licensee has a food and beverage service establishment license under M.S.A. Sec. 157.16, subd. 3(d)(3)(i) or (ii), or subd. 3(d)(4) and subd. 3(d)(6) or (7), and whatever food service is available anywhere else in the licensed premises is available in the permitted area;

(3) No alcoholic beverage can be served, consumed or possessed in the permitted area by any person unless he or she is seated at a table;

(4) The permitted area shall not exceed 500 square feet in area, must have an impervious surface, must, when in use, have an approved continuous perimeter barrier or fence. The fence must be approved by ~~city clerk,~~ the police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer alcoholic

beverages on or off the premises. The design, appearance, lighting, decoration, signage and use of the facility shall be reasonably compatible with the surrounding area, as determined by the ~~chief administrative officer, or his/her designee~~ land use supervisor;

(5) The permitted area shall be capable of being constantly observed by serving or security personnel of the licensee. Licensee shall furnish a minimum staff of one person for a permitted area of up to 20 patron capacity and one additional staff for each additional unit of up to 20 patron capacity;

(6) The permitted area shall leave at least a six foot wide area of sidewalk that is not subject to the ~~concurrent use permits~~sidewalk use permit;

~~(7) Any other restrictions set by the city council or in the concurrent use permit;~~

(c) Licensed premises outdoors on private property. If any part of the licensed premises is on privately-owned property that is not subject to an ownership or easement interest of the city of Duluth, or any other government, and that part of the licensed premises is not an "indoor area" as defined in M.S.A. Sec. 144.413, subd. 1(a), or its successor, then the use of that part of the licensed premises shall comply with all of the following:

(1) Any condition or limitation imposed by any law, ordinance, government regulation, code, license or permit, including restrictions on configuration or use that are set by the city council by ordinance or resolution;

(2) That part of the licensed premises shall not exceed in area the area of the rest of serving area of the licensed

premises;

(3) That part of the licensed premises shall have an improved surface suitable for all weather pedestrian traffic, must, when in use, have a continuous perimeter barrier or fence. The barrier or fence must be approved by city clerk, police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer alcoholic beverages on or off the premises. The appearance, lighting, signage, visual barriers of the facility shall be reasonably compatible with the surrounding area, as determined by the chief administrative officer or his/her designee;

(4) Any food service available anywhere in the licensed premises shall be available in that part of the licensed premises. Every type of seating for dining anywhere on the licensed premises shall be available on that part of the licensed premises. In that part of the licensed premises, no alcoholic beverage shall be served, consumed or possessed by any person unless he or she is seated at a table;

(d) Pre-existing uses. Outdoor areas that were included in a licensed premises on January 1, 2008, shall be allowed to continue as a nonconforming use under, and subject to, Section ~~50-14~~ 50-38, to remain in the same configuration and subject to the same restrictions of use, including hours of operation, as existed at that date, subject, however, at all times to the government's police power to control a license and sanction activities at establishments that dispense alcoholic beverages, as provided by any law, including (a) above.

Section 9. That Section 8-56 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-56. Fees.

(a) The license fee for off sale and on sale 3.2 percent malt liquor licenses shall be paid to the city clerk not later than March 15 of each year;

(b) The license fee for off sale intoxicating liquor licenses shall be paid to the city clerk not later than July 15 of each year;

(c) The license fee for on sale intoxicating liquor licenses may, at the option of the licensed applicant, be paid to the city clerk either in one lump sum not later than July 15 in each year, or in four equal installments, which shall be paid not later than July 15, October 15, January 15 and April 15, respectively;

(d) In any case where any payment for any alcoholic beverage license is not made when due, a penalty fee, which shall be set in accordance with Section 31-6(a) of this Code, shall be added to the fee. In any case where any payment for any alcoholic beverage license is more than 30 days in arrears, an additional penalty fee which is double the base penalty fee shall be added to the fee. Nonpayment of fees shall constitute good cause for suspension or revocation of any license;

~~(b)~~ (e) Payment for license fees shall be made by certified check payable to the city treasurer of the city or in lawful money of the United States of America and when such fees are received by the city clerk they shall be transmitted to the city treasurer. Upon the granting of a license as provided in this

Article the amount of fee for such license shall be paid into the general fund;

~~(c)~~ (f) Whenever any licensee holding an on sale intoxicating liquor license shall at any time for any purpose operate more than one permanent bar, such licensee shall pay an additional annual license fee, which shall be set in accordance with Section ~~31-6(a)~~ of this Code 8-56(g), for each such additional permanent bar. A so-called service bar which is used solely by employees of the licensee shall not be considered a bar for purposes of this Section;

~~(d)~~ (g) The annual fees for all licenses and permits provided for in this Chapter shall be set in accordance with Section 31-6(a) of this Code.

Section 10. That Section 8-57 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-57. ~~Refund of fees in certain cases~~ Operating period after death of licensee.

~~In case, during the term of an on sale intoxicating liquor license, an off sale intoxicating liquor license or an on sale 3.2 percent malt liquor license, the place of business of any licensee shall be destroyed or so damaged by fire or otherwise that the licensee shall cease to carry on the licensed business, in case 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 council may, 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, provided, however, that in case of Upon~~ the death of ~~any such licensee~~ an individual issued a license pursuant to this Chapter or of an individual owning all shares of a corporation issued a license pursuant to this Chapter, ~~his~~ the personal representative of such individual is ~~hereby~~ authorized to continue operation of ~~such the licensed~~ business for not more than 90 days after the death of such ~~licensee individual~~.

Section 11. That Section 8-58 of the Duluth City code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-58. Applications for intoxicating liquor licenses.

(a) Applications for intoxicating liquor licenses shall be made to and filed with the city clerk. On sale applications shall be made on forms provided by the city clerk. ~~prescribed by the city council~~. Off sale applications shall be made on forms prescribed by the liquor control commissioner. ~~All forms shall be supplied by the city clerk~~. The council or alcohol, gambling and tobacco commission may require applicants to furnish information in addition to that contained in the written forms. If required under the provisions of Minnesota Statutes, Chapter 340A, proof of a liability insurance policy in a form acceptable to the city, shall accompany each application; ~~for a license~~.

(b) The application for an off sale intoxicating liquor license is subject to approval by the state department of public safety. Before ~~such the~~ off sale license shall become effective, the application ~~therefor~~, together with the required proof of insurance policy, shall be approved by the liquor control

commissioner.

Section 12. That Section 8-62 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-62. Issuance--generally.

(a) Except as provided in this Section, ~~the~~ city clerk shall not issue any license under this Division unless directed to do so by resolution duly adopted by the city council. Where a license is made available by revocation, abandonment, surrender, cancellation or for some other cause, such available license may, upon application to the city council, be reissued by the city council as determined by a resolution adopted for such purpose. Any resolution granting a license may be conditioned on final departmental approvals, payment of taxes or any other condition the council deems appropriate. The city clerk shall not issue any license until all such conditions are met-;

(b) Except as provided in this Section, ~~the~~ alcohol, gambling and tobacco commission shall cause an investigation to be made of all of the representations set forth in the applications. Opportunity shall be given at a ~~regular or special~~ meeting of the alcohol, gambling and tobacco commission to any person to be heard ~~for or against the granting of any license. on an application.~~ After such investigation, the city council shall grant or refuse such license in its discretion; provided, that no off sale intoxicating liquor license shall become effective until it, together with any required proof of insurance policy, has the approval of the liquor control commissioner of the state-;

(c) The licensed premises shall have the license posted in

a conspicuous place;

(d) The city clerk may issue a one day or seasonal dance license to any on sale licensee as provided in Section 8-40(d).

Section 13. That Section 8-68 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-68. Licenses not to be issued in certain areas.

(a) Except for the district from Third Avenue East to Seventh Avenue East on Fourth Street; from Sixth Avenue West to Third Avenue East on Michigan Street, Superior Street and First Street; and from 14th Avenue East to 26th Avenue East on London Road west of 26th Avenue East; on Central Entrance east of Basswood Avenue, and except for clubs and general food stores, no licenses shall be granted to authorize the sale of alcoholic beverages in any establishment, the main entrance of which is situated within 400 feet of the main entrance of any church or of the grounds of any public or private elementary or secondary school; said distance to be measured by the shortest route along or across the public way.

(b) Establishments in which the sale of alcoholic beverages was ~~authorized~~ licensed on January 1, 1967, shall not be subject to the provisions of this ~~paragraph~~ Section. Establishments which exist at the time a church or school locates within 400 feet of the establishment may continue to operate and are eligible for license renewal and transfer unless the establishment's license is revoked for causes unrelated to this Section.

Section 14. That Chapter 8 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 8-71 to read as follows:

Sec. 8-71. Liquor caterer's registration and event permits.

(a) The holder of a state caterer's permit issued under the provisions of Minnesota Statutes, Section 340A.404(12), in order to provide catering services in the city, shall register to operate under such caterer's permit using a form approved by the police chief and provided by the city clerk. An annual liquor caterer's permit registration fee shall be established in accordance with Section 30-6(a);

(1) Registration of a liquor caterer's permit must be approved by the police chief and may be denied, or an approved registration may be suspended or revoked by the police chief without refund, for any of the following reasons:

(A) Any violation of the laws relating to the sale or service of alcoholic beverages;

(B) Licensee's refusal to supply books of account and contracts pertaining to an event as set forth in this Section;

(C) Any violation of the terms of this Section;

(D) Any other good cause related to the operation of the business or venue;

(b) Events that are catered in the city in accordance with Minnesota Statutes Section 340A.404(12) shall comply with the following provisions:

(1) Each catered event must be approved by the police chief. A liquor caterer shall apply for event approval to the city clerk at least five business days prior to the catered event and provide pertinent information about the event using a form provided by the city clerk. An event approval fee shall be established in

accordance with Section 30-6(a);

(2) The police chief may deny approval for any of the following reasons:

(A) The liquor caterer failed to apply for event approval as required by this Section;

(B) The operation of the event will unreasonably disturb the peace, quiet or repose of surrounding residential or commercial areas;

(C) The operation of the event will contribute to crime, disorderly behavior, noise, traffic, litter or parking problems in the area near the event's location;

(D) The licensee is in arrears in the payment of any city sales or property taxes, city fees, or city penalties;

(E) The failure to provide for adequate security personnel;

(3) Liquor caterers shall submit to and facilitate any site inspections by police, fire or other regulatory agency;

(4) Liquor caterers shall maintain adequate security at catered events in the city. The caterer may coordinate this with the host facility;

(5) If an event is to be held outside, the applicant shall indicate how the alcohol will be confined to a particular area. Exclusive outdoor events must provide portable toilets and comply with all applicable county health regulations related to such toilets;

(6) No sale of alcohol shall occur after 1:00 a.m.;

(7) All servers of alcohol at a catered event must be

at least 18 years of age and employees of the liquor caterer;

(8) The liquor caterer shall staff the event with at least one employee from the original licensed establishment;

(9) No single location in the city shall have a single liquor catered event lasting more than three days, unless the event is a civic event or community festival as designated by the mayor;

(10) Both state and city permits/licenses must be available for display upon request of any law enforcement officer or investigator;

(c) A liquor caterer shall keep a record of each event that they cater in the city. The record shall include the location of the event, the date and time, the event contact name(s) and phone number(s), and shall provide this register to city staff upon request;

(d) The city council may by resolution establish a list of premises for which a liquor caterer may not provide services at an event without explicit approval of city council;

(e) Any violation of the provisions set forth in this Chapter or Chapter 340A of the Minnesota Statutes by a licensee or the licensee's employees, agent or servants, while operating under a liquor caterer's permit which occurs on the premises being catered, shall cause the licensee and the licensee's employees, agents or servants to be subject to civil, criminal or administrative action;

(f) Holders of a liquor caterer's permit shall comply with all provisions of the statutes, ordinances and rules governing the retail sale of alcoholic beverages;

(g) Registration under this Section shall expire on August 31 of each year;

(h) The liquor caterer may appeal the decisions of the police chief as follows:

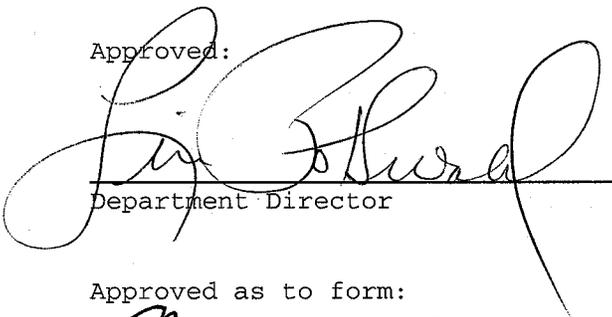
(1) The denial or suspension of permit registration may be appealed to the alcohol, gambling and tobacco commission within ten days after notice of the action is issued. The appeal shall be in writing on a form provided by the city clerk and shall specify the grounds and factual basis of the appeal. The appeal shall be accompanied by an appeal fee which shall be established by city council pursuant to Section 30-6(a). The commission shall hear the appeal at its first meeting following receipt of the appeal and the appeal fee, unless the appeal was received after the commission's agenda deadline. Any appeals filed after the commission's agenda deadline shall be heard at the following meeting. The commission's actions are limited to affirming or reversing the decision of the police chief. The commission shall specify the basis for its decision by motion. The decision of the commission is the final action of the city and is subject to appeal to the Minnesota court of appeals pursuant to Minnesota Statutes Section 606.01;

(2) The denial of an event permit may be appealed to the chief administrative officer within seven days after notice of the action is issued. The appeal shall be in writing on a form provided by the city clerk and shall specify the grounds and factual basis for the appeal. The appeal shall be accompanied by an appeal

fee which shall be established by city council pursuant to Section 30-6(a). The chief administrative officer or designee, who shall not be the police chief or any employee of the police department, shall hear the appeal within ten (10) business days. The chief administrative officer's decision shall be issued in writing and shall specify the basis for decision. The decision of the chief administrative officer is the final action of the city and is subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01.

Section 15. That this ordinance shall take effect 30 days after its passage and publication.

Approved:


Department Director

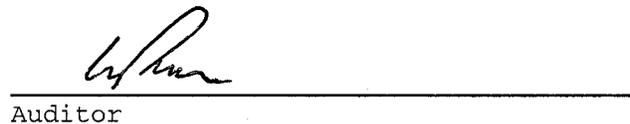
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ADM/ATTY MAL:dma 03/09/2011

STATEMENT OF PURPOSE:

Section 1. The amendments in this Section do the following: (1) makes clear that the city has the authority to impose discipline upon a licensee that violates laws related to the use of a caterer's permit; (2) eliminates the ability to forgive a portion of the presumed penalty. The presumed penalty may be reduced or raised if mitigating or aggravating circumstances exist. The word

"significant" is removed because it is vague and thus, constitutionally suspect; (3) ensures that a licensee has a reasonable amount of time to perfect an appeal prior to the beginning of a period of license suspension; (4) provides for a doubling of the fine with each additional offense up to the statutory maximum; (5) extends the look back period for subsequent offenses; (6) clarifies that the look back period begins on the date of the first offense and not the date a penalty for the offense is imposed.

Section 2. The amendment provides a definition for "security personnel."

Section 3. (1) Eliminates a conflict between Section 8-25 and Chapter 5 which regulates adult entertainment; (2) removes language that is not needed.

Section 4. (1) Clarifies that 3.2 establishments are subject to the limitations on dances; (2) provides for standards and procedures applicable to the one day dance license; (3) moves provisions from Section 8-52 related to dancing and late night entertainment security into Section 8-40 so that all of the rules unique to dancing and late night entertainment are located in the same section; and (4) simplifies language by the introduction of the term "security personnel."

Section 5. Conforms this Section to changes in state law related to liquor licensing for the Duluth Entertainment & Convention Center Authority.

Section 6. While state law authorizes the issuance of temporary licenses to charitable, religious and non-profit organizations, it does not provide a definition for the term "organization." The proposed change provides for an objective, simple method of identifying a formal group organized for ongoing charitable, religious or non-profit purposes. The ordinance also simplifies language and incorporates the term "security personnel."

Section 7. This Section (1) incorporates current nomenclature; (2) clarifies Section 8-52; and (3) removes security requirements related to dancing that has been provided for in Section 8-40 which deals with other aspects of dancing on licensed premises.

Section 8. This Section replaces the term "concurrent use permit" with the term "sidewalk use permit." The sidewalk use permit is a new type of permit provided for in the new Unified Development Chapter (Chapter 50). It also changes the approving authority for the physical elements of the permitted area from the chief administrative officer and city clerk to the police chief, building official and land use supervisor.

Section 9. This Section adds a provision that prevents a licensee from delaying a quarterly license fee payment for an entire quarter without incurring an additional penalty beyond the initial late fee. It also organizes the Section to aid the reader's understanding.

Section 10. This Section eliminates the license fee refund upon death of a licensee. Refunding upon death is not required by state law. It is also contrary to the purpose of fees which are to cover the administrative costs of the licensing program. Since most of these costs are associated with the annual license review, the deceased licensee received services covered by the fee. Refunds rarely occur because licenses are typically issued to a corporation and

not to an individual. The change also clarifies the relationship between the death of the sole shareholder of a corporate licensee and the ongoing existence of the corporation.

Section 11. This Section (1) eliminates the requirement that the city council approve the application form for an on sale license. The council has not been involved in this administrative function and it is not required by state law. The change allows the city to more efficiently alter forms as needed; and (2) eliminates the requirement that the city clerk supply the application forms dictated by the state. The state forms are available on line and an applicant can obtain them free of charge at the commissioner's website.

Section 12. This Section (1) divides the paragraphs of this long Section into alphabetically referenced Subsections to make citation to the various provisions easier; (2) some unneeded language has been removed; and (3) authorizes the administrative issuance of a one day dance license which currently must go through the commission and city council. The process and standards for the license are provided for in the proposed Section 8-40(d).

Section 13. This Section changes the areas subject to the 400 foot rule and clarifies the grandfather rights of establishments that predate the establishment of a church or school.

Section 14. This Section is new and is patterned after the Minneapolis ordinance. It provides for a better method to monitor the use of the caterer's permit and ensures that permit holders are complying with state law.