



Request for Council Action

Date: 09/13/2010

Item Number: 12.e

Department Approval

Manager Approval

Item Description:

Consider the Presumptive Penalty for an Alcohol Compliance Violation for Hamline Liquors

Background

On April 7th, 2010, all businesses with a liquor license in the City of Roseville were mailed a letter from the Roseville Police Department announcing two alcohol compliance checks would be conducted before the end of the year. The letter included notice of recent changes to Roseville City Ordinances regarding mandatory liquor licensee training programs and new penalties for non compliance. Also in the letter were instructions for the City of Roseville mandatory liquor licensee training program and a list of City of Roseville approved training programs. Training was to be completed by every employee prior to the employee selling or serving alcohol. Documentation of this training was to be completed and kept on file by the business.

Compliance Failure

On June 24th, 2010, a Roseville Police Officer, along with an underage buyer, entered Hamline Liquors, 2825 Hamline Ave N, Roseville MN to conduct an alcohol compliance check. The underage buyer selected a .40 oz bottle of Colt 45 and approached the counter. The cashier asked the underage buyer for ID and the underage buyer provided the cashier with his real MN Driver License with the correct birth date showing he was less than 21 years of age. The cashier took the license, looked at it, and gave it back to the underage purchaser. The cashier then sold the underage buyer the .40 oz bottle of Colt 45. The cashier was cited for the violation and released. On July 21st, 2010, Hamline Liquors was mailed a letter requesting documentation of a City of Roseville approved liquor licensee training program. This documentation was to be received by the Police Department no later than July 31st, 2010. Hamline Liquors has not provided the required proof of training. The general manager of Hamline Liquors, Robin Nelson has stated in a phone conversation that the employee in question has not undergone the mandatory training. This is Hamline Liquors first violation in the last thirty six (36) months.

Staff Recommendation

Issue and administer the presumptive penalty pursuant to City Code Section 302.15, for on-sale license holders for the first violation in thirty-six (36) months. The mandatory minimum penalty shall be a one thousand dollar (\$1,000.00) fine and a one (1) day suspension.

1 Discuss violation of City Code Section 308.08, Manager and Server Training. Failure to comply with this
2 provision in its entirety is sufficient grounds for denial or non-renewal of a requested license in 2011.

3

4 **Council Action Requested**

5

6 Allow the Roseville Police Department to issue and administer the presumptive penalty as set forth in
7 Section 302.15, of the Roseville City Code or other action as determined by the Roseville City Council.

Prepared by: Sergeant Josh Arneson

Attachments:

- A: Police Report
- B: Letters announcing Council Meeting
- C: Letters announcing checks
- D: Notifications of failure and investigation



ROSEVILLE POLICE DEPARTMENT

INCIDENT REPORT

| | | |
|----------------------|---|------------------|
| ICR# 10018690 | AGENCY ORI# MN0620800 | JUVENILE: |
| INCIDENT | Reported: 06-24-2010 1926 First Assigned: 1926 First Arrived: 1926 Last Cleared: 1931 Title: Compliance Checks, Alcohol How Received: In Person Short Description: Alcohol compliance check failure. | |
| | Location(s) Hamline Liquors Address: 2825 HAMLIN AV N City: Roseville State: MN Zip: 55113 Custom Attributes Sgt. Arneson Impact Team Sgt. Johnson | |
| OFFICERS | Officer Assigned: Kim, Dennis Badge No: Primary: No | |
| | Involved: Cited Name: Krieger, Harold Henry DOB: [REDACTED] Age: [REDACTED] Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Address: [REDACTED] City: [REDACTED] State: MN Zip: 55113 Phone: (Work) (651)639-1369 Hair Color: ID Number(s) ID Type: DL / ID Number ID #: [REDACTED] State: MN Year: Class: D | |
| NAMES | PRIVATE Involvement: Witness Name: [REDACTED] | |
| | [REDACTED] | |
| EVIDENCE | Involved: Other Name: Nelson, Robin Dale DOB: [REDACTED] Age: [REDACTED] Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Address: [REDACTED] City: [REDACTED] State: MN Zip: 55113 Phone: [REDACTED] Eye Color: [REDACTED] Hair Color: ID Number(s) ID Type: DL / ID Number ID #: [REDACTED] State: MN Year: Class: D | |
| | BarCode: 10-00263 Item Type: Alcohol Bin: A43 Value: 1.49 Description: Colt 45 Location Address: 2825 HAMLIN AV N City: Roseville State: MN Zip: 55113 | |

Supplemental Report

ICR: 10018690

07-01-2010 0730

Title: Original

Created By: Dennis Kim

On 06-24-2010, [REDACTED] acted as my underage alcohol buyer. [REDACTED] viewed the underage buyer instructional video prior to beginning compliance checks. I searched [REDACTED] and noted he only had one Valid ID ([REDACTED]) which clearly stated he turned 18 years of age ([REDACTED]). I took a digital photograph of [REDACTED] and one of his drivers license. Both were uploaded to the media section of this case.

At appx 1926 hours, [REDACTED] and I walked into Hamline Liquors (2825 Hamline Ave). [REDACTED] selected a 40oz can of Colt 45 malt alcohol beverage. He then went to the register, where Krieger (identified via MN photo DL) was working. I observed Krieger check [REDACTED] and then sell the Colt 45 to him for \$1.49, which [REDACTED] provided to him.

After the transaction was complete, I identified myself as a Roseville Police Officer, and advised Krieger he sold alcohol to an 18 year old. Krieger requested to see [REDACTED] ID again, which [REDACTED] displayed to him.

I obtained a refund, and advised Krieger I would be taking the Colt 45 as evidence. I requested a receipt for the transaction, however Krieger advised he was unable to print one out.

The beer was placed in PL#9. Krieger was mailed administrative citation 7314 for selling alcohol to an underage person (fine \$150).

Per Sgt. Arneson #S-21, a citation was not mailed to the business.

On 06-30-2010 at appx 1230 hours, I made contact with Nelson (manager of the business) and requested the "Responsible Manager/Server Training Certification" document, and showed her a copy of a blank one. Nelson said that Krieger had undergone the training, but she turned them in to a "dark haired lady" (who she could not identify) at the police department, and did not have the documentation on hand.

Nothing further.

Supplemental Report

ICR: 10018690

07-26-2010 0840

Title: Notification Letter

Created By: Joshua Arneson

On 07/26/10, I mailed the attached notification letters to Hamline Liquors. The letter requests copies of their employee training certificates by 07/31/10.

Supplemental Report

ICR: 10018690

07-26-2010 1111

Title: Mandatory Training

Created By: Joshua Arneson

On 07-26-10, I spoke with Robin from Hamline Liquors by phone. Robin informed me that her employees have not undergone the mandatory training required by the new ordinance. I made arrangements for Robin to come to the PD and get training packets for her employees.

Supplemental Report

ICR: 10018690

08-12-2010 0920

Title: Notice of Council Meeting

Created By: Joshua Arneson

On 08/12/10, I mailed Hamline Liquors and the license holders notice that their violations will be discussed at the 09/13/0 Council meeting.



08/11/2010

Hamline Liquors
2825 Hamline Ave N
Roseville, MN 55113

Dear General Manager:

As you know, on June 24th, 2010, an employee of your establishment sold an alcoholic beverage to an underage person in violation of City of Roseville Ordinances. At this time, you have been unable to provide proof that your employee underwent a mandatory liquor licensee training program. Therefore, pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty for a first violation for on-sale license holders for sale to an underage person is a minimum penalty of a \$1,000.00 fine and a one (1) day suspension. The penalty for non compliance with a mandatory liquor licensee training program is the consideration of non renewal or denial of your 2011 liquor license.

When a violation occurs, the police department provides information to the City Council, which either will assess the presumptive penalty set forth above or depart upward or downward based on extenuating or aggravating circumstances. The information set forth in this letter regarding the failed compliance check will be passed on to the City Council, as well as information regarding your participation in a mandatory liquor licensee training program, and the history of compliance checks at your establishment. The City Council will consider this information at its regular meeting on September 13th, 2010.

A representative of your establishment may appear at that time to offer any information that you deem relevant as to whether the Council should deviate from the presumptive penalties set forth in the Roseville City Code. If you fail to appear at that meeting, the City Council will act without any input from your establishment.

Finally, please be advised that if another violation should occur, further penalties will be invoked. If you have any questions, you can reach me at 651-792-7283.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Arneson". The signature is written in a cursive style with a long, sweeping underline.

Sergeant Joshua Arneson



Enclosure

cc: Chief Rick Mathwig
City Council
Bill Malinen, City Manager



08/11/2010

THANH V. HOANG
2825 Hamline Ave N
Roseville, MN 55113

Dear General Manager:

As you know, on June 24th, 2010, an employee of your establishment sold an alcoholic beverage to a minor in violation of City of Roseville Ordinances. At this time, you have been unable to provide proof that your employee underwent a mandatory liquor licensee training program. Therefore, pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty for a first violation for on-sale license holders for sale to an underage person is a minimum penalty of a \$1,000.00 fine and a one (1) day suspension. The penalty for non compliance with a mandatory liquor licensee training program is the consideration of non renewal or denial of your 2011 liquor license.

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Sincerely,

Sergeant Joshua Arneson



Enclosure

cc: Chief Rick Mathwig
City Council
Bill Malinen, City Manager



April 7, 2010

Hamline Liquors
 ATTN: MANAGER
 2825 Hamline Ave
 Roseville, MN 55113

ATTN: MANAGER

Please thoroughly review the following information as it pertains to alcohol compliance checks conducted by the Roseville Police Department, relative to your establishment.

The City of Roseville began alcohol compliance checks on licensed alcoholic beverage sellers in 1997. At that time, the compliance rate was only 70%. Nearly 30% of our licensees failed those compliance checks. The Roseville Police Department does yearly compliance checks to insure licensed alcoholic beverage sellers in the City of Roseville are complying with State law and Roseville Code Provisions relating to the selling of alcoholic beverages.

Please review the following relating to sales of alcohol to underage persons:

Minnesota Statute Chapter 340A.503 PERSONS UNDER 21; ILLEGAL ACTS.

Subdivision 1. Consumption.

(a) It is unlawful for any:

(1) retail intoxicating liquor or 3.2 percent malt liquor licensee, municipal liquor store, or bottle club permit holder under section 340A.414, to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises or within the municipal liquor store;

Subdivision 2. Purchasing. It is unlawful for any person:

(1) to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age;

The City of Roseville has passed a Liquor Control Ordinance. It is Chapter 302 of the Roseville City Code. The Roseville Police Department encourages you to become familiar with the Liquor Control Ordinance of Roseville. It can be obtained at the Roseville City Hall. It can also be reviewed and downloaded by going to the City of Roseville website, www.ci.roseville.mn.us.

The civil penalties for underage alcoholic beverage sales are set forth in the Roseville City Code. There are presumptive penalties set forth in § 302.15 of the Code. These penalties vary depending upon whether it is a first time violation, a second time violation, a third time violation, etc.

April 7, 2010

Page 2

The Roseville Police Department has worked with City alcoholic beverage licensees to promote training for both servers and managers to prevent sales of alcohol to underage persons, and to prevent other violations of the Liquor Control Ordinance. All licensees and their managers, and all employees or agents employed by the licensee that sell or serve alcohol, must complete a city approved or provided liquor licensee training program. Free training packets are available from the City. You can obtain information regarding the program by contacting Sgt. Josh Arneson of the Roseville Police Department, at joshua.arneson@ci.roseville.mn.us.

Both the City's approval and the required training shall be completed:

1. Prior to licensure or renewal for licensees and managers, or
2. Prior to serving or selling for any employee or agent, and
3. Every year thereafter.

Your business must maintain documentation that you have properly trained every employee that sells or serves alcohol, and produce such documentation upon reasonable request made by a peace officer, health officer or properly designated officer or employee of the city. The City will not maintain these records for you. Additional penalties may be assessed if you are unable to provide documentation or it is determined the employee did not under go the required training.

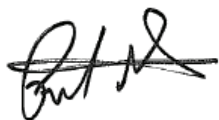
The mandatory minimum penalty for the sale of alcoholic beverages to underage individuals is a \$1,000 fine and a one day suspension.

These penalties are civil in nature. Please be aware criminal penalties may also be imposed for violations of the Liquor Control Ordinance.

The Roseville Police Department will do two compliance checks in 2010 beginning this summer. Please remind your employees of their legal and moral responsibility not to sell or serve alcoholic beverages to anyone under the age of 21.

Once again, we encourage you to review Roseville City Code, Chapter 302, to insure that you have familiarized yourself with the local regulations applicable to your establishment. If you have any questions, please contact Sgt. Josh Arneson at (651) 792-7283.

Sincerely,



Rick Mathwig
Acting Chief of Police



July 21, 2010

Hamline Liquors
Attn: Robin Nelson or General Manager
2825 Hamline Ave N
Roseville, MN 55113

Dear General Manager:

As you know, the City of Roseville has an ordinance prohibiting the sale of any alcoholic beverage to persons under the age of 21 years. A copy of the amended ordinance is enclosed for your review. Please note Section 302.15, of the local ordinance, where minimum penalties are stipulated.

On June 24, 2010, an employee of your establishment, Harold Krieger, sold an alcoholic beverage to a minor in violation of the attached ordinance. Our records indicate that this is your first violation in the last thirty six (36) months. Therefore, pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty for a first violation for sale of an alcoholic beverage to a person under the age of twenty one is a minimum penalty of a \$1,000.00 fine and a one (1) day suspension.

This incident is currently under investigation by the Roseville Police Department. You have been asked to provide a training certificate showing that Harold Krieger completed a city approved or provided liquor licensee training program. Up to this point, I have yet to receive the training certificate. If Harold Krieger has completed the required training, please mail the certificate to me at the address listed below. If he has not, then please mail me a letter stating that he has not done so. I must receive notification from you by Wednesday, July 31st, 2010. Please be aware that additional penalties may result from non compliance.

When a violation occurs, the police department provides information to the City Council, which either will assess the presumptive penalty set forth above or depart upward or downward based on extenuating or aggravating circumstances. The information set forth in this letter regarding the failed compliance check will be passed on to the City Council, as well as information regarding your participation in the manager and server training program, and



the history of compliance checks at your establishment. Once the date of the Council meeting is established, I will send you notice.

A representative of your establishment may appear at the Council meeting to offer any information that you deem relevant as to whether the Council should deviate from the presumptive penalties set forth in the Roseville City Code. If you fail to appear at that meeting, the City Council will act without any input from your establishment.

Finally, please be advised that if another violation should occur, further penalties will be invoked. If you have any questions, you can reach me at 651-792-7204.

Sincerely,

Sergeant Joshua Arneson
Roseville Police Department
2660 Civic Center Dr, Roseville MN 55113

Enclosure

cc: Chief Rick Mathwig
Bill Malinen, City Manager



July 21, 2010

THANH V. HOANG
2825 Hamline Ave N
Roseville, MN 55113

Dear License Holder:

As you know, the City of Roseville has an ordinance prohibiting the sale of any alcoholic beverage to persons under the age of 21 years. A copy of the amended ordinance is enclosed for your review. Please note Section 302.15, of the local ordinance, where minimum penalties are stipulated.

On June 24, 2010, an employee of your establishment, Harold Krieger, sold an alcoholic beverage to a minor in violation of the attached ordinance. Our records indicate that this is your first violation in the last thirty six (36) months. Therefore, pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty for a first violation for sale of an alcoholic beverage to a person under the age of twenty one is a minimum penalty of a \$1,000.00 fine and a one (1) day suspension.

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Sincerely,

Sergeant Joshua Arneson
Roseville Police Department
2660 Civic Center Dr, Roseville MN 55113

Enclosure

cc: Chief Rick Mathwig
Bill Malinen, City Manager

CHAPTER 302 LIQUOR CONTROL

SECTION:

- 302.01: Adoption of State Law
- 302.02: License Required
- 302.03: Application
- 302.04: License Fees
- 302.05: Ineligibility
- 302.06: Delinquent Taxes and Charges
- 302.07: Granting of License
- 302.08: Conditions of License
- 302.09: Hours of Sale
- 302.10: Evacuation of On-sale Establishments
- 302.11: Sale Outside of Structure on Licensed Premises
- 302.12: On-sale of Intoxicating Malt Liquor
- 302.13: Off-sale License Regulations
- 302.14: Prohibited Conduct
- 302.15: Civil Penalty

302.01: ADOPTION OF STATE LAW:

Except where inconsistent with this Chapter, the provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds and licenses, hours of sales and all other matters pertaining to the retail sale, distribution and consumption of non-intoxicating malt liquor, wine and intoxicating liquor are adopted and made a part of this Chapter as if set out in full. (Ord. 972, 5-13-85)

302.02: LICENSE REQUIRED:

- A. General Requirement: No person, except a wholesaler or manufacturer to the extent authorized under State license, shall directly or indirectly deal in, sell or keep for sale in the City any non-intoxicating malt liquor or intoxicating liquor without a license to do so as provided in this Chapter.
- B. Types of Licenses:
 - 1. Intoxicating liquor licenses shall be of five kinds: On-sale, On-sale Wine, Club, Special Sunday and Off-sale.
 - 2. Non-intoxicating malt liquor licenses shall be of two kinds: On-sale and Off-sale.
- C. Expiration: All intoxicating liquor and non-intoxicating malt liquor licenses shall expire on December 31 of each year.

- D. **On-sale Intoxicating Liquor Licenses:** On-sale intoxicating liquor licenses shall be issued only to hotels and restaurants and shall permit On-sale of intoxicating liquor only, for consumption on the licensed premises only, in conjunction with the sale of food. For the purposes of this Chapter, the following definitions are adopted:
HOTEL: A hotel is any establishment having a resident proprietor or manager where, in consideration of payment, food and lodging are regularly furnished to transients, which maintains for the use of its guests not less than 50 guest rooms with bedding and other usual, suitable and necessary furnishings in each room, which is provided at the main entrance with a suitable lobby, desk and office for the registration of its guests, which employs an adequate staff to provide suitable and usual service and which maintains, under the same management and control as the rest of the establishment and has, as an integral part of the establishment, a dining room of at least one thousand 1,800 square feet.
Such dining room shall have appropriate facilities for seating not less than one 100 guests at one time. Where the guest seating capacity is between 100 and 174, at least 50% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals. Where the seating capacity is 175 or more, at least 25% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals.
RESTAURANT: A restaurant is any establishment, other than a hotel, having appropriate facilities to serve meals, for seating not less than 100 guests at one time and where, in consideration of payment, meals are regularly served at tables to the general public and which employs an adequate staff for the usual and suitable service to its guests.
Where the seating capacity of the establishment is between 100 and 174, at least 50% of the gross sales of the establishment must be attributable to the service of meals. Where the seating capacity is 175 or more, at least 25% of the gross sales of the establishment must be attributable to the service of meals.
- E. **On-sale Wine Licenses:** On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes 340A.404, subdivision 5, and shall permit only the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. To qualify for a license under this subsection, a restaurant must have appropriate facilities for seating at least 25 guests at a time, regularly serve meals at tables to the public for a charge and employ an adequate staff. (Ord. 972, 5-13-85)
- F. **Club License:** Club licenses for the sale of intoxicating beverages to be consumed on the licensed premises may be issued to any clubs meeting the requirements of Minnesota Statute 340A.404, subdivision 1. (1995 Code)
- G. **Special License for Sunday Sales:** A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to any hotel, restaurant or club which has an On-sale license. A special Sunday license is not needed for Sunday sales of wine license.
- H. **Off-sale Intoxicating Liquor Licenses:** Off-sale licenses for the sale of intoxicating liquor shall permit the licensee to sell intoxicating liquor in original packages for consumption off the premises only. Such licenses may be issued in accordance with the provisions of this Chapter.
- I. **On-sale Non-intoxicating Malt Liquor Licenses:** On-sale licenses shall permit the licensee to sell non-intoxicating malt liquor for consumption on the premises only.
- J. **Off-sale Non-intoxicating Malt Liquor Licenses:** Off-sale licenses shall permit the

licensee to sell non-intoxicating malt liquor in original packages for consumption off the premises only. (Ord. 972, 5-13-1985)

- K. Temporary On-sale Licenses: Temporary On-sale licenses may be issued to a club or charitable, religious or nonprofit organization in existence for at least three years in connection with social events within the City, for up to three days in accordance with Minnesota Statutes section 340A.404, subdivision 10. (1995 Code)
- L. Temporary On-sale License In Central Park: Upon payment of the fee and submission of a completed application form, the City Manager is authorized to approve a temporary On-sale license for the sale and distribution of non-intoxicating malt liquor to a club, charitable, religious or other nonprofit organization in existence at least three years, for such sale and distribution in Central Park only for a time not to exceed three consecutive days, provided the following conditions are met:
 - 1. Insurance: Proof of liquor liability insurance in an amount equal to and in the form required by subsection 302.03C of this Chapter is filed with the application.
 - 2. Security Plan: A security plan, approved by the Chief of Police, is filed along with the application.
 - 3. Hours of Sale: In addition to the limitation on hours found elsewhere in this Code, the hours of sale shall be only during the time that Central Park is open to the public. Sales and distribution shall be located only in a shelter building or a temporary shelter, such as a tent, approved by the City Manager.In the event the City Manager denies the application, for any reason, the applicant may appeal the decision of the City Manager to the City Council. (Ord. 1102, 9-23-1991)
- M. Intoxicating Liquors at The Roseville Skating Center Community Rooms: Intoxicating liquor may be sold in the Roseville Skating Center Community Rooms only under the following conditions:
 - 1. By the City-designated caterer for the Roseville Skating Center Community Rooms who shall hold retail On-sale intoxicating liquor license issued by the City or by an adjacent municipality.
 - 2. The caterer must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the Roseville Skating Center Community Rooms, and may dispense intoxicating liquor only to persons attending the event.
 - 3. The caterer delivers to the City a certificate of insurance providing "off premises" or "catered event" liquor liability coverage naming the City of Roseville, to the full extent of statutory coverage, as an additional named insured.
 - 4. All other rules and regulations established by the City relating to the sale or dispensing of intoxicating liquor in the Roseville Skating Center Community Rooms are complied with. (Ord. 1217, 12-14-1998)

302.03: APPLICATION:

- A. Requirements: The requirements set forth in this Section shall apply to applications for those licenses named in Section 302.02 of this Chapter.
- B. Form:
 - 1. Information Required: Every application for a license under this Chapter shall state the name of applicant, applicant's age, presentations as to applicant's character, with such references as the City Council may require, applicant's citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long applicant has been in that business at that place and such

other information as the City Council may require from time to time.

2. Verification: In addition to containing such information, the application shall be in the form prescribed by the State Liquor Control Director and shall be verified and filed with the City Manager. No person shall make a false statement in an application.

3. Subsequent Data: From time to time, at the request of the City Manager, a licensee will provide data to the City concerning that portion of its revenue attributable to the sale of food and the sale of liquor and/or wine. (Ord. 972, 5-13-1985)

C. Liability Insurance:

1. Policy Limits: Prior to the issuance or renewal of a license under this Chapter, the applicant shall file with the City Manager a certificate of insurance in a form to be provided by the City covering liquor liability, loss of means of support and pecuniary loss in the amount of (\$500,000.00 of coverage because of bodily injury to any one person in any one occurrence; \$1,000,000.00 because of bodily injury to two or more persons in any one occurrence; \$100,000.00 because of injury to or destruction of property of others in any one occurrence; \$200,000.00 for loss of means of support or pecuniary loss to any one person in any one occurrence; and \$500,000.00 for loss of means of support or pecuniary loss for two or more persons in any one occurrence.

2. Annual Aggregate Limits: Annual aggregate limits as provided by Minnesota Statutes section 340A.409 shall not be less than \$1,000,000.00.

In the event such policy provides for (\$1,000,000.00 annual aggregate limits, said policy shall further require that in the event that the policy limits are reduced in any given year because of the \$1,000,000.00 annual aggregate policy limit, the insurance carrier shall provide the City with written notice of said reduction in policy limits within 30 days of said reduction becoming effective. (Ord. 1175, 10-28-1996)

3. Further Requirements: After the reduction becomes effective, the City Council may require the licensee to take further action with regard to liability insurance in order to protect citizens of the City during the period of the reduced aggregate policy limit.

4. Applicability: The requirements of this Section shall be applicable to new licenses issued after the effective date of this subsection and for renewals applied for after the effective date of this subsection. (Ord. 1046, 9-12-1988)

D. Approval of Insurance: Liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City, at all times, a certificate of insurance as required in subsection C of this Section is a cause for revocation of the license. All insurance policies shall state that the City will be given ten days' notice, in writing, of cancellation. (Ord. 972, 5-13-1985)

E. Insurance Not Required: Subsection C of this Section does not apply to licensees who by affidavit establish that they are not engaged in selling any intoxicating or non-intoxicating malt liquor in Central Park and that:

1. They are On-sale 3.2 percent malt liquor licensees with sales of less than \$10,000.00 of 3.2 percent malt liquor for the preceding year;

2. They are Off-sale 3.2 percent malt liquor licensees with sales of less than \$20,000.00 of 3.2 percent malt liquor for the preceding year;

3. They are holders of On-sale wine licenses with sales of less than \$10,000.00 for wine for the preceding year; or

4. They are holders of temporary wine licenses issued under law. (Ord. 1175, 10-28-1996)

302.04: LICENSE FEES:

- A. Annually: Annual license fee shall be as established by the City Fee Schedule in Section 314.05. (Ord. 1379A, 11-17-2008)
- B. Fee:
 - 1. Payment: \$500.00 of the On-sale intoxicating liquor and wine licenses and the entire license fee for all other licenses shall be paid at the time of application. The remaining balance, if any, shall be paid prior to the time of issuance of the license.
 - 2. Refund: All fees shall be paid into the General Fund of the City. Upon rejection of any application for a license or upon the withdrawal of the application before approval of the issuance by the City Council, the license fee shall be refunded to the applicant except where the rejection is for willful misstatement on the license application.
 - 3. Proration: The fee for On-sale intoxicating liquor and On-sale wine licenses granted after the commencement of the license year shall be prorated on a monthly basis. The fee for On-sale non-intoxicating malt liquor licenses granted after the commencement of the license year shall be prorated on a quarterly basis.
 - 4. Investigation: At the time of each original application for a license, except special club, On-sale non-intoxicating malt liquor and Off-sale non-intoxicating malt liquor licenses, the applicant shall pay, in full, an investigation fee. The investigation fee shall be \$300.00. No investigation fee shall be refunded. (Ord. 972, 5-13-1985; amd. 1995 Code)

302.05: INELIGIBILITY:

No license shall be granted to any person made ineligible for such a license by state law¹. (Ord. 972, 5-13-1985)

302.06: DELINQUENT TAXES AND CHARGES:

No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the city are delinquent and unpaid. (Ord. 972, 5-13-1985)

302.07: GRANTING OF LICENSE:

- A. Investigation and Issuance: The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the City Council shall, in its discretion, grant or refuse the application. At least ten days published notice of the hearing shall be given, setting forth the name of the applicant and the address of the premises to be licensed.
- B. Person and Premises Licensed; Transfer: Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Before a transfer is approved, the transferee shall comply with the requirements for a new application. Any transfer of the controlling interest of a licensee is deemed a transfer of the license. Transfer of a license without prior City Council approval is a ground for revocation of the license. (Ord. 972, 5-13-1985) (Ord. 1390, 3-29-2010)

¹ M.S.A. §340A.402.

302.08: CONDITIONS OF LICENSE:

Every license is subject to the conditions in the following subsections and all other provisions of this chapter and any other applicable ordinance, state law or regulation:

- A. Licensee's Responsibility: Every licensee is responsible for the conduct of licensee's place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises, authorized to sell intoxicating liquor there, is deemed the act of the licensee as well and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.
- B. Inspections: Every licensee shall allow any peace officer, health officer or properly designated officer or employee of the city to enter, inspect and search the premises of the licensee during business hours without a warrant.
- C. Manager and Server Training: With the exception of temporary on-sale licenses issued pursuant to Section 302.02, subparts k and l, all licensees and their managers, and all employees or agents employed by the licensee that sell or serve alcohol, shall complete, to the City's satisfaction, a city approved or provided liquor licensee training program. Both the City's approval of the training and the required training shall be completed:
 - 1. Prior to licensure or renewal for licensees and managers, or
 - 2. Prior to serving or selling for any employee or agent, and
 - 3. Every year thereafter unless probationary extension is granted for hardship reasons.

All licensees shall maintain documentation evidencing that this provision has been met, and produce such documentation as part of each application for licensure or renewal and upon reasonable request made by a peace officer, health officer or properly designated officer or employee of the city pursuant to the inspections provision noted above. An applicant's or licensee's failure to comply with this provision in its entirety is sufficient grounds for denial or non-renewal of a requested license. (Ord. 1243, 11-27-2000) (Ord. 1390, 3-29-2010)

302.09: HOURS OF SALE:

The hours for the sale of intoxicating or non-intoxicating liquor for consumption on the premises shall be those allowed under Minnesota Statute §340A.504. (Ord. 1290, 8-11-2003)

302.10: EVACUATION OF ON-SALE ESTABLISHMENTS:

- A. Thirty Minute Restriction: All patrons of an on-sale establishment selling intoxicating liquor or non-intoxicating malt liquor must vacate the premises within 30 minutes of the termination of sales by Minnesota Statute §340A.504. Any patron who remains on the licensed premises or any licensee or licensee's employee who allows a patron to remain on the licensed premises beyond the 30 minute limit is in violation of this subsection. (Ord. 1056, 3-16-1989) (Ord. 1290, 8-11-2003)
- B. Extension of Restriction for Sale of Food: If an on-sale establishment remains open for the sale of food beyond the 30 minute evacuation limit, all intoxicating liquor and non-intoxicating malt liquor must be secured within the 30 minute limit in such a manner as to prevent consumption. Any patron who consumes intoxicating liquor or non-intoxicating malt liquor on the licensed premises or any licensee or employee of

licensee who allows such consumption or allows intoxicating liquor or non-intoxicating malt liquor to remain unsecured on the licensed premises beyond the 30 minute limit is in violation of this subsection. (Ord. 1056, 3-16-1989)

302.11: SALE OUTSIDE OF STRUCTURE ON LICENSED PREMISES:

The sale of wine and intoxicating liquors, pursuant to any of the licenses issued in accordance with this chapter, shall be limited to sale and consumption inside of a structure on the licensed premises, unless the licensee applies for and receives permission from the City Council for sale and consumption outside of a structure on the licensed premises by an endorsement to the license. Issuance of an outside sale and consumption endorsement shall be accomplished as follows:

- A. Application: The licensee shall make written application using forms provided by the city and there shall be a nonrefundable application fee of twenty five dollars (\$25.00) at the time of making application.
- B. Notice: The owners of all property adjacent to the licensed premises will be given written notice of the fact that such an application has been made and of the date and time of the City Council meeting at which the application will be considered by the City Council.
- C. Endorsement: The City Council may, in its discretion, issue such an endorsement or refrain from issuing such an endorsement and may impose conditions to the endorsement such as, but not limited to, screening, time of day limitations and noise limitations. (Ord. 972, 5-13-1985)

302.12: ON-SALE OF INTOXICATING MALT LIQUOR:

The holder of an on-sale wine license who is also licensed to sell non-intoxicating malt liquor and whose gross receipts are at least 60% attributable to the sale of food may sell intoxicating malt liquor at on-sale without an additional license. (Ord. 1021, 9-28-1987)

302.13: OFF-SALE LICENSE REGULATIONS:

In addition to the other requirements of state law or this chapter, the following regulations are applicable to off-sale intoxicating liquor licenses:

- A. Number of Licenses: The number of licenses which may be issued is ten.
- B. Use of License: If a license is not used within one year, the license shall automatically terminate.
- C. Size of Premises: A licensed premises shall have at least 1,600 square feet of sales floor space including sales coolers and excluding walk-in storage coolers.
- D. Considerations: In addition to the other requirements of this chapter and applicable state law in determining whether or not to issue an off-sale license for a particular premises, the City Council shall consider all relevant factors relating to the health, safety and welfare of the citizens of the city such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.
- E. Delivery of Alcoholic Beverages; Identification Required: A person authorized to serve, sell, or deliver alcoholic beverages must determine through legitimate proof of identification that all deliveries of wine, beer, and alcoholic beverages are accepted only by eligible persons who are 21 years of age or older.

- F. Delivery Records: Upon any delivery of alcoholic beverages off the licensed premises, the seller, purchaser, and delivery recipient (if other than the purchaser) must sign an itemized purchase invoice. The invoice shall detail the time, date, and place of delivery. The licensee must retain the delivery records for a period of one year. The records shall be open to inspection by any police officer or other designated officer or employee of the city at any time. (Ord. 1243, 11-27-2000)

302.14: PROHIBITED CONDUCT:

- A. Policy: Certain acts or conduct on premises licensed pursuant to this chapter or licensed pursuant to Minnesota statutes, chapter 340A, are deemed contrary to public welfare and are prohibited and no license issued pursuant to this chapter or licensed pursuant to Minnesota statutes, chapter 340A, may be held or maintained where such acts or conduct is permitted. (Ord. 808, 11-21-1977)
- B. Prohibited Conduct: The prohibited acts or conduct referred to in subsection A of this section are:
1. The employing or use of any person in the sale or service of beverages in or upon the licensed premises where such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
 2. The employing or use of the services of any host or hostess while such host or hostess is unclothed or in such attire, costume or clothing as described in subsection B1 of this section.
 3. The encouraging or permitting of any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.
 4. The permitting of any employee or person to wear or use any device or covering exposed to view which simulates the breast, genitals, anus, pubic hair or any portion thereof.
 5. The permitting of any person to perform acts of or acts which simulate:
 - a. With or upon another person, sexual intercourse, sodomy, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Masturbation or bestiality.
 - c. With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breast.
 - d. The displaying of the pubic hair, anus, vulva, genitals or female breasts below the top of the areola.
 6. The permitting of any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in subsections B5a through B5d of this section.
 7. The permitting of any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.
 8. The permitting or showing of film, still pictures, electronic reproductions or other reproductions depicting:
 - a. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
 - c. Scenes wherein a person displays the vulva, or the anus or the genitals.
 - d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities described in subsections

B1 through B7 of this section.

- C. Revocation of License: Any license issued pursuant to this chapter, licensed pursuant to Minnesota statutes, chapter 340A, shall be revoked if any of the acts of conduct described in this section occur on the licensed premises. (Ord. 808, 11-21-1977; amd. 1995 Code)

302.15: CIVIL PENALTY:

- A. Penalty For Noncompliance: In addition to any criminal penalties which may be imposed by a court of law, the City Council may suspend a license for up to 60 days, may revoke a license and/or may impose a civil fine on a licensee not to exceed \$2,000.00 for each violation on a finding that the license holder or its employee has failed to comply with a statute, rule or ordinance relating to alcoholic beverages, non-intoxicating malt liquor or wine.
- B. Minimum Penalty: The purpose of this section is to establish a standard by which the City Council determines the civil fine, the length of license suspensions and the propriety of revocations, and shall apply to all premises licensed under this chapter. These penalties are presumed to be appropriate for every case; however, the council may deviate in an individual case where the council finds that there exist certain extenuating or aggravating circumstances, making it more appropriate to deviate, such as, but not limited to, a licensee's efforts in combination with the state or city to prevent the sale of alcohol to minors or, in the converse, when a licensee has a history of repeated violations of state or local liquor laws. When deviating from these standards, the council will provide written findings that support the penalty selected. When a violation occurs, the staff shall provide information to the City Council to either assess the presumptive penalty or depart upward or downward based on extenuating or aggravating circumstances. The staff shall notify the licensee of the information being considered and acted upon by the City Council.

- (1) Except as otherwise provided in this Chapter, the following violations will subject the licensee to the following administrative penalties:

| Type of Violation | 1st Violation | 2nd Violation | 3rd Violation | 4th Violation |
|--|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Sale of alcoholic beverage to a person under the age of 21 | \$1,000 and one day suspension | \$2,000 and 5 day suspension | \$2,000 and 15 day suspension | Revocation |
| Sale of alcoholic beverage to an obviously intoxicated person | \$1,000 and one day suspension | \$2,000 and 5 day suspension | \$2,000 and 15 day suspension | Revocation |
| Failure of an on-sale licensee to take reasonable steps to prevent a person from leaving the premises with an alcoholic beverage (on-sale allowing off-sale) | \$1,000 and one day suspension | \$2,000 and 5 day suspension | \$2,000 and 15 day suspension | Revocation |
| Refusal to allow City inspectors or police admission to premises | \$1,000 and 7 days suspension | \$2,000 and 14 days suspension | Revocation | N/A |
| After hours sale, possession by a patron or consumption of alcoholic beverages | \$1,000 and 7 days suspension | \$2,000 and 14 days suspension | Revocation | N/A |
| Illegal gambling on premises | \$1,000 and 7 days suspension | \$2,000 and 14 days suspension | Revocation | N/A |
| Sale of alcoholic beverages while license is under suspension | 60 day suspension | Revocation | N/A | N/A |
| Sale of intoxicating liquor with only 3.2 percent malt liquor license | Revocation | N/A | N/A | N/A |
| Commission of a felony related to licensed activity | Revocation | N/A | N/A | N/A |

(2) Any prior violation that occurred more than 36 calendar months immediately preceding the most current violation will not be considered in determining successive violations.

(3) In addition to the administrative penalties identified above, the city may in appropriate circumstances choose to not renew a license at the end of its current term for any and all reasons allowed by law.

(Ord. 1390, 3-29-2010)

C. Hearing and Notice: If, after considering the staff's information, the City Council

proposes to suspend or revoke a license, the licensee shall be provided written notice of the City Council's proposed action and shall be given the opportunity to request a hearing on the proposed penalty by providing the City a written notice requesting a hearing within ten days of the mailing of the notice of the City Council's proposed action. The notice of the proposed action of the City Council shall state the nature of the charges against the licensee and the action the City Council proposes to take, shall inform the licensee of the right to request a hearing prior to the action being final, and shall inform the licensee of the date the City Council's proposed action will be considered a final decision if a hearing is not requested. Any hearing, if requested, will be conducted in accordance with Minnesota statutes section 340A.415 and sections 14.57 to 14.69 of the Administrative Procedures Act ("APA"). If a hearing is requested, the licensee shall be provided a hearing notice at least ten days prior to the hearing, which shall state the date, time and place of the hearing and the issues involved in the hearing. An independent hearing officer shall be selected by the City Council to conduct the hearing and shall make a report and recommendation to the City Council pursuant to the provisions of the APA. The City Council shall consider the independent hearing examiner's recommendation and issue its final decision on the suspension or revocation. (Ord. 1243, 11-27-2000; Ord. 1280, 3-31-03) (Ord, 1336, 5-08-2006)