

Off Sale Liquor – Exclusive Wine Staff Report Licenses and Consumer Services

Staff was directed at the March 30, 2007 full City Council meeting to consider ordinance amendments to Title 14, Chapter 362 of the Minneapolis Code of Ordinances relating to *Liquor and Beer: Liquor Licenses*, allowing off-sale wine establishments notwithstanding the spacing requirements of Section 362.40.

Minneapolis Licensing, Zoning, and the State Alcohol, Gambling and Enforcement Division and City Attorney staff have analyzed the request and have developed the following staff report. Included in the staff report is suggested ordinance language if the Council chooses to implement the findings.

RELATED MINNESOTA STATUTES, CITY CHARTER, ORDINANCES and ZONING CODE REQUIREMENTS

Minnesota Statute 340A.101

Subd.20 Off-sale. “Off-sale” is the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

Subd.29 Wine. “Wine” is 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, 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 in subdivision 9.

Subd. 9 Distilled spirits. “Distilled spirits is ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

Minnesota Statue 340A.412

Subd. 3. Limitations on issuance of licenses to one person or place. (a) A municipality may not issue more than one off-sale intoxicating liquor license to any one person or for any one place.

Minnesota Statue 340A.413

Restrictions on the number of intoxicating liquor licenses that may be issued.

Subd. 5. Off-sale licenses. No off-sale intoxicating liquor license may be issued in any city, except as provided in this section, in excess of the following limits:

(1) in cities of the first class, not more than one off-sale license for each 5,000 population;

RECENTLY AMENDED

Minnesota Statutes 340A.408, subdivision 3,

Subd. 3. **Intoxicating liquor; off-sale.** (a) The annual license fee for an off-sale intoxicating liquor license issued by a city, when combined with any occupation tax imposed by the city, may not exceed the following limits:

(1) ~~\$1,000~~ \$1,500 for cities of the first class;

(c) The fee set by the jurisdiction issuing the license shall be reduced by \$100 if the following conditions are met:

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

(2) the licensee agrees to post a policy requiring identification checks for all persons appearing to be 30 years old or less; and

(3) a cash award and incentive program is established by the licensee, to award employees who catch underage drinkers, and a penalty program is established to punish employees in the event of a failed compliance check.

Minneapolis Ordinance 362.40 "Off-sale" license.

"Off-sale" liquor licenses may be issued, subject to the approval of the liquor control commissioner, only to proprietors of exclusive liquor stores, but only one such license shall be issued for every five thousand (5,000) inhabitants in the city. For purposes of this section, population shall be determined by the last preceding United States decennial census. The issuance of this license shall permit the "off sale" of liquor and beer, and the required additional fee shall permit, as defined and when carried on in conformity with the ordinances of the city, the sale of food as limited by Minnesota Statutes, Section 340A.101, Subd. 10, and the sale of ice.

This ordinance shall not be applied retroactively to any drugstore or general food store now having an off-sale license, nor shall this ordinance prohibit the annual renewal of the off-sale license of any such drugstore or general food store so long as such drugstore or general food store remains substantially the same, or smaller, in terms of the physical size of the licensed premises, size of the geographic area it serves, and its projected annual sales volume. Provided, that no drugstore or general food store holding an off-sale license may be relocated to a new location unless it complies with the above provisions and, further, unless the license will remain in the possession of the person, the immediate family members of the person, or the corporation which is entirely owned by the person or immediate family members, which held the license on September 1, 1988. Provided, however, that the licenses of such drugstores and general food stores shall continue to be subject to all other requirements of charter, statutes, and ordinances as may be applicable. Provided further, that if the council approves of such relocation, the relocated license shall be deemed to be a continuation of the previous license.

After April 15, 1994, no "off sale" license shall be issued for a location, the main entrance of which is within a radius of two thousand (2,000) feet from the main entrance of an existing "off sale" location. Any licenses in existence on April 15, 1994, may be renewed or reissued for such locations without regard to such distance limitations. The two thousand-foot limitation shall not apply to the issuance of any "off sale" liquor license for the following locations:

(a) In the B4 zoning district;

(b) In a location where the main entrance is less than one thousand (1,000) feet from the main entrance of a location where the applicant, on the date of application, holds an "off sale" liquor license, and where the applicant's location on the date of application is also less than two thousand (2,000) feet from the main entrance of an existing "off sale" location, which existing "off sale" location is also located in a shopping center consisting of a group of commercial establishments built on a site that is planned, developed, owned and managed as an operating unit related in location, size and types of shops to the trade area that the unit serves, and providing

on-site parking in definite relationship to the type and total size of the stores, and provided further that the applicant has not previously applied this exception;

(c) On premises owned by the commission created in Minnesota Statutes, Sections 473.551 to 473.595 and which are used primarily for sports and recreational purposes;

(d) A relocation of an existing "off sale" liquor establishment, currently within two thousand (2,000) feet of a second existing "off sale" location, to a new location within the same two thousand-foot radius and no closer to the second "off sale" location; provided, that on the date of application for the new location, the applicant is the holder of the "off sale" license at the location to be discontinued.

(e) A relocation of an existing "off-sale" liquor establishment which also operates as a general food store, to a location which is no closer than one thousand (1,000) feet of a second existing "off-sale" location; provided that the second existing "off-sale" establishment is already located nearer than two thousand (2,000) feet to a third existing "off-sale" establishment; and further provided that the general food store license be surrendered and that the applicant operates as an exclusive "off-sale" establishment.

Minneapolis Charter

Requires all off-sale locations to be on 5 acres of continuously zoned commercial property.

Zoning Code Requirements

Eligible off-sale sites must be zoned C-2 or higher, must apply for and be granted a conditional use permit, must be on at least 5 acres of continuously zoned commercial property, and may not be within 300 feet of a school or church.

Condition of License

Off-sale licensees are required to sign conditions to address the community impact.

They are as follows

1. Business will not allow any customer to pay for a purchase with more than \$2.50 in change or coins.
2. The business will not sell beer in singles unless the container holds more than 16 oz.
3. The business will not sell wine or distilled spirits in quantities of 100 ml or less.
4. The business will clean the property of litter and trash daily including the area within 100 feet of property lines.
5. All windows will be free of signs and other items that block the view in and out. Merchandise on shelves will be kept low to ensure proper surveillance of the store interior by clerks.

BEST PRACTICES

The cities of Buffalo, New York, Cincinnati, Ohio and Toledo, Ohio are considered comparable cities for best practices research. These cities' liquor licenses are regulated at the state level. They are the only cities/states that have a separate license category for off-sale wine. Ohio requires the approval of any institution within 500 feet of the proposed location (church, school, library, or playground) for any off-sale license, wine or liquor. In New York, off-sale wine and liquor establishments must be 200 feet from any church or school.

Most cities regulate the distance of off-sale locations, primarily from churches and schools. The distances range from 150 feet to 300 feet. In addition, St. Paul, Minnesota requires a ½ mile distance (2640 feet) between off-sale establishments. Many cities allow the residents and business owners in the surrounding community's final approval of the establishment for the license to be issued. For example, Kansas City, MO requires that more than 50% of the neighbors within 250 feet of the front door of the proposed establishment agree to the approval of an off-sale license. Also the majority of the property owners in a 350 foot radius can sign a petition requesting a hearing to protest the proposed location.

Other best practices include limiting off-sale licenses based on population (quotas) and residency requirements for applicants.

MINNEAPOLIS POPULATION and OFF-SALE LICENSES

U.S. Census Bureau reports that the estimated 2005 population for Minneapolis to be 372,811. Therefore, per State statute, Minneapolis can have up to 74 off-sale liquor licenses. Currently there are 45 approved off sale licenses in Minneapolis, leaving 29 available licenses.

If the ordinance does not change, there are potentially 16 available locations available, subject to the Zoning Code distance requirement of 300 feet away from a church or school. If the ordinance amendments were adopted, there would be additional potential locations outside of downtown. However there will still only 29 available licenses for approval.

INDUSTRY IMPACT

There has been some recent State Legislature discussions regarding off-sale wine sales in grocery stores. The industry is not in support of allowing off-sale wine in grocery stores.

The Minnesota Licensed Beverage Association, MLBA website states, "Wine in Grocery Defeated Again in 2004" This headline is beginning to get a little repetitive this time of year, but the fourth consecutive year, the well-financed effort to allow grocery stores to sell "wine with dinner" has been stopped without passing a single committee.

In addition, the MLBA has published its position on the potential ordinance amendments to allow off-sale wine only. They state, "A Minnesota City is attempting to create an off-sale license that has not been recognized in the state of Minnesota. The proposed ordinance would create a Class B off sale license to sell intoxicating malt liquor and wines only. This proposal is an attempt to circumvent state law and deregulate the off premise sale of alcohol."

Licensing staff met with Minneapolis off-sale licensees on June 13, 2007 to listen to their comments on reducing the distance requirements between off-sale establishments so exclusive off-sale wine stores are eligible for a license and to increase license fees for all off-sale establishments. All of the 11 attendees and three written responses were opposed to reducing the distance requirements for the following primary reasons:

- 1) Economics: The off-sale business cannot survive with exclusive wine sales. Businesses have been known to limit their sales exclusively to wine, but in order to make a viable profit, they must sell all liquor products.
- 2) Opportunity: The current ordinance, without modification, allows for plenty of additional off-sale liquor establishments.
- 3) Community Impact: Wine is still liquor even though it may be considered a “softer, lighter product”. It will predictably have the same negative impact on crime and livability.
- 4) National Trends: It goes against the national trend to increase the number of off-sale liquor licenses, even if classified as limited off-sale.

COMMUNITY IMPACT

The Alcohol Epidemiology Program of the University of Minnesota conducted research regarding the community impact of alcohol. The study reports, “Increases in availability and subsequent consumption of alcohol result in increased alcohol-related problems (Gruenewald, 1998). More specifically, increased availability can result in an increase in drunk driving, motor vehicle crashes, gonorrhea, and liver cirrhosis (Dull & Giacomassi, 1998; Stout, Sloan, Liang & Davies, 2000). Communities with more alcohol outlets produce greater numbers of alcohol-related hospital admissions (Tatlow, Clapp & Hohman, 2000). Increased alcohol availability is also associated with an increase in violence, including homicide, assault, robbery, rape and weapons use (Dull & Giacomassi, 1988; Scribner, MacKinnon & Dwyer, 1995). Density of alcohol outlets is a strong predictor of crime and is positively associated with the number of crimes committed, including robbery, burglary, and theft (Roneck & Maier, 1991; Speer, Gorman, Labouvie, et al., 1998). Violent crime by or against youth is also positively associated with alcohol outlet density (Alaniz, Cartmill & Parker, 1998).

The trend is to increase the distance requirements to reduce the number of off-sale establishments in Cities. Washington, DC and Los Angeles has recently put forth an effort to reduce the number of off-sale establishments in an effort to positively influence crime and livability. In 2000, residents of district PSA 109 in Washington DC worked collaboratively with city officials and eliminated alcohol sales within their boundaries.

Historically, there is strong opposition and negative comments from the community at Minneapolis public hearings conducted for new off-sale licenses. One public comment directed at the new off-sale Hiawatha Falls Liquor, 4727 Hiawatha in a written response states” warnings from the Police to be on the lookout for people who are robbing women at our rail stations.”

On November 16, 2007 a public hearing was sent by neighborhood email regarding allowing off-sale establishments that exclusively sell wine in the C3A zoning.

STAFFING IMPACT

Adding additional licenses would have an impact on staffing. There would be new applications to review with additional requirements, research, and conditions to review and inspections, both routine and complaint-based, to perform. If additional off-sale wine licenses were approved conditionally as off-sale liquor licenses, the need to conduct additional routine inspections specifically to ensure that only wine was available for sale would result.

These new licenses would also result in an increase in the mandated youth alcohol compliance checks. Minneapolis Police Licensing conducts youth alcohol compliance checks at new businesses during each of their first two years of operation. Passing both of those checks will place the establishment on the "A" list of businesses, resulting (barring complaints) in less frequent inspections in future years. Failure to pass these compliance checks results in increased compliance checks.

During the first four months of this year, we have experienced a 21% failure rate on compliance checks. These failures require additional resources to re-check the business within 30-60 days following the failure. Based on the personnel costs involved (approximately \$110/pass and \$200/fail), a rough estimate of the additional annual cost just for compliance checks on twenty new businesses would be at least \$3,000. This financial impact is in addition to the staff costs incurred in conducting the necessary background checks and financial reviews which occur during the course of the license application process.

FINANCIAL IMPACT

The State Statute regulating the licensee fee for off-sale liquor licenses was amending in 2006. The City of Minneapolis may now increase the license fee for off-sale liquor licenses by \$500.00, minus \$100.00 for establishment that provided alcohol serve training. Increasing these fees may increase the revenue for license fee by an estimated \$18,000.00 in 2008.

RECOMMENDATIONS

1. Council may choose to amend 362.40 with the following amendment

(f) An "off sale" liquor establishment that exclusively sells wine as defined in MN Statute 340A.101 this is zoned C3A and not more than one per block face.

2. Increase the off-sale license fee, as permitted for the first time in 22 years by State Statute, to \$1,500.00. The license fee has been frozen by the State since 1985. Since that date all license fees have been adjusted 3% in 2004, 3% in 2005 and 3% in 2006.

3. Amend the ordinance to replace the conditions of license with prohibited acts:

362.41 The following acts are prohibited at an off sale liquor establishment:

a. Business will not allow any customer to pay for a purchase with more than \$2.50 in change or coins.

b. The business will not sell beer in singles unless the container holds more than 16 oz.

c. The business will not sell wine or distilled spirits in quantities of 100 ml or less.

362.42 An “off sale” liquor establishment shall have the annual license fee reduced by \$100 if they provide, at time of renewal evidence, that the following conditions are met:

a. the licensee agrees to have a private party vendor train all employees within 60 days of hire and annually thereafter in laws pertaining to the sale of alcohol, the rules for identification checks, and the responsibilities of establishments serving intoxicating liquors;

b. the licensee agrees to post a policy requiring identification checks for all persons appearing to be 30 years old or less; and

c. a cash award and incentive program is established by the licensee, to award employees who catch underage drinkers, and a penalty program is established to punish employees in the event of a failed compliance check.