

2014-OR _____

**AN ORDINANCE
of the
CITY OF
MINNEAPOLIS**

By Palmisano, Glidden and Frey

Amending Title 14, Chapter 363 of the Minneapolis Code of Ordinances relating to Liquor and Beer: Wine License.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 363.10 of the above-entitled ordinance be amended to read as follows:

363.10. Definitions. As used in this chapter, unless some other meaning is clearly required by the context, the following words and phrases shall mean:

Bar Area: As defined in Chapter 360.10 of this code.

Beverages: A drink of any kind.

Food: What is eaten for nourishment but excluding beverages.

~~*Gross revenue:* The total amount of receipts without regard to taxes or any other imposition.~~

~~*Restaurant:* An establishment, under the control of a single proprietor or manager, having appropriate facilities for serving meals, having facilities for interior seating of not fewer than fifty (50) guests at one (1) time at tables if the application is for a Class A through Class E wine license and having facilities for seating not fewer than twenty-five (25) guests at one (1) time at tables if the application is for a Class D through Class E wine license, and where, in consideration of payment therefore, meals are regularly served at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests, and which has gross sales revenue during each fiscal year from the sale of food and beverages not containing alcohol in an amount of not less than sixty (60) per cent of its total gross revenue from the sale of food and beverages.~~ As defined in Chapter 360.10 of this code.

Wine: A vinous beverage containing not more than twenty-four (24) per cent alcohol by volume.

Section 2. That Section 363.25 of the above-entitled ordinance be amended to read as follows:

363.25. On-sale intoxicating malt liquor licenses for holders of wine licenses. (a) A holder of an on-sale wine license may apply for an on-sale intoxicating malt liquor (strong beer) license in the same class as the on-sale wine license. The on-sale intoxicating malt liquor license shall be coterminous with the on-sale wine license, and shall be deemed revoked, suspended, expired, or cancelled upon the revocation, suspension, expiration, or cancellation of the on-sale wine license.

(b) The city council may grant an application for on-sale intoxicating malt liquor license upon a finding that:

~~(1) The applicant meets all of the conditions and requirements for an on-sale wine license;~~

~~(2) The licensed premises does not contain a "bar area" except as permitted herein. A "bar area" shall mean any area not devoted exclusively to full restaurant service to customers seated at tables, in which consumption of alcoholic beverages is the primary activity, except an area predominantly used as a holding area for customers waiting for restaurant seating. The size and capacity of such an area must bear a relationship to the size and capacity of the restaurant area which is consistent with its purpose as a waiting area. A waiting area of excessive size shall not be approved.~~

(c) The on-sale intoxicating malt liquor license, when held in conjunction with an on-sale wine license, shall permit the on-sale of both intoxicating and nonintoxicating malt liquor.

(d) When the provisions of this title relating to on-sale wine licenses and on-sale beer licenses are inconsistent, the provisions relating to on-sale wine licenses shall govern.

(e) The annual fee for an on-sale intoxicating malt liquor license, when issued to the holder of an on-sale wine license, shall be as established in ~~Appendix J,~~ the License Fee Schedule, due and payable at the same time as the on-sale wine license fee.

Section 3. That Section 363.26 of the above-entitled ordinance be amended to read as follows:

363.26. On-sale nonintoxicating malt liquor licenses for holders of wine licenses. (a) A holder of an on-sale wine license may apply for an on-sale nonintoxicating malt liquor (3.2 beer) license in the same class as the on-sale wine license. The on-sale nonintoxicating malt liquor license shall be coterminous with the on-sale wine license, and shall be deemed revoked, suspended, expired, or cancelled upon the revocation, suspension, expiration, or cancellation of the on-sale wine license.

(b) The city council may grant an application for an on-sale nonintoxicating malt liquor license upon a finding that the applicant meets all of the requirements and conditions for an on-sale wine license.

(c) The on-sale nonintoxicating malt liquor license, when held in conjunction with an on-sale wine license, shall permit the on-sale of nonintoxicating malt liquor (3.2 beer).

(d) When the provisions of this title relating to on-sale wine licenses and on-sale beer licenses are inconsistent, the provisions relating to on-sale wine licenses shall govern.

(e) The annual fee for an on-sale nonintoxicating malt liquor license, when issued to the holder of an on-sale wine license, shall be as established in ~~Appendix J,~~ the License Fee Schedule due and payable at the same time as the on-sale wine license fee.

Section 4. That Section 363.41 of the above-entitled ordinance be amended to read as follows:

363.41. Temporary on-sale wine license. (a) A club or charitable, religious or other nonprofit corporation in existence for at least three (3) years or a political committee registered under Minnesota Statutes, Section 10A.14, may obtain an "on-sale" license to sell wine for

consumption on premises specified in the license, including school buildings and school grounds. The license may also include the sale of intoxicating malt beverages or 3.2 percent malt beverages.

(b) Application for temporary on-sale wine license shall be made on forms provided by the ~~director~~ licensing official and shall contain the following:

- (1) The name, address and purpose of the organization, together with the names and addresses of its officers and evidence of nonprofit status or of its status as a club under section 362.35(a) above.
- (2) The purpose for which the temporary on-sale wine license is sought, together with the place, dates and hours during which wine is to be sold.
- (3) Consent of the owner or manager of the premises, or a person or group with lawful responsibility for the premises.
- (4) A specific description of the area in which alcoholic beverages are to be dispensed and consumed which area shall be compact and contiguous in accordance with section 360.15.
- (5) Such other information as the ~~director~~ licensing official may deem necessary.

(c) A temporary on-sale wine license may be issued subject to the following conditions:

- (1) Such license shall be issued for a period not to exceed six (6) consecutive days.
- (2) No individual organization shall be granted more than three (3) four-day, four (4) three-day, six (6) two-day or twelve (12) one-day, licenses, in any combination not to exceed twelve (12) days per calendar year.
- (3) The overall purpose of the license shall be to enhance the stated purpose of the applicant organization and no private organizer or promoter shall derive excessive profits from the event. The licensing official may require presentment of the temporary licensee's and full year on-sale licensee's books of account and contracts entered into for purposes of the event to aid in the determination of compliance with this section.
- (4) No such license shall be issued for the sale of wine on school grounds or in school buildings or within three hundred (300) feet thereof when regularly scheduled classes are being held in the school.
- (5) No more than twelve (12) licenses shall be granted in any one (1) calendar year at any location.
- (6) The licensee must contract for wine services with the holder of a full-year on-sale intoxicating liquor or on-sale wine license issued by the City of Minneapolis whose employees have received training within the twelve (12) month period preceding the event under an approved alcohol server awareness program and who provides evidence of liquor liability insurance covering the event.

(d) The fee for a temporary wine license shall be as established in Appendix J, the License Fee Schedule.

(e) *Entertainment.* A temporary on-sale wine licensee may present entertainment as set forth in section 362.30(b) through (f) for an additional fee of as established in ~~Appendix J~~, the License Fee Schedule.

(f) The city council may deny, revoke, suspend a license for any of the following reasons:

(1) The existence of temporary wine disturbs the peace, quiet or repose of surrounding residential or commercial areas.

(2) The existence of temporary wine contributes to crime, disorderly behavior, noise, traffic, litter or parking problems in the area near the establishment.

(3) Any violation of the laws relating to the sale or service of alcoholic beverages.

(4) Licensee's refusal to supply books of account and contracts pertaining to the event as set forth in section 362.35(c)(3).

(5) Any violation of the terms of this section.

(6) Any other good cause related to the operation of the establishment.

(g) Licenses issued under this section are subject to all laws and ordinances governing the sale of intoxicating liquor except those laws and ordinances which by their nature are not applicable.

(h) Licensing official to grant temporary on-sale wine license in certain instances. When an application for a license for temporary on-sale wine has been filed too late to be considered on the regular agendas of the city council or the appropriate committee of the council prior to the scheduled date of the event, the licensing official may issue the license if the application is filed and complete, the fee including a fifty (50) percent late fee has been paid, and the required conditions listed above have been met. The licensing official may also deny, suspend or revoke those licenses which he or she has issued based on the reasons listed above for which the city council may deny, suspend or revoke such licenses. The issuance of a temporary on-sale wine license is subject to compliance with all applicable health and safety laws. Concurrence with the issuance of the temporary on-sale wine license shall be obtained from the chair of the appropriate committee of the city council and the council member representing the affected ward prior to the issuance of the license.

Section 5. That Section 363.42 of the above-entitled ordinance be amended to read as follows:

363.42. Wine license issued pursuant to Charter Amendment Number 144. Restaurants located in certain zoning districts may obtain and on-sale wine license notwithstanding the seven (7) acre commercial zoning requirement of Chapter 4, Section 5 of the Minneapolis Charter, subject to the following provisions:

(a) *Definitions.* As used in this section, unless some other meaning is clearly required by the context, the following words and phrases shall mean:

Restaurant: ~~An establishment, under the control of a single proprietor or manger, having appropriate facilities for the preparation and serving of a variety of at least four (4) complete meals, having not fewer than twenty five (25) seats at tables and the application is for a Class~~

~~C-2, Class E or Class D wine license, and where, in consideration of payment therefore, meals are regularly served at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests, and which has gross sales revenue during each fiscal year from the sale of food and beverages not containing alcohol in an amount of not less than seventy (70) percent of its total gross revenue from the sale of food and beverages. As defined in Chapter 360.10 of this code.~~

~~Bar or bar area: Structures, furniture other than freestanding tables and booths, or waiting areas, where consumption of alcoholic beverages is the primary activity. As defined in Chapter 360.10 of this code.~~

Meal: A variety and combination of food items which may contain entrees, sandwiches, combination salads, pizza, soup, breads, vegetables or fruits, contained in a menu as approved by the licensing official.

~~(b) Wine, intoxicating malt liquor, or 3.2 percent malt liquor. May only be served to patrons seated for regular dining that have ordered or have been served a meal.~~

~~(c) Establishments licensed under this section may not have a bar or bar area, as defined in Chapter 360.10 of this code that exceeds 20% of the public premises. Counter areas existing as of the effective date of this section equipped for the service of food and drink to patrons in full view of and conducted as part of the service of the dining room shall not be considered a bar or bar area.~~

(c) Allowed classes of entertainment shall be Class E, Class D, and Class C-2.

(d) *Hours of operation.* Establishments licensed under this section shall not exceed the lawful hours of operation established in chapter 363.40 (a) of this Code. The city council may require establishments licensed under this section to further reduce their hours of operation upon consideration of, but not limited to, one (1) or more of the following factors:

- (1) Proximity to permitted or conditional residential uses.
 - (2) Nature of the business and its impact of noise, light, and traffic.
 - (3) Conformance with applicable zoning regulations, including but not limited to use, yards, gross floor area, and specific development standards.
 - (4) History of complaints related to the use.
- (e) Full menu service shall remain available during all of the establishments hours of operation.
- (f) ~~Percentage of food sold.~~

~~(1) Establishments licensed under this section shall provide an accounting of the actual percentage of gross receipts attributable to the sale of food and non-alcoholic beverages during the immediately preceding calendar year. This requirement shall be established by an affidavit of the licensee on a form provided by the licensing official. Such affidavit shall be submitted with each application for issuance of renewal of the license, or at other times as the licensing official may request. Such statements shall be subject to verification by the city and the license applicant shall make such records available as may be necessary to verify~~

~~such statements. The applicant shall upon request furnish the city certified copies of any state sales tax returns covering the sale of food and beverages. The licensing official, and any time and from time to time, may require that such accounting be verified and confirmed by an independent and licensed certified public accountant who is a member of the Minnesota Society of Certified Public Accountants. Failure or refusal of a licensee to provide such accountings upon request, or any false statements in any such accounting, shall be grounds for denial, suspension or revocation of all licenses held by such licensee for the on-sale of wine.~~

~~(2) In the event the city disputes the license applicant's statements, the matter shall be submitted to a neutral certified public accountant agreed upon by the city and the applicant. The certified public accountant shall make a determination based on accepted accounting principles, which shall be binding on both parties. The license applicant shall post a bond or cash in an amount that the city believes reasonably necessary to pay the cost of the audit.~~

~~(g) Posting of license and outdoor seating plan.~~ Each licensee under this section shall conspicuously post the license certificate that shall list the authorized number of both indoor and outdoor seats. The licensee shall also post the approved outdoor seating plan immediately adjacent to the license certificate.

~~(hg)~~ All other provisions of this Title 14 shall apply unless by their nature are not applicable.

~~(i) This section 363.42 shall not apply to establishments in the Linden Hills neighborhood, until adoption of the Linden Hills Zoning Code Overlay. The Linden Hills neighborhood is defined as the area bounded by 36th Street and Lake Calhoun Parkway to the north, William Berry Parkway and Lake Harriet to the east, 47th Street and Fulton neighborhood to the south, and France Avenue and the cities of Edina and St. Louis Park to the west.~~

Section 6. That Section 363.50 of the above-entitled ordinance be amended to read as follows:

363.50. License fees established. (a) The annual fees for the licenses as required by this chapter shall be as established in ~~Appendix J,~~ the License Fee Schedule.

(b) The annual fee for any type of wine license must be paid sixty (60) days prior to April first of each year.

(c) All "on sale" applicants shall pay a nonrefundable investigative filing fee as established in ~~Appendix J,~~ the License Fee Schedule; except that no fee shall be paid when the following changes are filed with the department of licenses and consumer services:

- (1) When a partner sells or transfers his or her share of the partnership to other members of the partnership;
- (2) When a shareholder sells all or part of his or her shares of stock to persons who are already shareholders, officers, directors, or managers of the corporation and who are already listed as such on the current application;
- (3) Any corporate reorganization where the new officers, directors, managers and shareholders are already named on the original application;

- (4) When a business wishes to eliminate Sunday sales or wishes to downgrade the class of license it holds;
- (5) When a personal representative of the estate of a deceased licensee files a certified copy of his or her appointment; or (6) When the licensed premises have been diminished.

Section 7. That Section 363.80 of the above-entitled ordinance be amended to read as follows:

363.80. Penalty for late renewal. In the event any application is granted which has not been filed on or before sixty (60) days prior to the expiration of the license year, before the license can be issued the applicant shall pay an additional fee in the amount as established in ~~Appendix J,~~ the License Fee Schedule, in addition to the regular license fee.

Section 8. That Section 363.90 of the above-entitled ordinance be amended to read as follows:

363.90. Penalty for late installment. (a) Any installment of license fee which is not paid by the due date, may be paid within fifteen (15) days thereafter upon payment of an additional fee in the amount of twenty (20) per cent of the installment due. Failure to make such payment within the time provided shall cancel all rights of the licensee under such license, and the police department shall immediately close the place of business operated under such license.

(b) Provided, further, that if any former licensee, whose license has been canceled pursuant to the provisions of this section, makes an application for another license after such cancellation, such applicant shall, in addition to the payment of the required license fee, pay an additional amount as established in ~~Appendix J,~~ the License Fee Schedule to cover the necessary costs incurred by the city.

Section 9. That Section 363.270 of the above-entitled ordinance be amended to read as follows:

363.270. False statements in application. No person shall make any material false statement in any written application, or operate the business in a manner other than as described in the application, and in addition to all other penalties, his or her license shall be revoked by the city council for a violation of this section after notice to the licensee and hearing, and an opportunity of the licensee to be heard.

Section 10. That Chapter 363 of the above-entitled ordinance be amended by adding thereto a new section 363.295 to read as follows:

363.295 On sale wine licenses in proximity to residentially zoned property. (a) After October 14, 1983, "on sale" licenses for new premises, in which the main entrance is within five hundred (500) feet from residentially zoned property, shall be issued only for premises which qualify as a "restaurant" as defined in subsection 360.10 and have a maximum bar area of not more than 30% of the total public premises and which comply with the following requirements:

- (1) It is the policy of the city council that establishments operating under this section are intended primarily for the service of patrons at tables and for the consumption of alcoholic beverages in conjunction with food service that is prepared on-site.
- (2) Every license issued under this section shall be deemed presumptively to be licensed as a Class E unless a higher class of license has been expressly granted by the city council in

the manner prescribed by this code. The city council may further restrict the days, hours, nature, volume, and other aspects of entertainment in any establishment, including a prohibition against all forms of live and non-live music and other entertainment, to protect the public interest, safety, repose, and welfare of residents, businesses and other uses near the establishment.

- (3) Establishments licensed for the sale of beverage alcohol shall monitor and be responsible for the activity of employees and patrons so as to prevent negative secondary effects directly attributable to the existence of the business. License holders shall monitor all sound levels, so as to comply with state and city noise standards, generated by amplification devices employed by the establishment; patron generated sound levels, nuisance activities, criminal activities occurring on the premises; and loitering activities associated with the licensed premises, so as to protect the safety, repose, and welfare of residents, businesses and other uses near the establishment.

(b) Violations of this section and other sections of this code or other laws where there is an admission that the violation occurred by satisfaction of the citation, or findings issued regarding violations that are adjudicated by a district, state or federal court of law, or a neutral administrative hearing officer, shall be deemed to constitute a sufficient basis for the city council to impose reasonable conditions or other adverse license action on any license or permit, including but not limited to a reduction in hours of operation, a reduction in bar area, a reduction in the levels of live entertainment allowed, amendments to security plans, or a reduction in the size of outdoor premises.

Section 11. That Section 363.430 of the above-entitled ordinance is hereby repealed.

~~**363.430. Certified copy of audit required.** (a) No license shall be renewed without the applicant having filed with the police license inspector a certified copy of an audit conducted by a certified public accountant which certifies that the gross sales revenue during the preceding fiscal year from the sale of food and beverages not containing alcohol was in an amount of not less than sixty (60) percent of the total gross revenue from the sale of food and beverages. Such statements shall be subject to verification by the city and the license applicant shall make such records available as may be necessary to verify such statements. The applicant shall upon request furnish the city certified copies of any state sales tax returns covering the sale of food and beverages.~~

~~(b) — In the event the city disputes the license applicant's statements, the matter shall be submitted to a neutral certified public accountant agreed upon by the city and the applicant. The certified public accountant shall make a determination based on accepted accounting principles, which shall be binding on both parties. The license applicant shall make any records available to such person as may be necessary to verify the statements. The entire cost of such audit and determination shall be paid by the applicant. Prior to such audit, the applicant shall post a bond or cash in an amount which the city believes reasonably necessary to pay the cost of the audit.~~