

CHAPTER 12
SALE, CONSUMPTION AND DISPLAY OF INTOXICATING LIQUOR, 3.2
PERCENT MALT LIQUOR AND WINE.

SECTION 1

1201.000. ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S.A. Ch. § 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S.A. Ch. § 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

1201.001. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The City Council is authorized by the provisions of M.S.A. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S.A. Ch. § 340A, as it may be amended from time to time.

1201.002. DEFINITIONS.

In addition to the definitions contained in M.S.A. § 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

- A. LIQUOR. As used in this chapter, without modification by the words intoxicating or 3.2 percent malt, includes both intoxicating liquor and 3.2 percent malt liquor.

- B. RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S.A. § 157.16, as it may be amended from time to time, and meet the definition of either a "limited food" establishment as licensed by the Minnesota Department of Health, or a "small establishment", "medium establishment" or "large establishment" as defined in M.S.A. § 157.16, subd. 3d as it may be amended from time to time. An establishment which serves

pre-packaged food that receives heat treatment and is served in a package or frozen pizza that is heated and served, shall not be considered to be a restaurant unless it is licensed as a "limited food" establishment by the Minnesota Department of Health, or meets the definitions of a "small establishment", "medium establishment" or "large establishment".

C. COMMISSIONER. "Commissioner" is the Commissioner of Public Safety of the State of Minnesota, except as otherwise provided.
(Ord. 0-12-06; 6/5/12; Ord. O-15-08, 10/20/15)

1201.003. NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

- A. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this chapter. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this chapter, as set forth in this section, reflects the prevailing community standards of the city.
- B. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.
- C. A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this ordinance or the imposition of a civil penalty under the provisions of Section 1201.018.

1201.004. CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor, 3.2 percent malt liquor, or wine on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter or where the consumption and display of liquor is lawfully permitted. Small amounts of intoxicating liquor and 3.2 percent malt liquor are allowed in city parks for private consumption. Nothing in this ordinance shall restrict local service groups from making application for the sale and consumption of intoxicating liquor or 3.2 percent malt liquor in a city park.

(Ord. O-13-02, 6/4/13)

1201.005. NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter is limited to the number of licenses which were issued as of the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The City Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S.A. Ch. § 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M.S.A. § 340A.413, Subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the City Council by ordinance determines that any or all of the licenses may be issued. The City Council is not required to issue the full number of licenses that it has available.

1201.006. TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on June 30 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on June 30 of each year.

1201.007. KINDS OF LIQUOR LICENSES.

A. 3.2 PERCENT MALT LIQUOR LICENSES. No person, except wholesalers and manufacturers to the extent as allowed by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2 percent malt liquor within the city without first having received a license as hereinafter provided. Licenses shall be of three kinds: (1) Regular "ON-SALE"; (2) "OFF-SALE"; and (3) temporary "ON-SALE".

1. Regular "ON-SALE". Regular "ON-SALE" 3.2 percent malt liquor licenses shall be granted only to drug stores, restaurants, hotels, clubs, bowling centers, golf courses, taverns, theaters and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks. "ON-SALE" 3.2 percent malt liquor licenses shall permit the sale of 3.2 percent malt liquor for consumption on the premises only. The holder of said "ON-SALE" 3.2 percent malt liquor license may also be the holder of an "OFF-SALE" 3.2 percent malt liquor license.
2. "OFF-SALE" 3.2 percent Malt Liquor License. "OFF-SALE" 3.2 percent malt liquor licenses shall permit the sale of 3.2 percent malt liquors at retail, in the original package for consumption off the

premises only. The holder of an "OFF-SALE" 3.2 percent malt liquor license may also be the holder of an "ON-SALE" 3.2 percent malt liquor license.

3. TEMPORARY "ON-SALE" 3.2 Percent Malt Liquor License. A temporary "ON-SALE" 3.2 percent malt liquor license shall be granted only to a club or charitable, religious, or nonprofit organization for the sale of 3.2 percent malt liquor. Said temporary license may authorize the sale of 3.2 percent malt liquor in any school or school buildings. Said temporary license shall be subject to any terms set by the City Council.
4. EXEMPTION. (a) Any person licensed to sell intoxicating liquor at "ON-SALE" shall not be required to obtain an "ON-SALE" license under this section, and may sell 3.2 percent malt liquor at "ON-SALE" without further license.(b) Any person licensed to sell intoxicating liquor at "OFF-SALE" shall not be required to obtain an "OFF-SALE" license under this section, and may sell 3.2 percent malt liquor at "OFF-SALE" without further license.

(Ord. O-13-02, 6/4/13)

B. INTOXICATING LIQUOR AND MALT LIQUOR LICENSES. 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 intoxicating liquors with a license to do so as provided in this Ordinance. Liquor Licenses shall be of twelve kinds: "ON-SALE", "ON-SALE WINE", "OFF-SALE", "CLUB", TEMPORARY ON-SALE", "ONE DAY", "CULINARY CLASS", "SUNDAY ON-SALE", "TEMPORARY OFF-SALE WINE", "BREW PUB ON-SALE", "BREWER OFF-SALE", AND "BREWER TEMPORARY ON-SALE".

1. ON-SALE. On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S.A. § 340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans organizations, theaters and exclusive liquor stores. The City Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S.A. § 340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises. Said "ON-SALE" intoxicating liquor license shall permit the licensee to sell "ON-SALE" intoxicating liquor, wine, 3.2 percent malt liquor and setups. The holder of an "ON-SALE" intoxicating liquor license may also be the holder of an "OFF-SALE" liquor license as long as the

appropriate fees are paid for same (and the appropriate qualifications are met).

2. ON-SALE WINE. On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S.A. § 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in M.S.A. § 112.03; to licensed bed and breakfast facilities which meet the criteria in M.S.A. § 340A.401, Subd. 1, as it may be amended from time to time and to theaters that meet the criteria of M.S.A. § 340A.404(b), as it may be amended from time to time The fee for an on-sale wine license established by the City Council under the provisions of Section 1201.008 of this ordinance, shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.
3. "OFF-SALE" Intoxicating Liquor Licenses. "OFF-SALE" intoxicating liquor licenses shall be issued only to exclusive liquor stores and shall permit the "OFF-SALE" of intoxicating liquor, wine and 3.2 percent malt liquor. The holder of this license may also be the holder of an "ON-SALE" intoxicating liquor license as long as appropriate fees and qualifications are met.
4. CLUB LICENSE. A club license shall be issued only to incorporated clubs or congressionally chartered veterans' organizations, provided that the clubs or veterans' organizations have been in existence for at least three years and liquor sales will only be to members and bona fide guests. Said club must provide a guest book for members and bonafide guests to sign each time they enter the building. Said club licenses are subject to all of the terms and conditions contained herein and by state statute applicable to "ON-SALE" licenses. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the City Council under Section 1201.008 of this ordinance shall not exceed the amounts provided for in M.S.A. § 340A.408, Subd. 2b, as it may be amended from time to time. The City Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S.A. § 340A.404, Subd. 4b, as it may be amended from time to time.
5. TEMPORARY ON-SALE. A temporary "ON-SALE" intoxicating liquor license may be issued pursuant to this paragraph. A club or charitable, religious or other nonprofit organization in existence for at least three years may be issued a temporary license by the City of

Winsted, for the "ON-SALE" intoxicating liquor in connection with a social event within the City of Winsted, sponsored by licensee. Such license may authorize the "ON-SALE" intoxicating liquor for not more than four consecutive days, and may authorize "ON-SALE" on premises other than the premises the licensee owns or permanently occupies. No organization shall be issued more than twelve days worth of temporary "ON-SALE" licenses in one calendar year. Any one day license is subject to the terms and conditions herein. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full year "ON-SALE" intoxicating liquor license issued by the City of Winsted. The temporary "ON-SALE" intoxicating liquor licenses are subject to the terms, including a license fee imposed by the City of Winsted. Licenses issued under this subdivision for temporary purposes are subject to all laws and Ordinances governing the sale of intoxicating liquor, except Section 340A.409 and those laws and Ordinances which by their nature are not applicable. Licenses under this subdivision are not valid unless first approved by the Commissioner of Public Safety.

6. ONE DAY. One day consumption and display license with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

7. CULINARY CLASS. Culinary class limited "ON-SALE" licenses may be issued to a business establishment not otherwise eligible for an "ON-SALE" intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of 3.2 percent malt liquor, during and as part of the class, for consumption on the licensed premises only.
(Ord. O-13-02, 6/4/13)

8. SUNDAY ON-SALE. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S.A. § 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in Section 1201.002 of this ordinance, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of Section 1201.008 of this ordinance, shall not exceed \$200, or the maximum amount provided by M.S.A. § 340A.504, Subd. 3c, as it may be amended from time to time.

9. TEMPORARY OFF-SALE WINE. Temporary off-sale wine licenses, with the approval of the Commission of Public Safety, may be issued for the off-sale of wine at an auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three consecutive days provided not more than 600 cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by Section 1201.008.

10. BREW PUB. "Brew pub" is a brewer who also holds one or more retail on-sale licenses and who manufactures fewer than 3,500 barrels of malt liquor in a year, at any one licensed premises, the entire production of which is solely for consumption on tap on any licensed premises owned by the brewer, or for off sale from those licensed premises as permitted in Minnesota Statute § 340A.24 Subdivision 2, and subsections a, b, c, d, and e of this Section 10.

a. Brew Pub On-Sale License. A brew pub may be issued in on-sale intoxicating liquor or 3.2 percent malt liquor license by a municipality for a restaurant operated in the place of manufacture.

b. Brew Pub Off-Sale License. Notwithstanding section 340A.405, a brew pub that holds an on-sale license issued pursuant to this section may, with the approval of the commissioner, be issued a license by a municipality for off-sale of malt liquor produced and packaged on the licensed premises. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brew pub is located, and the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. Packaging of malt liquor for off-sale under this subdivision must comply with Minnesota Statutes § 340A.285 (i.e. Growlers) and Winsted Municipal Code § 1201.007.B.12.d.

c. Interest in other license.

1. A brew pub may hold or have an interest in other retail on-sale licenses, but may not have an ownership interest in whole or in part, or be an officer, director, agent, or employee of, any other manufacturer, brewer, importer, or wholesaler, or be an affiliate thereof whether the affiliation is corporate or by management, direction, or control.

2. Notwithstanding this prohibition, a brew pub may be an affiliate or subsidiary company of a brewer licensed in

Minnesota or elsewhere if that brewer's only manufacture of malt liquor is:

- i. manufacture licensed under section 340A.301, subdivision 6, clause (d);
 - ii. manufacture in another state for consumption exclusively in a restaurant located in the place of manufacture; or
 - iii. manufacture in another state for consumption primarily in a restaurant located in or immediately adjacent to the place of manufacture if the brewer was licensed under section 340A.301, subdivision 6, clause (d), on January 1, 1995.
- d. **Brew Pub Prohibition.** A brew pub licensed under this chapter may not be licensed as an importer under section 340A.302.
- e. **Fee.** The City of Winsted hereby imposes a licensing fee on any license given under this section 10 subject to limitations applicable to license fees under Minnesota Statute § 340A.408, as set by City Council resolution.

11. BREWER TAPROOMS.

a. Brew Pub Taproom License.

- i. Brewer taproom license authorizes on-sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer. Nothing herein precludes the holder of a brewer taproom license from also holding a license to operate a restaurant at the brewery. Minnesota Statute § 340A.409 shall apply to license issued under this subdivision. All provisions of this chapter of the Municipal Code that apply to a retail liquor license shall apply to a license issued under this subdivision unless the provision is explicitly inconsistent with this subdivision.
 - ii. A brewer may only have one taproom license under this subdivision, and may not have an ownership interest in a brew pub.
- b. Prohibition. The City of Winsted may not issue a brewer taproom license to a brewer if the brewer seeking the license, or any person having an economic interest in the brewer seeking the license or exercising control over the brewer seeking the license, is a brewer

that brews more than 250,000 barrels of malt liquor annually or a winery that produces more than 250,000 gallons of wine annually (M.S.A. § 340A.26, subdivision 2).

- c. Fee. The City of Winsted hereby imposes a licensing fee on a brewer holding a brewer taproom license under this subdivision, subject to limitations applicable to license fees under Minnesota Statute § 340A.408, as set by City Council resolution.
- d. Municipality to Inform Commissioner. The City of Winsted shall, within ten days of the issuance of a license under this subdivision (i.e. Brewer Taproom License), inform the commissioner of the licensee's name and address and trade name, and the effective date and expiration date of the license. The City of Winsted shall also inform the commissioner of a license transfer, cancellation, suspension, or revocation during the license period.
- e. Sunday On-sale. Notwithstanding Minnesota Statute § 340A.504, subdivision 3, a taproom may be open and may conduct on-sale business on Sundays if authorized by the municipality.

12. SMALL BREWER OFF-SALE.

- a. Small Brewer Off-Sale License; Limitations. A brewer licensed under Minnesota Statute § 340A.301, subdivision 6, clause (c), (i), or (j), may be issued a license by the City of Winsted for off-sale of malt liquor at its licensed premises that has been produced and packaged by the brewer. The license must be approved by the commissioner. A brewer may only have one license under this subdivision. The amount of malt liquor sold at off-sale may not exceed 500 barrels annually. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer is located, and the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. Packaging of malt liquor for off-sale under this subdivision must comply with Minnesota Statute § 340A.285.
- b. Small Brewer Prohibition. The City of Winsted may not issue a license under this section to a brewer if the brewer seeking the license, or any person having an economic interest in the brewer seeking the license or exercising control over the brewer seeking the license, is a brewer that brews more than 20,000 barrels of its own brands of malt liquor annually or a winery that produces more than 250,000 gallons of wine annually.
- c. Small Brewer Fee. The City of Winsted shall impose a licensing fee on a brewer holding a license under this subdivision, by

resolution, subject to limitations applicable to license fees under Minnesota Statute § 340A.408, subdivision 3, paragraph (a).

d. Growlers.

i. Malt liquor authorized for off-sale pursuant to Minnesota Statute § 340A.24 or 340A.28 shall be packaged in 64-ounce containers commonly known as "growlers" or in 750 milliliter bottles. The containers or bottles shall bear a twist-type closure, cork, stopper, or plug. At the time of sale, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container or bottle and extended over the top of the twist-type closure, cork, stopper, or plug forming a seal that must be broken upon opening the container or bottle. The adhesive band, strip, or sleeve shall bear the name and address of the brewer. The containers or bottles shall be identified as malt liquor, contain the name of the malt liquor, bear the name and address of the brew pub or brewer selling the malt liquor, and shall be considered intoxicating liquor unless the alcoholic content is labeled as otherwise in accordance with the provisions of Minnesota Rules, part 7515.1100.

ii. A brew pub or brewer may, but is not required to, refill any container or bottle with malt liquor for off-sale at the request of the customer. A brew pub or brewer refilling a container or bottle must do so at its licensed premises and the container or bottle must be filled at the tap at the time of sale. A container or bottle refilled under this paragraph must be sealed and labeled in the manner described in paragraph i above.

13. BREWER OFF-SALE. Brewer off-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Section 1201.007.B.10 above or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established at M.S.A. § 340A.301 Subd. 6(d) and 7(b), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the city. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by M.S.A. § 340A.301 Subd. 7, as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year. If a brewer licensed under this section possesses a license under Section 1201.008 (10) above, the brewer's

total retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

14. BREWER TEMPORARY ON-SALE. Brewer temporary on-sale intoxicating liquor licenses may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than 3,500 barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

15. CONSUMPTION AND DISPLAY PERMIT. Consumption and display permits may be issued to a bottle club which complies with requirements in M.S. 340A.414 and which has obtained a permit from the Commissioner of public safety and approval from the City Council.

16. CATERERS; SPECIAL PROVISIONS.

a. City Council findings. The City Council makes the following findings regarding the need to enact additional sale provisions governing persons selling or furnishing alcoholic beverages pursuant to a caterer's permit issued pursuant to M.S. § 340A.404(12), as it may be amended from time to time. This statute authorizes the holder of such a permit to provide alcoholic beverages at unlicensed locations provided that the sale is incidental to a larger food service. This division is enacted in order to preserve the incidental nature of the caterer's permit and to preserve the underlying state and local framework for permanent on-sale intoxicating liquor licenses. The issuance of a caterer's permit does not allow a person to, in effect, operate a permanent on-sale intoxicating liquor establishment; rather it entitles the person to provide temporary alcoholic beverages as an incidental part of a food service that prepares meals at special locations apart from the licensee's permanent location. The location requirements in this section for the sale of alcoholic beverages at catered events are enacted to assure compliance with existing state and local provisions regarding on-sale licenses. Numerous events conducted at one location where alcoholic beverages are provided by caterers thwarts the licensing scheme for permanent on-sale intoxicating liquor establishments.

b. Regulations. Events that are catered in accordance with M.S. § 340A.404(12), as it may be amended from time to time, shall comply with the following additional sale provisions.

i. No one location shall have more than 48 days of catered events in one calendar year at which alcoholic beverages are served to the general public, and in no case shall any

one event of this type be for more than four consecutive days.

- ii. All such caterer's licenses shall be approved by the City Council, although no public hearing shall be required.

17. MICRODISTILLERIES.

a. Activities.

- i. A microdistillery licensed under Minnesota Statutes § 340A.22 may provide on its premises samples of distilled spirits manufactured on its premises, in an amount not to exceed 15 milliliters per variety per person. No more than 45 milliliters may be sampled under this paragraph by any person on any day.
- ii. A microdistillery can sell cocktails to the public, pursuant to subdivision b.

b. Micro Distilleries Cocktail Room License.

- i. The City of Winsted may issue the holder of a microdistillery license under Minnesota Statute § 340A.22, a microdistillery cocktail room license. A microdistillery cocktail room license authorizes on-sale of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller. Nothing in this subdivision precludes the holder of a microdistillery cocktail room license from also holding a license to operate a restaurant at the distillery. Minnesota Statute § 340A.409 shall apply to a license issued under this subdivision. All provisions of this chapter of the Municipal Code that apply to a retail liquor license shall apply to a license issued under this subdivision unless the provision is explicitly inconsistent with this subdivision.
- ii. A distiller may only have one cocktail room license under this subdivision, and may not have an ownership interest in a distillery licensed under Minnesota Statute § 340A.301, subdivision 6, paragraph (a).

c. Cocktail Room License Fee. The City of Winsted imposes a cocktail room license fee on a distiller holding same by resolution of the city council, subject to limitation applicable to license fees under Minnesota Statute § § 340A.408 subdivision 2, paragraph (a).

- i. The City of Winsted shall, within ten days of the issuance of a microdistillery cocktail room license, inform the

commissioner of the licensee's name and address and trade name, and the effective date and expiration date of the license. The City of Winsted shall also inform the commissioner of a license transfer, cancellation, suspension, or revocation during the license period.

- ii. No single entity may hold both a cocktail room and taproom license, and a cocktail room and taproom may not be co-located.
- d. Microdistilleries Off-Sale License. A microdistillery may be issued a license by the local licensing authority for off-sale of distilled spirits. The license may allow the sale of one 375 milliliter bottle per customer per day of product manufactured on-site, subject to the following requirements:
- i. off-sale hours of sale must conform to hours of sale for retail off-sale licensees in the City of Winsted; and
 - ii. no brand may be sold at the microdistillery unless it is also available for distribution by wholesalers.

(Ord. 0-12-06; 6/5/12; Ord. O-15-08; 10/20/15)

1201.008. LICENSE FEES; PRO RATA.

- A. No license or other fee established by the city shall exceed any limit established by M.S.A. Ch. 340A, as it may be amended from time to time, for a liquor license.
- B. The City Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.
- C. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.
- D. All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.
- E. A refund of a pro rata share of an annual license fee may occur only if authorized by M.S.A. § 340A.408, Subd. 5, as it may be amended from time to time.

1201.009. COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The City Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

1201.010. APPLICATION FOR LICENSE.

A. FORM. Every application for a license under this Ordinance shall be made to the City Clerk on a form supplied by the City and contain such information as the City Clerk or the City Council may require. It is a violation of this Ordinance for any person to make any false statement in making application for a license. The applicant shall, in addition to other information required by the City Clerk, provide the following information: Name of person asking for the license, said person's age, representations as to the applicant's character, with references as the City Council may required, citizenship, 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 the applicant has been in that business and at that place, and such other information as the City Council may require from time to time. In addition to containing such information, the application shall be in the form prescribed by the Commissioner of Public Safety and shall be verified and filed with the City Clerk.

B. SUMMONS. Every application for the issuance or renewal of a license for the sale of intoxicating or 3.2 percent malt liquor must include a copy of each Summons received by the applicant under Section 340A.802 during the preceding year.

(Ord. O-13-02, 6/4/13)

C. FINANCIAL RESPONSIBILITY/LIABILITY INSURANCE.

1. No retail license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability under M.S.A. § 340A.801 as it may be amended from time to time. The City of Winsted must submit to the Commissioner the applicant's proof of financial responsibility. The minimum requirement for proof of financial responsibility may be given by filing:

a. a Certificate that there is in effect for the license period and insurance policy issued by and insurer required to be licensed under Minnesota Statute § 60A.07, subdivision 4, or by an insurer recognized as an eligible surplus lines carrier pursuant to Minnesota Statute § 60A.206 or pool providing at least \$50,000 of coverage because of bodily injury to any one person in any one occurrence, \$100,000 because of bodily injury to two or more persons in any one occurrence, \$10,000 because of injury to or destruction of property of others in any one occurrence, \$50,000 for loss of means of support of any one persons in any one occurrence, \$100,000 for loss of means of support of two or more

persons in any one occurrence, \$50,000 for other pecuniary loss of any one person in any one occurrence, and \$100,000 for other pecuniary loss of two or more persons in any one occurrence;

- b. a bond of a surety company with minimum coverages as provided in clause (a) (hereinabove); or
 - c. a certificate of the commissioner of management and budget that the licensee (i.e. insured) has deposited with the commissioner of management and budget \$100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.
2. This subdivision does not prohibit an insurer from providing the coverage required by this subdivision in combination with other insurance coverage.
 3. An annual aggregate policy limit for dram shop insurance of not less than \$300,000 per policy year may be included in the policy provisions.
 4. A liability insurance policy required by this section must provide that it may not be canceled for:
 - a. Any cause, except for nonpayment of premium, by either the licensee (i.e. insured) of the insurer unless the canceling party has first given 60 days' notice in writing to the licensee (i.e. insured) of intent to cancel the policy; and
 - b. Nonpayment of premium unless the canceling party has first given ten days' notice in writing in the licensee (i.e. insured) of intent to cancel the policy.
 5. In the event of a policy cancellation, the insurer will send notice to the City of Winsted at the same time that a cancellation request is received from or a notice is sent to the licensee (i.e. insured).
 6. All insurance policies which provide coverage with regard to any liability imposed by MSA § 340A.801 must contain at least the minimum coverage required as herein stated.
 7. Market Assistance. The market assistance plan of the Minnesota Joint Underwriting Associations shall assist licensees in obtaining insurance coverage.
 8. Minnesota Joint Underwriting Association.
 - a. The Minnesota Joint Underwriting Association shall provide coverage required by subdivision 1.a. herein above, to persons rejected under paragraph 8.b (hereinbelow).

- b. A liquor vendor shall be denied or terminated from coverage through the Minnesota Joint Underwriting Association if the liquor vendor disregards safety standards, laws, rules, or ordinances pertaining to the offer, sale, or other distribution of liquor.
9. Notification by insurer of status of claim. Upon the request of licensee (i.e. insured) an insurer who is providing coverage required in paragraph 1.a. (hereinabove) shall inform the licensee (i.e. insured) of the status of any claims made under the policy. The information must include:
- a. the employees of the licensee (i.e. insured) that may be involved and the nature of their involvement;
 - b. any amount the insurer is holding in reserve for payment of a claim or has paid in the disposition of the claims; and
 - c. any amount paid in the defense of the claim.

This subdivision does not require disclosure of otherwise nondiscoverable information to an adverse party in litigation.

10. Insurance not required. The insurance required hereinabove does not apply to licensees (i.e. insured) who by affidavit established that:
- a. they are on-sale 3.2 percent malt liquor licensees with sales of less than \$25,000 of 3.2 percent malt liquor for the preceding year;
 - b. they are off-sale 3.2 percent malt liquor licensees with sales of less than \$50,000 of 3.2 percent malt liquor for the preceding year;
 - c. they are holders of on-sale wine licenses with sales of less than \$25,000 for wine for the preceding year;
 - d. they are holders of temporary wine licenses issued under law; or
 - e. they are wholesalers who donate wine to an organization for wine tasting conducted under Minnesota Statutes § 340A.418 of 340A.419

(Ord. 11-01; 3/7/11)

D. APPROVAL OF SECURITY. The security offered under Subdivision 3 of this section shall be approved as to form by the City Attorney. Operation of a licensed business without having on file at all times with the city and Commissioner of Public Safety effective security as required in Subdivision 3 of this section shall be grounds for immediate revocation of the license.

1201.011. GRANTING OF LICENSES.

- A. Preliminary Investigation. The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person wishing to be heard for or against the granting of the license. After such investigation hearing, the City Council shall grant or refuse the application in its discretion.
- B. On initial application for an "ON-SALE" intoxicating liquor license and on application for transfer of existing "ON-SALE" intoxicating liquor license, the applicant shall pay an investigation fee determined by the City Council. The city shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and contain such additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of an "ON-SALE" intoxicating liquor license, it shall so determine. If the Council determines that a comprehensive background and investigation of the application is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the City Council that the issuance would not be in the public interest. If an investigation outside the State is required, the applicant shall be charged the actual cost not to exceed \$10,000.00. The fee, after deducting any initial investigation fee already paid, shall be payable by the applicant, whether or not the license is granted. No license applied for under this Ordinance shall become effective until it, together with the security furnished by the applicant and the appropriate fees paid, has been approved by the City Council of Winsted and the Commissioner of Public Safety.
- C. Transfers. Each license issued under this Ordinance shall be issued to the applicant only and shall not be transferable to another holder. Unless the City Council otherwise approves, the sale, the use and consumption of intoxicating liquors and 3.2 percent malt liquors shall occur and be effective for the compact and contiguous space specified in the approved license application. The description may not include any parking lot or sidewalk. No license may be transferred to another person without approval of the City Council. Unless the license approved by the City Council permits, no sales or consumption of liquor shall be permitted outside of the building (or portion of the building) licensed on said premises. Any transfer of stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior City Council approval is a ground for revocation of the license.
- D. Applications for Renewal. At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the City Council. No licensee has a right to have the license renewed.

1201.012. PERSONS AND PLACES INELIGIBLE FOR LICENSE.

A. Persons Ineligible. No license shall be granted to: (a) A person not a citizen of the United States or a resident alien; (b) A person under twenty-one (21) years of age; (c) A person who within five years of the license application has been convicted of a willful violation of a federal or state law or local Ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of intoxicating or 3.2 percent malt liquor; (d) A person who has had an intoxicating liquor or intoxicating liquor license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than 5% of the capital stock of a corporation licensee, or as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested; (e) a person not of good moral character in repute; (f) a person who is not named as the applicant for the premises described in the application; (g) any place or any business ineligible for a license under state law; (i) to any person who is not a resident of the State of Minnesota; or (h) to any corporation in which all of the share holders are not residents of the State of Minnesota.

(Ord. O-13-02, 6/4/13)

B. Places Ineligible For License. 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.

1201.013. CONDITIONS OF LICENSE.

A. GENERAL CONDITIONS. Every license shall be granted subject to the conditions in the following subdivisions and all provisions of this Ordinance and of any other applicable Ordinance, State Law or Regulation.

B. SALES OF INTOXICATING LIQUOR. No licensee, who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit, shall sell or permit the consumption and display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquors for purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquor shall be prima facie evidence of intoxicating liquor being permitted to be consumed or displayed contrary to this Ordinance.

C. LICENSEE'S RESPONSIBILITY. Every licensee is responsible for the conduct of said licensee's place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Ordinance and the law equally with any employee.

D. 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, or at any other times when persons are present on the licensed premises, without a warrant.

- E. **REQUIRED FORUM.** All liquor license applicants are required to attend an annual alcohol licensure forum conducted by the City of Winsted. No liquor license shall be issued without verification by the Winsted Police Chief that this class has been attended by the applicant or by representative of the applicant of the license.
- F. **OUTDOOR PATIOS AND DECKS.** Conditions Under Which Permitted: Service and consumption of alcohol on outdoor patios and decks in conjunction with an intoxicating liquor "on-sale" license, an "on-sale" wine license, a special club license, a special license for Sunday sales or a 3.2 percent malt liquor license may be permitted by the City Council under the following conditions:
1. The patio or deck area must be compact and contiguous to the licensed premises and shall be enclosed with a railing or fence that meets standards set forth in this code and final inspection by the chief building official.
 2. Appropriate receptacles for rubbish, garbage, cigarette paraphernalia, etc., must be provided.
 3. Lighting must be sufficient to promote public safety, directed downward, and compatible with the surrounding area.
 4. The area surrounding a patio or deck area must be completely fenced from the outside.
 5. Smoking may be allowed on the patio or deck area, provided it is in compliance with the Minnesota "freedom to breath act of 2007".
 6. Music, televisions, bands, amplified sound or any activity that would disturb the peace of the surrounding area is prohibited on the outdoor patio or deck area.
 7. The patio or deck area shall be controlled and monitored continuously during the hours of operation and unruly patrons shall be removed immediately.
 8. The hours and days of sale of alcoholic beverages shall be in accordance with this code.
 9. Patrons shall not leave the premises with a drink nor can drinks be taken onto a public sidewalk.
 10. The amendment to the licensee's licenses for the outdoor patio or deck area shall be approved on a provisional basis. The council may

revoke, suspend or decline to renew the license for the patio or deck area portion of the licensed premises on the grounds of failure to comply with the conditions outlined in the resolution or undue annoyance or burden on nearby residents.

11. The outdoor patio or deck area must be included in the required liquor liability insurance for the premises.

12. The City Council may impose any additional conditions it deems necessary in the interest of the public health, safety and welfare at the time of initial approval or any renewal of the license for a patio or deck. The conditions set forth allowing the patio or deck shall be reviewed during the yearly renewal period.

G. FEDERAL STAMPS. No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

H. FINANCIAL RESPONSIBILITY. Compliance with Financial responsibility requirements of state law and of this chapter is a continuing condition of any license

1201.014. LIQUOR CONSUMPTION AND DISPLAY. No person shall consume or display any intoxicating liquor on the premises of a licensee who is not also licensed to sell intoxicating liquor or who does not hold a consumption and display permit. Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety is not effective unless approved by the City Council. The maximum amount of the additional fee which may be imposed by the City Council on a person who has been issued a consumption and display permit under the provisions of Section 1201.008 of this ordinance shall not exceed \$300, or the maximum amount permitted by M.S.A. § 340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on June 30 of each year.

1201.015 RESTRICTIONS ON PURCHASE AND CONSUMPTION. No person shall mix or prepare liquor for consumption by the general public in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the City Council.

1201.016. HOURS AND DAYS OF SALE.

A. 3.2 Percent Malt Liquor. No sale of 3.2 percent malt liquor may be made between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 11:00 a.m. on Sunday.
(Ord. O-13-02, 6/4/13)

B. INTOXICATING LIQUOR "ON-SALE". No sale of intoxicating liquor for consumption on the licensed premises may be made:

1. Between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday;
2. Between 1:00 a.m. and 11:00 a.m. on Sundays.
3. Between 8:00 p.m. on December 24th and 8:00 a.m. on December 25th.
(Ord. O-13-02, 6/4/13)

C. INTOXICATING LIQUOR; SUNDAY SALE; "ON-SALE".

1. A restaurant, club, bowling center, or hotel with seating capacity for at least 30 persons and which holds an "ON-SALE" intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 11:00 a.m. on Sunday and 1:00 a.m. on Monday
2. An establishment serving intoxicating liquor on Sundays must obtain a Sunday license. The license shall be issued by the City Council of the City of Winsted for a period of one year (pursuant to the provisions of Subdivision 3. of Section 5. hereinabove). The fee for the license shall be established by Council Resolution.

(Ord. O-13-02, 6/4/13)

D. INTOXICATING LIQUOR "OFF-SALE". No sale of intoxicating liquor may be made by an "OFF-SALE" licensee:

1. On Sundays, except between the hours of 11:00 A.M. and 6:00 P.M.;
2. Before 8:00 a.m. on Monday through Saturday;
3. After 10:00 p.m. on Monday through Saturday;
4. Thanksgiving Day;
5. On Christmas Day, December 25th; or
6. After 8:00 p.m. on Christmas Eve, December 24th.
7. No delivery of alcohol to an "OFF-SALE" licensee may be made by a wholesaler or accepted by an "OFF-SALE" licensee on a Sunday. No order solicitation or merchandising may be made by a wholesaler on a Sunday.

- E. No person, including a licensee, employee of the license, host of a private party or guest of a private party, shall consume, sell, or permit the consumption of any intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can

legally occur.

- F. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
- G. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur. Nor shall any person, other than the licensee and any employee, be on the on-sale licensed premises prior to 6:00 a.m.
- H. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

(Ord. O-13-02, 6/4/13; Ord. 15-02, 1/6/15; Ord. O-17-06. 5/2/17)

1201.017. SUSPENSION AND REVOCATION. The City Council may either suspend for not to exceed sixty (60) days or revoke any liquor license upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to the sale of liquors. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing except for mandatory revocations provided for by law where no notice and hearing are necessary.

- A. The City Council may act as a hearing body under the Administrative Procedures Act, M.S.A. §§ 14.57 to 14.70, as it may be amended from time to time. The City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.
- B. The following are the minimum periods of suspension or revocation which shall be imposed by the City Council for violations of the provisions of this chapter or M.S.A. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:
 - 1. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of M.S.A. § 112.04, the license shall be revoked.
 - 2. All liquor licenses shall be suspended by the City Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:
 - a. _____ For the first violation within any three-year period, at least a one day suspension and a \$500 fine.

- b. _____ For a second violation within any three-year period, at least three consecutive days suspension and a minimum \$1,000 fine.
- c. For the third violation within any three-year period, at least seven consecutive days suspension and a minimum \$2,000 fine.
- d. For a fourth violation within any three-year period, the license shall be revoked.

3.—For the first violation within any three-year period the suspension shall be served on a Monday. If the business is normally scheduled to be closed on Monday the suspension shall be served on a Tuesday. For the second and third violation within any three-year period the suspension shall be served on consecutive days beginning on a Thursday. The Chief of Police or his/her designee shall designate the date(s) the suspension will be served..

- C. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the City Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the City Clerk, a hearing before the City Council shall be granted within ten days. Any suspension under this division (B) shall continue until the City Council determines that the financial responsibility requirements of state law and this chapter have again been met.
- D. The provisions of Section 1201.018 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

(Ord. 15-02, 1/6/15)

1201.018. PENALTIES.

- A. Any person violating the provisions of this chapter or M.S.A. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- B. The City Council shall impose a civil penalty of up to \$2,000 for each violation of M.S.A. Ch. 340A, as it may be amended from time to time, and of this chapter. Conviction of a violation in a court of law is not required in order for the City Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S.A. §§ 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the City Council shall hold a hearing on the proposed violation and the

proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:

1. For the first violation within any three-year period, \$500.
2. For the second violation within any three-year period, \$1,000.
3. For the third and subsequent violations within any three-year period, \$2,000.

C. The term “violation” as used in Section 1201.017 includes any and all violations of the provisions in this section, or of M.S.A. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

HISTORY OF REPEALS. The following Ordinances that relate to this Chapter have all been repealed: Ordinances 8, 18, 25, 26, 34, 35, 37, 39, 40, 61-02, 66-02, 67-03, 73-02, 74-01, 78-03, 81-02, 83-01, 83-02, 84-05, 84-06 86-03, 86-08, 87-01, 88-03, 89-08, 90-02, 93-01 ,08-06, 10-03, 15-02.

SECTION 2

HISTORY OF REPEALS. The following Ordinances that relate to this Chapter have all been repealed: Ordinances 8, 18, 25, 26, 34, 35, 37, 39, 40, 61-02, 66-02, 67-03, 73-02, 74-01, 78-03, 81-02, 83-01, 83-02, 84-05, 84-06 86-03, 86-08, 87-01, 88-03, 89-08, 90-02, 93-01, 08-06. SECTION 2 HAS BEEN REPEALED IN ITS ENTIRETY BY ORDINANCE O-10-03

SECTION 3

1203.000. **TOBACCO SALES.**

1203.001. **LICENSE.**

- A. No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco product at any place in the City without first obtaining a license from the City. "Tobacco" is defined as and includes: cigarettes, cigars; cheroots; stogies; perique; granulated; plug cut; crimp cut; ready rubbed; and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps; clippings; cuttings and sweepings of tobacco; and other kinds and forms of tobacco; prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices.
- B. The annual license fee for a retail tobacco license shall be determined annually by the Winsted City Council through a Fee Schedule Ordinance. The amount of such fee shall be valid for one calendar year from the date that the license is issued. No license shall be transferred, directly or indirectly to another. Once said fee is paid, no refund of any fee shall be made.
- C. Every license shall be conspicuously posted at the place for which the license is issued and shall be valid for one calendar year from the date that the license is issued.
- D. Before issuing any retail tobacco license, or renewing same, the City shall have it's police department perform a background check to determine if said person or entity is acceptable to the City to conduct retail tobacco sales.

(Ord. 11-04, 4/5/11)

1203.002. **SALES PROHIBITED TO MINORS.** No person shall sell or offer to sell any tobacco or tobacco products to any person under eighteen (18) years of age.

1203.003. **ADMINISTRATIVE PENALTIES.**

- A. If a license or employee of a licensee sells tobacco to a person under the age of 18 years, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of \$100.00. An administrative penalty of \$200.00 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$300.00 must be imposed, and the licensee's authority to sell tobacco at that location must be suspend for not less than seven days. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged

violation and an opportunity for a hearing before a person authorized by the City to conduct the hearing. The City hereby authorizes the Mayor to conduct such a hearing.

- B. An individual who sells tobacco to a person under the age of 18 years must be charged an administrative penalty of \$50.00. No penalty may be imposed until the individual has received notice, served personally or by mail, of the

alleged violation and an opportunity for a hearing before a person authorized by the City to conduct the hearing. The City hereby authorizes the Mayor to conduct such a hearing.

- C. It is an affirmative defense to the charge of selling tobacco to a person under the age of 18 years in violation of this ordinance that the licensee or individual making the sale relied in good faith upon proof of age as follows:

1. A valid driver's license or identification card issued by the State of Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or
2. A valid military identification card issued by the United States Department of Defense; or
3. In the case of a foreign national, from a nation other than Canada, by a valid passport.

1203.004. **SELF-SERVICE SALES.**

- A. No licensee shall offer for sale single packages of cigarettes or smokeless tobacco in open displays which are accessible to the public without the intervention of a store employee.
- B. Cartons and other multipack units may be offered and sold through open displays accessible to the public.
- C. Section 1203.004.B. of this Ordinance will expire upon the effective date and implementation of Code of Federal Regulation, Title 21, Part 897.16(c).
- D. The self-service restrictions described in this Section 1203.004. shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco related products and which cannot be entered at any time by persons younger than 18 years of age.

1203.005. **VENDING MACHINE SALES.** No person shall sell tobacco products from vending machines. This section does not apply to vending machines in facilities that cannot be entered at any time by persons younger than 18 years of age.

1203.006. **COMPLIANCE CHECKS.** The City shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold to test compliance with Minnesota Statutes Section 609.685. Compliance checks shall utilize minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee of the licensing authority.

SECTION 4

1204.000. **PROHIBITION AND PENALTIES FOR PERSONS HOSTING EVENT/GATHERING WHERE CONSUMPTION OF ALCOHOL BY A PERSON UNDER 21 YEARS OF AGE TAKES PLACE.**

1204.001. This ordinance prohibits, and establishes penalties for, any person hosting an event or gathering where alcohol is present and being possessed or consumed by persons under twenty-one (21) years of age.

1204.002. **Purpose and Findings.** The City of Winsted intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons criminally responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The City of Winsted finds that:

- (a) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of twenty-one are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.
- (b) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.
- (c) Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.
- (d) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and, condone the activity, and in some circumstances provide the alcohol.
- (e) Even though giving or furnishing alcohol to an underage person is a crime, it is difficult to prove, and an ordinance is necessary to help further combat underage consumption.
- (f) A deterrent effect will be created by holding a person criminally responsible for hosting an event or gathering where underage possession or consumption occurs.

1204.003. **Authority.** This ordinance is enacted pursuant to Minn. Stat. §145A.05, subdivision 1.

1204.004. **Definitions.** For purposes of this ordinance, the following terms have the following meanings:

- (a) Alcohol. “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.
- (b) Alcoholic beverage. “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- (c) Event or gathering. “Event or gathering” means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.
- (d) Host. “Host” means to aid, conduct, allow, entertain, organize, supervise, control, or permit a gathering or event.
- (e) Parent. “Parent” means any person having legal custody of a juvenile:
 - (1) As natural, adoptive parent, or step-parent;
 - (2) As a legal guardian; or
 - (3) As a person to whom legal custody has been given by order of the court.
- (f) Person. “Person” means any individual, partnership, co-partnership, corporation, or any association of one or more individuals.
- (g) Residence or Premises. “Residence” or “premises” means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented, or used with or without permission or compensation.
- (h) Underage Person. “Underage person” is any individual under twenty-one (21) years of age.

1204.005. **Prohibited Acts.**

- (a) It is unlawful for any person(s) to:
 - (1) host or allow an event or gathering at any residence, premises, or on any other private or public property; and
 - (2) where alcohol or alcoholic beverages are present; and
 - (3) when the person knows or reasonably should know that an underage person will or does
 - (i) consume any alcohol or alcoholic beverage; or

- (ii) possess any alcohol or alcoholic beverage with the intent to consume it; and
- (4) the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).
- (b) A person is criminally responsible for violating Subdivision 4(a) above if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the prohibited act.

1204.006. **Exceptions.**

- (a) This ordinance does not apply to conduct solely between an underage person and his or her parents while present in the parent's household.
- (b) This ordinance does not apply to legally protected religious observances.
- (c) This ordinance does not apply to retail intoxicating liquor or 3.2 percent malt liquor licensees, municipal liquor stores, or bottle club permit holders who are regulated by Minn. Stat. §340A.503 Subd.1(a)(1).
- (d) This ordinance does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

1204.007. **Enforcement.** This ordinance may be enforced by the Winsted Police Department or any law enforcement officer assisting the Winsted Police Department.

1204.008. **Severability.** If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be unconstitutional or invalid, in whole, or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

1204.009. **Penalty.** Violation of subdivision 4 is a misdemeanor which carries with it a maximum penalty of 90 days jail and/or \$1,000.00 fine.

(Ord. 0-14-02, 4/1/14)