



**To:** MAYOR AND COUNCIL

**Agenda Item #:** VII. C.

**From:** Bill Neuendorf  
Economic Development Manager

**Action**   
**Discussion**   
**Information**

**Date:** September 16, 2015

**Subject:** Ordinance 2015-20 Amending Chapter 4 Concerning Alcoholic Beverages  
(*First Reading: Requires offering of Ordinance only.*)

### **Action Requested:**

Grant First Reading of Ordinance 2015-20.

### **Information / Background:**

Edina's liquor ordinance has been modified on several occasions since licenses for on-site consumption of alcoholic beverages began to be issued in the 1980s. After three decades of modifications, the current code requirements can be confusing to businesses and difficult for staff to interpret, apply and enforce. Some of the detailed regulations position restaurants in Edina at a disadvantage compared to restaurants in adjacent municipalities that are subject to different regulations.

In January 2015, the City solicited input from residents and businesses concerning desired changes to the regulation of alcoholic beverages. The public comments (summary attached) were presented at the February 17, 2015 City Council meeting. In brief, the 102 participants favored elimination of the 60/40 food-to-beverage ratio, supported new tap rooms and strongly preferred restaurants that serve liquor instead of bars that serve liquor without food service.

Representatives of several businesses were also consulted during the preparation of this proposed ordinance. Input was provided by representatives of the 50th & France Business Association, Edina Chamber of Commerce and Minnesota Restaurant Association.

Based on the input collected from residents and the business community, staff from each City Department has worked with the City Attorney to rewrite the liquor code to better reflect the interests of the community. The proposed ordinance eliminates Chapter 4 in its entirety and replaces it with new language that more effectively regulates the sale of alcoholic beverages with minimal red tape. The goals of the ordinance rewrite include:

- 1) streamlined language for the sake of clarity and enforceability;
- 2) allow new establishments that are responsive to the preferences of Edina patrons; and
- 3) allow established and new businesses to prosper in the Edina marketplace subject to an efficient regulatory process.

A summary of anticipated amendments is attached to more easily identify changes in regulations.

The proposed ordinance is presented for the First Reading only. The Second Reading is anticipated after the Plan Commission provides a recommendation for new zoning regulations for tap rooms and distilleries. Staff recommends that the City Council accept the First Reading of Ordinance 2015-20.

**Attachments:**

Speak Up Edina summary, February 2015

Summary of Anticipated Amendments, August 20, 2015

Proposed Ordinance No. 2015-20



The CITY of  
**EDINA**

# Speak Up, Edina!

## Liquor Ordinance Revisions



The CITY of  
**EDINA**

# Liquor Law Discussion

- Open Dec. 31 to Feb. 2
- 102 total comments made
- 1,692 visitors, 2,164 visits
- 6,913 page views
- 41% visited more than once
- Most respondents from Edina



# Comment Summary

- Of 56 responses to eliminating the ratio, two were not in favor of changing or eliminating the law as it stands
  - However, don't want to see Edina become the Warehouse District
  - City not as competitive as many neighbors for businesses
  - Old, antiquated law
- Bars/Taprooms
  - Majority are comfortable with bars and/or taprooms
  - May need to limit licenses available.
  - Don't see need for bars in Edina without food.
  - Tap rooms attractive to young people and drive businesses to Edina.



# Comment Summary (cont.)

- Concerns
  - Few have major concerns over a change in ordinance.
  - City/PD should plan for staffing and funding for prevention and enforcement, possibly funded through license fees, taxes and fines.
  - Intoxicated drivers on City streets, endangering others. Consider unintended consequences.
  - Concern Edina lags behind neighboring cities.

# **Anticipated Amendments to Edina Liquor Ordinance**

The City of Edina intends to revise its liquor ordinance in 2015. The following is a summary of potential revisions based on preliminary stakeholder input from residents, businesses, and staff members. The purpose of the rewrite is to address concerns from Edina businesses and residents as they relate to key components of the ordinance, as well as to create a more tactical and enforceable ordinance that enhances the quality of life in Edina in a safe and responsible manner.

The goals of the ordinance rewrite include:

- 1) Streamline ordinance language for the sake of clarity and enforceability
- 2) Allow new establishments that are responsive to preferences of Edina patrons
- 3) Allow established and new businesses to prosper in the Edina marketplace subject to an efficient regulatory process

## **I. Streamline ordinance language**

- Retain off-sale licenses to municipal liquor stores (Sec 4.2)
- Replace the much amended ordinance with a new and up-to-date ordinance template as recommended by the City Attorney.
- Reflect current State law and eliminate conflicting and confusing local provisions.
- Use terms that are defined in State law and industry-standards instead of definitions with a purely local definition.
- Clarify language regarding consumption of alcohol in outdoor public places such as sidewalk cafes, street festivals, public parks and golf courses.
- Delete specific criteria related to gaming establishments (eg Pinstripes and Dave & Busters in Sec. 4-34(f) and 4-34(g)) and replace with general provisions applicable to all establishments.
- Clarify the definition of “Restaurant” in accordance with State law and Edina health code. Retain the issuance of on-sale liquor license to places that hold restaurant license, either high-risk, medium-risk or low-risk, as defined elsewhere.
- Clarify the meaning of “compact and contiguous premises” in Sec. 4-72 for outdoor areas where alcohol consumption is allowed.

## **2. Allow new establishments that are responsive to preferences of Edina patrons**

- Retain preference for commercial establishments with a dining component as well as liquor service.
- Add brewpub license in accordance with Minn. Stat. § 340A.301, Subdivision 6 for restaurants in commercial zoning districts.
- Add taproom license in accordance with Minn. Stat. § 340A.301, Subdivision 6 for breweries in the industrial zoning district.
- Add cocktail room license in accordance with Minn. Stat. § 340A.301, Subdivision 6c for distilleries in the industrial zoning district.
- Retain other license types as currently found in Sec. 4-26.

## **3. Efficient and effective regulatory practices**

- Eliminate Sec. 4-77(3) which mandates a 60/40 ratio for food-to-liquor gross sales ratios. This change is consistent with other metro cities including Minneapolis who repealed similar provisions in September-November 2014.
- Delete regulations that limit liquor licenses to specific zoning districts (Secs 4-34(d) and 4-34(e)) and amend the Zoning Code to provide for new facilities with alcoholic beverage service.
  - Zoning Code amendments include details regarding parking requirements, hours of operation and permitted/conditional uses for breweries and distilleries with on-sale drinking facilities.
- Retain the current license application process (Sec 4-27, 4-28 & 4-33), fee schedule (Sec 4-29, 4-30, 4-31 & 4-32) and violation penalties (Sec. 4-102 through 4-109). Make necessary changes to coincide with other changes made to the ordinance, such as fees for new types of licenses.
- Add language allowing for City enterprise facilities to apply for temporary licenses (or dispensaries) for special events.
- Retain requirement (Sec. 4-77(l)(b)) that limits the seating capacity located at a bar or service counter as it has been effective in encouraging restaurants instead of bars. The current 15% limitation should be reconsidered to keep in line with current industry standards.

- Retain alcohol awareness training (Sec 4-77(2)) provision. Staff believes that the 75% requirement for employee training is an effective and realistic provision.
- Replace Sec. 4-77(4) that establishes maximum percentages of alcohol by volume for beer and wine with reference to Minn. Stat. § 340A.301, Subd. 29 that has similar provisions
- Simplify happy hour provisions in Sec. 4-77(7) in accordance with best practice ordinances. Eliminate current language that prohibits “prizes, coupons, punch cards, games or barbers” for alcohol as well as language that prohibits two-for-one sales.
- Clarify process for license renewal (Sec. 4-79) in regard to any midterm change of officer. Identify flat fee for this mid-term renewal instead of current practice to escrow funds.

## **ANTICIPATED SCHEDULE AND STEPS**

- 1) Collect idea from community – Spring 2015 COMPLETE
- 2) Summarize anticipated changes – August 2015 COMPLETE
- 3) Prepare first draft of new Ordinance - late August 2015 IN PROGRESS
- 4) Review of draft by impacted stakeholders - early September 2015
- 5) Amend draft, if needed and present to City Council – September 2015
- 6) Present companion zoning changes to Plan Commission – September 2015
- 7) Conduct public hearings and consider adoption of new ordinance – October 2015
- 8) New ordinance takes effect – January 2016

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## ORDINANCE NO. 2015-20

### AN ORDINANCE AMENDING CHAPTER 4 OF THE EDINA CITY CODE CONCERNING ALCOHOLIC BEVERAGES

#### THE CITY COUNCIL OF EDINA ORDAINS:

**Section 1.** Chapter 4 of the Edina City Code is amended to read as follows:

#### **Sec. 4-1. State Law Provisions Adopted.**

The provisions of Minnesota Statutes Chapter 340A are adopted and made a part of this chapter as if fully set out herein, except as hereinafter modified.

#### **Sec. 4-2. Definitions.**

For the purposes of this chapter, the following terms shall have the meanings given them herein:

*Restaurant.* A business licensed by the city under the control of a single proprietor or manager having a full service kitchen when, in consideration of payment, 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. Such establishment shall have facilities for seating not less than thirty (30) guests at one time. The kitchen shall be open at all times the facility is open to the public, except that the kitchen may close no earlier than 1-hour prior to closing.

#### **Sec. 4-3. License Required.**

A. Except as provided in Minnesota Statutes Chapter 340A, no person may directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without having obtained the required license or permit.

B. Holders of an on-sale intoxicating liquor license are exempt from the requirement that an on-sale 3.2 percent malt liquor license be obtained.

#### **Sec. 4-4. Types of Licenses.**

A. "On-Sale Liquor License." On-sale liquor licenses shall be issued only to those establishments allowed under Minnesota Statutes Section 340A.404, Subd. 1. On-sale liquor licenses shall permit the sale of intoxicating liquor for consumption on the premises only.

B. "Special Club Licenses." Special on-sale licenses shall be issued only to clubs in accordance with the provisions of Minnesota Statutes Section 340A.404, Subdivision 1.

C. "On-Sale Sunday Liquor Sale License." On-sale Sunday liquor sale licenses may be issued to establishments holding an on-sale liquor license hereunder.

D. "On-Sale Wine License." On-sale wine licenses may be issued for the sale of wine for consumption on the licensed premises only. An on-sale wine license may be issued only to a restaurant. The holder of an on-sale wine license who is also licensed to sell 3.2 percent malt liquors at on-sale is authorized to sell intoxicating malt liquors at on-sale without an additional license.

E. "On-Sale 3.2 Percent Malt Liquor License." On-sale 3.2 percent malt liquor licenses shall be granted only to bona fide clubs, beer stores, restaurants and hotels where food is prepared and served for consumption on the premises. On-sale 3.2 percent liquor licenses shall permit the sale of beer for consumption on the premises only.

F. "Off-Sale 3.2 Percent Malt Liquor License." Off-sale 3.2 percent malt liquor licenses shall permit the sale of beer at retail, in the original package, for consumption off the premises only.

G. "Cocktail Room License." Cocktail room licenses shall be issued only in accordance with Minnesota Statutes Section 340A.22, Subdivision 2.

H. "Brew Pub License." Brew pub licenses shall be issued only in accordance with Minnesota Statutes Section 340A.24.

I. "Brewer Taproom License." Brewer taproom licenses shall be issued only in accordance with Minnesota Statutes Section 340A.26.

J. "Temporary On-Sale 3.2 Percent Malt Liquor License." The city council may issue a temporary on-sale license for the sale of 3.2 percent malt liquor to a club, charitable religious or nonprofit organization. The temporary license shall be subject to such terms and conditions as the council shall subscribe. Except where specifically excluded, applicants for temporary licenses shall be subject to the provisions of this chapter.

K. "Temporary On-Sale Liquor Licenses." The city council may issue to: (1) a club or charitable religious or other nonprofit organization in existence for at least three years, (2) a political committee registered under Minnesota Statutes Section 10A.14 or (3) a state university, a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the licensee. a temporary license for the on-sale of intoxicating liquor in connection with a social event within the city sponsored by the licensee. The license may authorize the on-sale of intoxicating liquor for not more than four consecutive days, and may authorize on-sales on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full year on-sale liquor license issued by the city. The licenses are subject to

the terms, including license fee, imposed by the city. The licenses issued under this section are subject to all laws and ordinances governing the sale of intoxicating liquor except Minnesota Statutes Sections 340A.409 and 340A.504, Subdivision 3, Paragraph (d), and the laws and ordinances which by their nature are not applicable. Temporary licenses must first be approved by the Minnesota Commissioner of Public Safety before they become valid. No more than three 4-day, four 3-day, or six 2-day temporary licenses, in any combination not to exceed twelve days per year, may be issued for the sale of alcoholic beverages to any one organization or registered political committee, or for any one location, within a twelve month period. Not more than one temporary license may be issued to any one organization or registered political committee, or for any one location, within any thirty day period.

## **Sec. 4-5. License Application.**

### **Sec. 4-5-1. Contents of Initial Application.**

In addition to the information which may be required by the forms of the Minnesota Commissioner of Public Safety, the applicant shall complete the application forms furnished by the city.

### **Sec. 4-5-2. Renewal Applications.**

A. License Period, Expiration. Each renewal license shall be issued for a maximum period of one (1) year. All licenses expire on April 1 of each year.

B. Time of Making Application. Applications for the renewal of an existing license shall be made at least sixty (60) days prior to the date of the expiration of the license, and shall state that everything in the prior applications remains true and correct except as otherwise indicated.

### **Sec. 4-5-3. Execution of Application.**

If the application is by a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by a partnership, by one of the partners; if by an unincorporated association, by the operating officer or managing officer thereof. If the applicant is a partnership, the application, license and bond or insurance policy shall be made and issued in the name of all partners. It shall be unlawful to make any false statement in an application. Applications shall be filed with the city clerk.

## **Sec. 4-6. Granting Licenses.**

### **Sec. 4-6-1. Investigation.**

At the time of making an initial application, renewal application, or request for a new operating officer, the applicant shall, in writing, authorize the Edina Police Department to investigate all facts set out in the application and do a personal background and felony criminal record check on the applicant. The applicant shall further authorize the Police Department to

release information received from such investigation to the city council. Should the city council deny the applicant's request for a license due, partially or solely, to the applicant's prior conviction of a crime, the city council shall notify the applicant in writing of the following information:

- A. The grounds and reasons for the denial;
- B. The applicable complaint and grievance procedure as set forth in Minnesota Statutes Section 364.06;
- C. The earliest date the applicant may reapply for a license; and
- D. That all competent evidence of rehabilitation will be considered upon reapplication.

**Sec. 4-6-2. Hearing Requirements.**

A. Notice of Hearing. Upon receipt of the written report and recommendation by the police department, and within twenty (20) days thereafter, the clerk shall cause to be published in the official newspaper ten (10) days in advance, a notice of hearing to be held by the council, setting forth the date, time and place when the hearing will be held, the name of the applicant, the premises where the business is to be conducted, the nature of the business and such other information as the council may direct.

B. Conduct of Hearing. At the hearing, opportunity shall be given to any person to be heard for or against the granting of the license.

C. Hearing on Renewal Applications. Hearings are not required on renewal applications.

D. Hearing Cost. The cost of all hearings shall be borne by the applicant.

E. Exempt From Hearings. The provisions of this section shall not apply to applications for: on-sale wine licenses, on- sale and off-sale 3.2 percent malt liquor licenses, or temporary licenses.

**Sec. 4-6-3. Granting License.**

After an investigation and hearing, if required, the council shall grant with or without conditions or deny the application.

**Sec. 4-6-4. Issuance.**

A. Issuance. Each license shall be issued to the applicant only. No license may be transferred to another person or to another place without the approval of the council and without a new application having been filed.

B. Exact Location and Size. Except in the case of a golf course, licenses shall only be issued to a space that is compact and contiguous. Each license shall be issued only for the exact rooms and square footage described in the application.

C. Changes to Building. Proposed enlargement, substantial alteration which, in the city's opinion, changes the character of the establishment or extension of premises previously licensed shall be reported to the clerk at or before the time application is made for a building permit for any such change. The enlargement, substantial alteration or extension shall not be allowed for the sale or consumption of alcoholic beverages unless the council approves an amendment to the liquor license.

#### **Sec. 4-6-5. Report to State.**

The clerk shall, within ten (10) days after the issuance of any license under this chapter, submit to the Minnesota Commissioner of Public Safety the full name and address of each person granted a license, the true name, the effective license date, and the date of expiration of the license. He/she shall also submit to the Commissioner of Public Safety any change of address, transfer, cancellation or revocation of any license by the council during the license period.

#### **Sec. 4-7. License Fees.**

##### **Sec. 4-7-1. Fees Established.**

A. Application Fees. The annual license application fee shall be the amount set forth in Section 2-724. When a new wine license or on-sale intoxicating liquor license is issued for a portion of a year, the annual license application fee shall be prorated at the rate of one-twelfth (1/12) of the license fee per month or portion of a month remaining in the license year at the time of application.

B. Investigation Fees. Investigation fees shall be as follows:

1. At the time of each original application for a license, the applicant shall pay the applicable investigation fees. For investigations conducted outside of the state, the city may recover the actual investigation costs if the costs exceed the applicable fees. Any fees due in excess of the in state investigation fee must be paid prior to the license hearing and before the city council considers the application.
2. At the time an additional investigation is required because of a change in the ownership of any license or control of a corporate license, or because of a transfer from place to place, the licensee shall pay an additional investigation fee equal to a fee for a new license.
3. At any time that an additional investigation is required because of an enlargement, substantial alteration which, in the city's opinion, changes the character of the

establishment, or extension of premises previously licensed, the licensee shall pay an additional investigation fee equal to a fee for a new license.

#### **Sec. 4-7-2. Payment of Fees.**

The license fee for a new license shall be paid in full before the application for the license is accepted. The annual license fee for the renewal of an existing license shall be paid prior to the expiration of the existing license.

#### **Sec. 4-7-3. Refunds.**

No part of the fee paid for any license shall be refunded, except (1) as authorized under Minnesota Statutes Section 340A.408, (2) upon rejection of any application for reasons other than a willful misstatement in the license application, or (3) upon withdrawal of an application before approval of the issuance by the council. The license fee shall be refunded to the applicant. The investigation fee shall not be refunded.

#### **Sec. 4-7-4. Change of Ownership; Exception.**

Where a new application is filed as a result of incorporation by an existing licensee and the ownership control and interest in the license are unchanged, no additional investigation fee will be required.

#### **Sec. 4-8. Conditions of License.**

##### **Sec. 4-8-1. Compliance with Laws.**

A. City and State Laws. Every license shall be granted subject to the conditions of this chapter and of any other applicable ordinance of the city and/or state law.

B. Area of License. No license shall be effective beyond the areas approved in the license for which it was granted.

##### **Sec. 4-8-2. License Year.**

All liquor licenses shall expire on April 1.

##### **Sec. 4-8-3. Posting License.**

The license shall be posted in a conspicuous place in the licensed establishment at all times.

##### **Sec. 4-8-4. Alcohol Awareness Training.**

A. Within thirty (30) days following the issuance of a new wine license or a new on-sale intoxicating liquor license, not less than seventy-five percent (75%) of the employees

authorized to serve or sell wine or liquor on the licensed premises shall have completed an alcohol awareness program approved by the police chief.

B. Not less than seventy-five percent (75%) of the employees authorized to serve or sell wine or liquor on the licensed premises must complete an alcohol awareness program approved by the police chief within ninety (90) days prior to an application for license renewal for a wine license or an on-sale intoxicating liquor license.

#### **Sec. 4-8-5. Responsibility of Licensee; Hours, Orderly Conduct.**

Every licensee shall be responsible for the conduct of his place of business including conduct and activity of the premises attributable to the business.

#### **Sec. 4-8-6. Hours of Operation.**

The provisions of Minnesota Statutes Section 340A.504 with reference to the hours of sale are hereby adopted and made a part of this chapter as if fully set out herein. Malt liquor in growlers may also be sold at off-sale on Sunday after 8:00 A.M. Persons other than employees of the licensee may not be in the premises from thirty (30) minutes after the sale of malt liquor or intoxicating liquor is prohibited until thirty (30) minutes before the sale is permitted.

#### **Sec. 4-8-7. Beverage Restrictions.**

A. No intoxicating liquor shall be sold or furnished or delivered to any obviously intoxicated person, to any known habitual drunkard, to any minor, or to any person to whom sale is prohibited by state law.

B. No person shall give, sell, procure or purchase intoxicating liquor to or for any person to whom the sale of intoxicating liquor is forbidden by law.

#### **Sec. 4-8-8. Display of Liquor.**

No "on-sale" liquor establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

#### **Sec. 4-8-9. Prohibited Conditions.**

A. Prostitution. No licensee shall knowingly permit the licensed premises or any room in those premises or any adjoining building directly under his control to be used for prostitution.

B. Controlled Substances. No licensee shall knowingly permit the sale, possession or consumption of controlled substances on the licensed premises in violation of Minnesota Statutes Chapter 152.

C. Gambling Prohibited. Gambling is prohibited in licensed premises.

D. Adult Entertainment. The findings, purpose and objectives of Article IX of Chapter 12 are hereby incorporated by reference. No licensee shall permit any specified sexual activities, the presentation or display of any specified anatomical areas or the conduct of a sexually oriented business all as defined by Chapter 36 on the licensed premises or in areas adjoining the licensed premises where such activities or the conduct of such a business can be seen by patrons of the licensed premises.

#### **Sec. 4-8-10. Right of Inspection.**

A. Premises. Any police officer, building inspector or any properly designated officer or employee of the city shall have the unqualified right to enter, inspect and search the premises of any licensee hereunder at any time without a warrant.

B. Records. The business records of the licensee, including federal and state tax returns, shall be available for inspection by the city at all reasonable times upon written request.

#### **Sec. 4-8-11. Continued Validity of License.**

A. The licensed premises must be operated and managed by the licensee. The licensee may not allow a prospective or actual buyer to manage or operate the premises until that person is licensed.

B. Licenses issued to corporations shall be valid only so long as there is no change in the officers or ownership interest of the corporation, unless such change is approved by the council, in which event said license shall continue in force until the end of the then current license year. The requirements concerning changes in officers or ownership interest in the corporation do not apply to corporations whose stock is traded on the New York or American Stock Exchanges.

C. Licenses issued to associations or partnerships shall be valid only so long as there is no change in the partnership or association agreement or in the ownership of said partnership or association unless such change is approved by the council, in which event said license shall continue in force until the end of the then current license year.

D. Licensees shall submit written notice to the clerk of any such changes described herein on or before thirty (30) days prior to the effective date of any such change. Notwithstanding the definition of "interest" as given in this chapter in the case of a corporation, the licensee shall notify the clerk when a person not listed in the application acquires an interest which, together with that of a spouse, parent, brother, sister or child, exceeds five percent (5%) interest in the corporation and shall give all information about said person as is required of a person pursuant to the provisions of this chapter.

E. Corporations holding licenses shall submit written notice to the city clerk of any change in operating officers at least thirty (30) days prior to the effective date of such change. The written notice shall designate the new operating officer and shall contain all of the information

about said person as is required of a single applicant. The new operating officers shall be subject to the investigation required by section 4-6-1 of this chapter. Investigation fees shall be as determined by the city council pursuant to subsection 4-7-1B of this chapter.

F. The designation of a new operating officer shall not cause the corporation's license to become invalid before a decision is rendered by the city council, provided proper notice and application are made pursuant to subsection E of this section. A proposed new operating officer shall be referred to as the interim operating officer. In the event an interim operating officer is rejected by the city council, the corporation shall designate another interim operating officer and make the required application within fifteen (15) calendar days of the council's decision. In that event, a corporation shall be limited to two (2) successive interim operating officers.

#### **Sec. 4-8-12. Patio.**

A. The issuance of an "on-sale liquor", "special club intoxicating liquor", "on-sale wine", or "on-sale 3.2 percent malt liquor" license pursuant to this code will be limited to the sale and consumption of alcoholic beverages inside of a structure on the licensed premises, unless the licensee applies for and receives approval from the city council for a patio to allow the sale and consumption outside of a structure on the licensed premises.

B. Definition. "Patio" means any outdoor area located on the premises used for serving food or alcohol but does not include a golf course.

C. Regulations:

1. The patio shall not be enclosed in such a manner that the space becomes an indoor area as defined by Minnesota Statutes Section 144.413.
2. The patio shall be clearly delineated by an approved fence at least thirty- six inches (36") in height or some other approved structure or barrier that has designated openings for ingress or egress, to prevent the ingress or egress of persons to and from the patio except by way of the designated openings for ingress or egress. Such patios shall be considered compact and contiguous.
3. Patio screening may be required if the premises is adjacent to a residential district, consistent with the fencing/screening/landscaping provisions of this code.
4. The premises shall be in compliance with the parking provisions of this code.
5. The patio shall have sufficient vehicle barriers installed to reduce the entry of vehicles into the patio if it is in direct contact with or immediately adjacent to a vehicle parking area or street.
6. The patio shall be in compliance with the noise amplification, lighting, sign, and sidewalk cafe requirements of this code.

D. Application; Site Plan. The application shall contain a detailed description and site plan of the entire premises including the following: size and seating capacity of the licensed building; proposed patio size and seating capacity including table, chair, and aisle arrangements; and fence or landscape barrier type and height.

## **Sec. 4-9. Security.**

### **Sec. 4-9-1. Liability Insurance.**

All applicants for any type of intoxicating liquor, 3.2 percent malt liquor, or wine license, must, as a condition to the issuance of the license, maintenance of the license and renewal of the license, demonstrate proof of financial responsibility with regard to liability imposed by Minnesota Statutes, Section 340A.801 to the city. The minimum requirements for proof of financial responsibility are set forth in Minnesota Statutes Section 340A.409. The sale of alcohol is prohibited if the required insurance is not in effect.

### **Sec. 4-9-2. Terms of Insurance Certificate.**

Certificates of insurance required by section 4-9-1 of this chapter shall provide that the city must be given ten (10) days' advance written notice of the cancellation of any insurance described in the certificate.

## **Sec. 4-10. Public Character of Liquor Sales.**

No sales of intoxicating liquor shall be made to or in guestrooms of hotels unless the rules of such hotel provide for the service of meals in guestrooms; nor unless the sale of such intoxicating liquor is made in the manner "on-sales" are required to be made; nor unless such sale accompanies and is incidental to the regular service of meals to guests therein; nor unless the rules of such hotel and the description, location and number of such guestrooms are fully set out in the application for a license.

## **Sec. 4-11. Persons Ineligible for License.**

A. State Law. No license shall be granted to or held by any person made ineligible for such a license by state law.

B. Operating Officer. No license shall be granted to a corporation that does not have an operating officer who is eligible pursuant to the provisions of this chapter.

C. Real Party In Interest. No license shall be granted to a person who is the spouse of a person ineligible for a license pursuant to the provisions of subsections A and B of this section or who, in the judgment of the council, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license.

D. "Interest" Defined. The term "interest" as used in this section includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor

establishment, but does not include: bona fide loans; bona fide fixed sum rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; or an interest of ten percent (10%) or less in any corporation holding a city liquor license. A person who receives monies from time to time directly or indirectly from a licensee in the absence of a bona fide consideration therefor and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such retail license. In determining "bona fide", the reasonable value of the goods or things received as consideration for the payment by the licensee and all other facts reasonably tending to prove or disprove the existence of any purposeful scheme or arrangement to evade the prohibitions of this section shall be considered.

E. **Outstanding Debts.** No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the city or of the state are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Chapter 278 Minnesota Statutes, questioning the amount or validity of taxes, the council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one year period is extended through no fault of the licensee.

## **Sec. 4-12. Restrictions Involving Persons Under the Legal Drinking Age.**

### **Sec. 4-12-1. Prohibited Acts.**

A. **No Sale To Persons Under The Legal Drinking Age.** No licensee, agent or employee shall serve or dispense upon the licensed premises any intoxicating liquor or 3.2 percent malt liquors to a person under the legal drinking age; nor shall such licensee, or his/her agent or employee, permit any such person to be furnished or consume any such liquors on the licensed premises; nor shall such licensee, his/her agent or employee, permit any such person to be delivered any such liquors.

B. **Delivery To Persons Under The Legal Drinking Age.** No persons under the legal drinking age shall receive delivery of intoxicating liquor.

### **Sec. 4-12-2. Misrepresenting Age.**

No person under the legal drinking age shall misrepresent his/her age for the purpose of obtaining intoxicating liquor or 3.2 percent malt liquor, nor shall he/she enter any premises licensed for the retail sale of intoxicating liquor or 3.2 percent malt liquor for the purpose of purchasing or having served or delivered to him/her for consuming any such intoxicating liquor or 3.2 percent malt liquor, nor shall any such person purchase, attempt to purchase, consume or have another person purchase for him/her any intoxicating liquor or 3.2 percent malt liquor, except that a person under the age of twenty-one (21) years may purchase or attempt to purchase an alcoholic beverage if under the supervision of a responsible person over the age of twenty-one (21) for training, education, or research purposes.

### **Sec. 4-12-3. Identification Requirements:**

A. Identification Required. Any person shall, upon demand of the licensee, his/her employee or agent, produce and permit to be examined (1) a valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person, (2) a valid military identification card issued by the United States Department of Defense, (3) a valid passport issued by the United States, (4) a valid instructional permit issued under Minnesota Statutes section 171.05 to a person of legal age to purchase alcohol which includes a photograph and the date of birth of the person issued the permit, or (5) in the case of a foreign national, a valid passport.

B. Prima Facie Evidence. In every prosecution for a violation of the provisions of this section 4-12 relating to the sale or furnishing of intoxicating liquor or 3.2 percent malt beverages to persons under the legal drinking age, and in every proceeding before the council with respect thereto, the fact that the person involved has obtained and presented to the licensee, his/her employee or agent, a driver's license, passport, or nonqualification certificate issued by the department of public safety, from which it appears that said person was not under the legal drinking age and was regularly issued such identification card, shall be prima facie evidence that the licensee, his/her agent or employee is not guilty of a violation of such a provision and shall be conclusive evidence that a violation, if one has occurred, was not willful or intentional.

### **Sec. 4-13. Revocation or Suspension of License.**

#### **Sec. 4-13-1. Grounds for Suspension or Revocation.**

The council may suspend or revoke any license for the sale of intoxicating or 3.2 percent malt liquor for any of the following reasons:

A. False or misleading statements made on a license application or renewal, or failure to abide by the commitments, promises, or representations made to the city council.

B. Violation of any special conditions (e.g., restrictions on entertainment) under which the license was granted, including, but not limited to, the timely payment of real estate taxes, and all other charges.

C. Violation of any state or federal law regulating the sale of intoxicating liquor, 3.2 percent malt liquor, or controlled substance.

D. Creation of a nuisance on the premises or in the surrounding area.

E. That the licensee suffered or permitted illegal acts upon the licensed premises or on property owned or controlled by the licensee adjacent to the licensed premises, unrelated to the sale of intoxicating liquor or 3.2 percent malt liquor.

F. That the licensee had knowledge of illegal acts upon or attributable to the licensed premises, but failed to report the same to the police.

G. Expiration or cancellation of any required insurance, or failure to notify the city within a reasonable time of changes in the term of the insurance or the carriers.

**Sec. 4-13-2. Presumptive Civil Penalties.**

A. Purpose. The purpose of this chapter is to establish a standard by which the council shall determine the length of license suspensions and the propriety of revocations. This chapter shall apply to all premises licensed under this chapter and the penalties herein shall be presumed to be appropriate. The council may deviate from the presumptive penalty when it finds that there exists extenuating or aggravating reasons to deviate, including, but not limited to a licensee’s efforts, in combination with the state or the city, to prevent the sale of alcohol to minors. When deviating from these standards, the council shall provide written findings supporting the penalty selected.

B. Hearing Notice. No sanction under this chapter shall take effect until the licensee has been given the opportunity for a hearing to be held in accordance with Minnesota Statutes Section 340A.415 and the Administrative Procedures Act Sections 14.57 to 14.69. The council may appoint a hearing examiner or may conduct a hearing itself. The hearing notice shall be given at least ten (10) days prior to the hearing, include notice of the time and place of the hearing, and state the nature of the charges against the licensee. For first violations, for which the presumptive penalty is a fine, the licensee may, at any time prior to the hearing, pay the fine and waive the right to a hearing.

C. Presumptive Penalties For Violations:

<i>Type of Violation</i>	<i>1st Violation</i>	<i>2nd Violation</i>	<i>3rd Violation</i>	<i>4th Violation</i>
Commission of a felony related to the licensed activity	Revocation	N/A	N/A	N/A
Sale of alcoholic beverages while license is under suspension	Revocation	N/A/	N/A/	N/A
Adult entertainment	Revocation	N/A/	N/A/	N/A
Sale of intoxicating liquor where only licensed for 3.2 percent malt liquor	Revocation	N/A/	N/A/	N/A
Refusal to allow city inspectors or police admission to inspect premises	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation	N/A
Sale of alcoholic beverages to underage	\$500.00 fine	\$1,000.00 fine and 3-	\$2,000.00 fine and 7-	Revocation

person		day suspension	day suspension	
After/before hours sale of alcoholic beverage	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
After hours consumption of alcoholic beverages	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Gambling or prostitution on premises	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Sale of alcoholic beverage to obviously intoxicated person	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Allowing a disorderly establishment	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Person under 18 serving liquor	\$500.00 fine	\$1,000.00 fine and 3-day suspension	\$2,000.00 fine and 7-day suspension	Revocation
Failure to display liquor license	Warning letter	\$500.00 fine	\$1,000.00 fine	\$1,500.00 fine

D. Other Penalties. When a violation of this chapter or an applicable statute, ordinance, or rule regarding alcoholic beverages is without a presumptive penalty, the penalty shall be determined by the council.

E. Multiple Violations. At a licensee's first appearance before the council, the council must act upon all of the violations that have been alleged in the notice sent to the licensee. The council shall consider the presumptive penalty for each violation under the first appearance column in this chapter. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the council's discretion.

F. Subsequent Violations. A violation occurring after the notice of hearing has been mailed, but prior to the hearing, must be treated as a separate violation and dealt with as a

second appearance before the council, unless the licensee agrees in writing to add the violation to the first appearance. The same procedure applies to the second, third or fourth appearance.

G. Subsequent Appearances. Upon a second or subsequent appearance before the council by the same licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the particular violation or violations that were the subject of the prior appearance. However, the council may consider the amount of time elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this chapter.

H. Computation of Violations.

1. Any violation which has occurred within twenty-four (24) months of the current violation shall be counted.

2. Nothing in this chapter shall restrict or limit the authority of the council to:

- a. Suspend a license up to sixty (60) days;
- b. Revoke the license;
- c. Impose a civil fee not to exceed \$2,000.00;
- d. Impose conditions on a license; or
- e. Take any other action in accordance with law;

provided that the licensee has been afforded an opportunity for a hearing in the manner provided under this chapter.

## **Sec. 4-15. Open House Parties.**

### **Sec. 4-15-1. Definitions.**

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcoholic beverage* means any beverage containing more than one-half of one percent of alcohol by volume.

*Control* means the right of possession of a residence or premises.

*Controlled substance* means any drug, substance or immediate precursor so defined in Minnesota Statutes § 152.01.

*Open house party* means a social gathering of persons at a residence or premises. A social gathering attended only by the owners, or those with rights of possession of the residence or premises, or their immediate family members, shall not be considered an open house party for purposes of this chapter.

*Person under the legal drinking age of 21 years* means a person not legally permitted by reason of age to possess alcoholic beverages pursuant to the provisions of this Code and state law.

*Residence or premises* means a home, apartment, condominium, hotel room, premises, or other dwelling unit or meeting room or hall, whether occupied on a temporary basis or permanent basis, whether occupied as a dwelling or for a social function, owned, rented, leased or under the control of any person or persons including the curtilage of such residence or premises.

**Sec. 4-15-2. Acts prohibited.**

No person having control of any residence or premises shall allow an open house party to take place at the residence or premises if any alcoholic beverage is possessed or consumed at the open house party by any person under the legal drinking age of 21 years or any controlled substance is possessed or consumed at the open house party.

**Section 2.** This ordinance is effective January 1, 2016.

First Reading:

Second Reading:

Published:

Attest:

\_\_\_\_\_  
Debra A. Mangen, City Clerk

\_\_\_\_\_  
James B. Hovland, Mayor

Please publish in the Edina Sun Current on:  
Send two affidavits of publication  
Bill to Edina City Clerk