



## REPORT/RECOMMENDATION

<b>To:</b> <b>MAYOR AND COUNCIL</b>	<b>Agenda Item</b> <b>Item No. <u>VIII. C.</u></b>
<b>From:</b> <b>Scott Neal</b>  <b>City Manager</b>	<input checked="" type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Discussion</b> <input type="checkbox"/> <b>Information</b>
<b>Date:</b> <b>February 21, 2012</b>	
<b>Subject:   Ordinance No. 2012-05 Amending Section 900 of Edina City Code Concerning Liquor</b>	

**ACTION REQUESTED:**

Approve first and second readings of Ordinance No. 2012-05 establishing penalties and enforcement criteria for compliance with the City’s liquor licensing standards and requirements.

**INFORMATION/BACKGROUND:**

With one exception, the penalties and enforcement criteria that are included in Ordinance No. 2012-05 have been previously approved by City Council by resolution. The City Attorney has recommended that the resolution (including its penalty matrix) be adopted by the City Council in the form of an ordinance. The City Attorney draft Ordinance No. 2012-05 for that purpose.

The only new penalty included in Ordinance No. 2012-05 that was not included in the previous penalty matrix resolution is the proposed penalty for violation of the City’s 60/40 food/liquor standard. The previous penalty matrix resolution did not include a penalty for that violation. Staff propose the following penalty for that violation:

**1<sup>st</sup> Violation:** \$500 fine; a six month probationary license; development of a plan to achieve compliance within one year, with a monitoring visit at 6 months where the Council may consider granting an additional six month probationary license if staff certify positive progress towards the full compliance goal.

**2<sup>nd</sup> Violation:** \$1,000 fine; a six month probationary license; development of a plan to achieve compliance within one year, with a monitoring visit at 6 months where the Council may consider granting an additional six month probationary license if staff certify positive progress towards the full compliance goal.

**3<sup>rd</sup> Violation:** Revocation and license holder is barred from holding future liquor licenses for a period of not more than twenty four months.

**RECOMMENDATION:**

The Council has had no previous discussion regarding the appropriateness of the proposed penalty. I would expect the Council to discuss, and possibly, amend it. However, it is important for the Council to adopt this ordinance at the February 21 Council meeting to allow it to be in place for the March 6 Council meeting, at which we expect the Council will be asked to address a violation of this nature.

**ATTACHMENTS:**

Draft Ordinance No. 2012-05

**ORDINANCE NO. 2012- 05  
AN ORDINANCE AMENDING THE EDINA CITY CODE  
CONCERNING LIQUOR**

**THE CITY OF EDINA ORDAINS:**

**Section 1.** Subsection 900.15 of the Edina City Code is amended to provide as follows:

**900.15 Sanctions for License Violations.**

Subd. 1 **Purpose.** The purpose of this Subsection is to establish a standard by which the Council shall determine the length of license suspensions and the propriety of revocations. This section shall apply to all premises licensed under this Section 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 of minors. When deviating from these standards, the Council shall provide written findings supporting the penalty selected.

Subd. 2 **Hearing Notice.** No sanction under this Subsection shall take effect until the licensee has been given the opportunity for a hearing has been held in accordance with M.S. 340A.415 and M.S. 14.57 to 14.69 of the Administrative Procedures Act. 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 license holder may, at any time prior to the hearing, pay the fine and waive the right to a hearing.

Subd. 3 **Presumed Penalties for Violations.**

<b>Type of Violation</b>	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd Violation</b>	<b>4th Violation</b>
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
Sale of an alcoholic beverage to a person under the State-established drinking age	\$1,000.00 fine and 6 day suspension	\$1,500.00 fine and 6 day suspension	\$2,000 fine and 12 day suspension	Revocation
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 person	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 and 7 day suspension	Revocation
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<b>Type of Violation</b>	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd Violation</b>	<b>4th Violation</b>
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 fine and 7 day suspension	Revocation
Illegal 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
Failure to meet requirement of 60% of gross receipts from sale of food and non-alcoholic beverages	\$500 fine; a six month probationary license; development of a plan to achieve compliance within one year, with a monitoring visit at 6 months where the Council may consider granting an additional six month probationary license if staff certify positive progress towards the full compliance goal.	\$1,000 fine; a six month probationary license; development of a plan to achieve compliance within one year, with a monitoring visit at 6 months where the Council may consider granting an additional six month probationary license if staff certify positive progress towards the full compliance goal.	Revocation and license holder is barred from holding future liquor licenses for a period of not more than twenty four months.	

Subd. 4 **Other Penalties.** When the penalty for violations of this Section or an applicable statute, ordinance, or rule regarding alcoholic beverages is without a presumptive penalty, the penalty shall be determined by the Council.

Subd. 5 **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 Subsection. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the Council's discretion.

Subd. 6 **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 Manager and licensee agree in writing to add the violation to the first appearance. The same procedure applies to the second, third, or fourth appearance.

Subd. 7 **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 Subsection.

Subd. 8 **Computation of Violations.** Violations are computed as follows:

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

B. Nothing in this Subsection shall restrict or limit the authority of the Council to suspend a license up to sixty (60) days, revoke the a license, impose a civil fee not to exceed \$2,000.00, to impose conditions on a license, or take any other action in accordance with law, provided that the license holder has been afforded an opportunity for a hearing in the manner provided under this Subsection.

**Section 2.** This ordinance is effective immediately upon its passage and publication.

First Reading: February 21, 2012

Second Reading: Waived

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