

**AN ORDINANCE TO AMEND CHAPTER 12:
BEERS AND LIQUORS OF THE KERKHOVEN CITY CODE**

The City of Kerkhoven does ordain:

Chapter 12, Sections 120.01 through 120.16, are hereby *amended* as follows:

**CHAPTER 12
120.00 ALCOHOLIC BEVERAGES**

120.01 Provisions of State Law Adopted. Except to the extent the provisions of this chapter are more restrictive, the provisions of Minnesota Statutes, Chapter 340A, as amended, regarding the terms, licensing, consumption, 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 adopted and made a part of this chapter as if set out in full.

120.02 Definitions.

Alcoholic Beverage. “Alcoholic beverage” is any beverage containing more than one-half percent alcohol by volume.

Restaurant/Supper Club. “Restaurant/Supper Club” is an establishment that serves food in or on non-disposable dishes to be consumed primarily while seated at tables or booths within the building.

Display. The term “Display” means the keeping, storing or permitting to be kept or stored of an alcoholic beverage which has been poured, dispensed or has had its package seal broken on, in or at any table, booth, bar or other area of a licensed premises accessible to the general public, except when the alcoholic beverage is stored in a normal storage area during non-sale hours.

Exclusive Liquor Store. “Exclusive liquor store” is an establishment used exclusively for the sale of those items authorized in Minnesota Statutes, Section 340A 412, subdivision 14.

Interest. The term “Interest” as used in this chapter includes any pecuniary interest in the ownership, operation, management or profits of a licensed premises.

Intoxicating Liquor. Ethyl alcohol, distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol weight.

Licensed Premises. The term “Licensed Premises” is the premises described in the approved license application.

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

On-Sale. “On-Sale” is the sale of alcoholic beverages for consumption on the licensed premises only.

Operating Manager. The term “Operating Manager” as used in this chapter means a person who is under the legal drinking age as provided by Minnesota States, Chapter 340A.

120.03 Licenses Required. No person, except as otherwise provided in Minnesota Statutes, Chapter 340A shall directly or indirectly deal in, sell, deep for sale or delivery any intoxicating liquor and/or 3.2 percent malt liquor as part of a commercial transaction without first having received a license to do so as provided in this chapter, nor shall any private club or public place, directly or indirectly, or upon any pretense or by any device,

allow the consumption or display of intoxicating liquor and/or 3.2 percent malt liquor or serve any liquid for the purpose of mixing the intoxicating liquor and/or 3.2 percent malt liquor without first obtaining a license from the city as provided in this chapter. The number of liquor licenses issued by the city is restricted by Minnesota Statutes, Section 340A.413.

120.04 Types of License. The licenses issued under this section are subject to all laws and ordinances governing the sale of liquor, including furnishing of a form of financial responsibility. The following types of licenses are issued under this chapter.

- (A) On-Sale Intoxicating Liquor License. On-Sale intoxicating liquor licenses shall be granted only to restaurants, supper clubs and exclusive liquor stores where food is prepared and served for consumption on the premises only and shall permit on sale of intoxicating liquor and 3.2 percent malt liquor.
- (B) Off-Sale Intoxicating Liquor License. Off-Sale intoxicating liquor licenses may be issued to an exclusive liquor store and shall permit off-sale of intoxicating liquor and 3.2 percent malt liquor.
- (C) On-Sale 3.2 Percent Malt Liquor License. On-sale 3.2 percent malt liquor licenses may be issued to restaurants and supper clubs where food is prepared and served for consumption on the premises only and shall permit on-sale 3.2 percent malt liquor.
- (D) Off-Sale 3.2 Percent Malt Liquor License. Off-sale 3.2 percent malt liquor licenses may be issued to general food stores and permit the sale of 3.2 percent malt liquor at retail in the original package for consumption off the premises only.
- (E) Temporary Licenses. Temporary on-sale 3.2 percent malt liquor licenses may be issued to a club or charitable, religious or nonprofit organization in existence for at least three (3) years. The license may authorize the on-sale of 3.2 percent malt liquor for not more than three (3) consecutive days, and may authorize on-sale of 3.2 percent malt liquor on premises other than premises the licensee owns or permanently occupies. The license may provide that the licenses may contract for 3.2 percent malt liquor with the holder of a full-year on-sale liquor license issued by the City. The licenses are subject to the terms, including the license fee, normally imposed by the City.
- (F) Restricted On-Sale Liquor License. Restricted on-sale intoxicating liquor licenses may be issued to a restaurant/supper club for the sale of beer and wine coolers only.

120.05 License Application.

- (A) Applications for a license required by this division shall be required upon initial application, upon renewed application and upon any change of ownership of business control of a licensed premise. Every application for a license to sell liquor shall be verified and filed with the City Clerk. It shall state the following:
 - 1. The name of the applicant;
 - 2. The age of the applicant;
 - 3. Representations as to the applicant's character, with such references as may be required;
 - 4. The applicant's citizenship;
 - 5. Whether the application is for on-sale or off-sale;
 - 6. The business in connection with which the proposed license will operate and its location;
 - 7. The nature of the business and its location on the property;
 - 8. Whether the applicant is owner and operator of the business;

9. How long the applicant has been in that business at that place; and
10. Such other information as the City Council may require from time to time.

In addition to containing such information, each application for a license shall be in a form prescribed by the liquor control commissioner. No person shall make a false statement in an application.

120.06 Renewal Application.

- (A) Applications for renewal of an existing license shall be made at least forty-five (45) days prior to the date of the expiration of the license, and shall state that everything in the prior application(s) remains true and correct except as otherwise indicated.
- (B) Renewal applications for an on-sale license for restaurant/supper clubs and exclusive liquor stores shall include a Certified Public Accountant statement showing totals of sales, food sale, liquor sales and percentage of total sales for the previous year. The City Council shall not renew the license unless at least forty (40) percent of the establishment's annual gross sales are from food prepared and served for consumption on the premises only.

120.07 Liability Insurance. All applicants for any liquor license or consumption and display permits must, as a condition to the issuance of the license, demonstrate proof of financial responsibility with regard to liability imposed by Minnesota Statutes, Section 340A. The minimum requirement for proof of financial responsibility may be given by filing a certificate of insurance providing coverage as required by state law.

State law references: Liability insurance, Minnesota Statutes, Section 340A.409.

120.08 License Fee and Term.

- (A) The annual fee for a liquor license shall be determined by the City Council and set by resolution subject to the provisions of Minnesota Statutes, Section 340A.408.
- (B) Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee. All fees shall be paid into the general fund. If an application for a license is rejected, the Treasurer shall refund the amount paid, except where the rejection is for a willful misstatement in the license application.
- (C) Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rate fee, with any expired fraction of a month being counted as one month. Every license shall expire January 1 of each year. (Amended by Ordinance adopted on November 28, 2005)
- (D) No refund shall be made except as authorized by Minnesota Statutes, Section 340A.408.

120.09 Investigations.

- (A) At the time of making an initial application, or renewal application, or request for a new manager, the application shall, in writing, authorize the city police department to investigate all facts set out in the application and do a personal background and criminal record check on the applicant and operating manager. The applicant shall further authorize the city police department to release information received from such investigation to the City Council.
- (B) 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 of the grounds and reasons for denial; the applicable complaint and grievance procedure as set forth

in Minnesota Statutes, Section 364.06; the earliest date the applicant may reapply for a license; and that all competent evidence of rehabilitation will be considered upon reapplication.

120.10 Hearing Required for New License. A public hearing for the issuance of a license for new premises, or for a different licensee at the same premises, shall be preceded by ten (10) days published notice and ten (10) days posted notice at City Hall and on the premises to be licensed. In addition, the public hearing for the issuance of a license for new premises shall also be preceded by ten (10) days mailed notice to all owners of property located within five hundred (500) feet of the boundaries of the property on which the business that is the subject of the application is located. A public hearing is not required for temporary license.

120.11 Information Considered for License Approval. The City Council shall consider the following in addition to conformity with state statutes and City Ordinances in determining whether a new or renewal license shall be granted:

- (A) The investigative and staff report submitted by the police department and City Clerk;
- (B) Information received through the public hearing process;
- (C) Whether the applicant has or will take affirmative action to minimize public safety problems commonly associated with on-sale liquor establishments including, but not limited to, DWI drivers, illegal sale to minors, disturbing the peace, et;
- (D) Any other relevant information.

120.12 License Approval. At the time a license is issued pursuant to this chapter or a consumption and display permit is approved, the City Council may attach special conditions to the approval based upon the nature of the business, the location of the business, and verified complaints, if any, to protect the health, safety, welfare and quietude of the community and ensure harmony with the location where the business is located. Violation of any of the conditions shall be grounds for revocation of the license.

120.13 License Conditions; Transferability.

- (A) Applicant. A license shall be issued to the applicant only, and no license shall be transferred except as provided in this chapter.
- (B) Premises. Each license shall be issued only for the exact rooms and square footage described in the application. A license is valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure.
- (C) Building Under Construction. When a license is granted for premises where the building is under construction or otherwise not ready for occupancy, the City Clerk shall not issue the license until notified by the Building Official that the building is ready for occupancy.
- (D) Death of Licensee. In the event of the death of a person holding a license, the personal representative of that person shall be allowed to continue to operate the business within the terms of the license for a period not to exceed ninety (90) days after the death of the licensee.

120.14 License Ineligibility.

- (A) State Law. No license shall be granted to or held by any person:

- (1) made ineligible by state law;
 - (2) who is a person under twenty-one (21) years of age;
 - (3) who is not a citizen of the United States or a resident alien;
 - (4) upon whom it is impractical to conduct a background and financial investigation due to the unavailability of information;
 - (5) who has had a 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 five percent of the capital stock of a corporation licensee, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested;
 - (6) who is not of good moral character and repute;
 - (7) who has a direct or indirect interest in a manufacturer, brewer or wholesaler; or
 - (8) who within five years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution or possession for sale or distribution of an alcoholic beverage and who cannot show competent evidence under Minnesota Statutes, Section 364.03 of sufficient rehabilitation and present fitness to perform the duties of a licensee.
- (B) Real Party in Interest. No license shall be granted to a person who is the spouse of a person ineligible for a license under this chapter or who, in the judgment of the City Council, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license.
- (C) Residency Requirement. A license will not be renewed if the applicant is not a resident of the state at the time of the date for renewal. The time for establishing residency within the state may, for good cause, be extended by the City Council.
- (D) Delinquent Taxes or Charges. No license shall be granted for operation on any premises on which state, city or county taxes, assessments or other financial claims of the state, city or county are delinquent and unpaid. Notwithstanding the foregoing, if the delinquent taxes, assessments or financial claims are against a landowner, and licensee is a tenant of landowner and has no financial interest in landowner, then the City Council may, in its discretion, but shall not be required to, grant a license to an applicant so long as the applicant is not delinquent on any taxes, assessments or financial claims as set forth herein.
- (E) Distance from School. No on-sale or off-sale intoxicating liquor license or on-sale or off-sale 3.2 percent malt liquor license may be granted within the same block of any school or within 500 feet of any school. The distance shall be measured from the freestanding parcel or lot upon which the business to be licensed is located or from the exterior wall of the approved area leased or owned by the business to be licensed within a shopping center to the nearest point of the parcel or lot upon which the school is located. The erection of a school within a prohibited area after the original license application has been granted shall not, in and of itself, render such premises ineligible for renewal of the license.

- (F) Federal Stamps. No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

120.15 License Suspension or Revocation. The City Council may suspend or revoke any license for the sale of intoxicating liquor or 3.2 percent malt liquor for any of the following reasons:

- (A) False or Misleading Statements. False or misleading statements made on a license application or renewal including, but not limited to, the timely payment of real estate taxes and all other charges.
- (B) Violation of Special Conditions. Violation of any special conditions 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 Law. Violation of any federal, state or local law regulating the sale of intoxicating liquor, 3.2 percent malt liquor or controlled substance.
- (D) Nuisance. Creation of a nuisance on the premises or in the surrounding area.
- (E) Illegal Acts Unrelated to Sale of Intoxicating Liquor. 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) Illegal Act Related to Sale of Intoxicating Liquor or 3.2 Percent Malt Liquor. 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) Insurance. 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.
- (H) Inactive License. The City Council may revoke the intoxicating liquor and/or 3.2 percent malt liquor license of any establishment granted a license that is not under construction and exhibiting satisfactory progress toward completion within six (6) months from its issuance, or any establishment that ceases operation for a period of six (6) months. A hearing shall be held to determine what progress has been made toward opening or reopening the establishment and, if satisfactory progress is not demonstrated, the City Council may revoke the license.
- (I) Hearing Notice. Revocation or suspension of a license by the City Council shall be preceded by public hearing conducted in accordance with Minnesota Statutes, Section 14.57 to 14.70. The City 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.

120.16 License Suspension and Revocation. The City Council may revoke any liquor license for violation of any statute or ordinance relating to the sale of liquor or may suspend the licensee for a period not exceeding sixty (60) days if revocation is not mandatory. The licensee shall be granted a hearing upon at least ten (10) days notice before revocation or suspension is ordered except where mandatory revocation is provided by law.

120.17 Retail Sales Regulations.

(A) Responsibility of Licensee.

- (1) *Orderly Conduct.* Every licensee shall be responsible for the conduct on the licensee's place of business including conduct and activity attributable to the business on property owned or controlled by the licensee. Every licensee shall also cooperate with the City in controlling activity attributable to the business in surrounding areas.
- (2) *Act of Employee.* The act of any employee in violation of this chapter on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable for all penalties provided by this chapter and other laws equally with the employee.

(B) Hours of Operation.

- (1) *Hours and Days of Sale.* Hours and days of sale shall be as allowed by state law. There shall be no consumption or display of intoxicating liquor or 3.2 percent malt liquor during the hours that sale is prohibited by state law.
- (2) *Non-employees on Premises.* A liquor licensee shall not allow non-employees on the business premises from thirty (30) minutes after the sale of intoxicating liquor and/or 3.2 percent malt liquor is prohibited until the sale is again permitted except as hereinafter provided. On-sale intoxicating liquor licensees and on-sale 3.2 percent malt liquor licensees may permit non-employees on the premises during its normal hours of operation when the sale of intoxicating liquor and 3.2 percent malt liquor is prohibited, provided, that there be no sale, consumption or display of intoxicating liquor and 3.2 percent malt liquor during the hours in which the sale or consumption of liquor is prohibited, and provided that the licensee has closed off all access to the bar area in a manner approved by the City.

(C) Posting License. All liquor licensees shall have the license posted in a conspicuous place that is visible to the public in the licensed establishment at all times.

(D) Building Changes. Proposed enlargement or substantial alteration which changes the character of the establishment or extension of premises previously licensed, shall be reported to the City Clerk at or before the time application is made for a building permit for any such change. The enlargement or substantial alteration shall not be allowed unless the City Council approves an amendment to the license.

(E) Restrictions Involving Underage Persons.

- (1) No licensee, his agent or employee shall serve or dispense upon the licensed premises any intoxicating liquor or 3.2 percent malt liquor to a person under the legal drinking age; nor shall such licensee, his agent or employee, permit any such person to be furnished or allowed to consume any such liquors on the licensed premises; nor shall such licensee, his agent or employee, permit any such person to be delivered any such liquors.
- (2) No person under the legal drinking age shall enter licensed premises for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of eighteen (18) years to enter licensed premises for the following purposes:

- (a) to perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute;
 - (b) to consume meals; and
 - (c) to attend social functions that are held in a portion of the establishment where liquor is not sold.
- (3) No person under the age of sixteen (16) shall enter licensed premises in any portion of the establishment where liquor is sold without a parent or guardian. No person between the ages of sixteen (16) and seventeen (17) shall enter licensed premises in any portion of the establishment where liquor is sold with a parent or guardian after the hour of 7:30 p.m.
- (4) *Misrepresenting Age.* No underage person shall misrepresent the person's age for the purpose of obtaining intoxicating liquor and/or 3.2 percent malt liquor, nor shall the person enter any premises licensed for the retail sale of intoxicating liquor and/or 3.2 percent malt liquor for the purpose of purchasing or having served or delivered any alcoholic beverage. Nor shall any such person purchase, attempt to purchase, consume or have another person purchase for the underage person any intoxicating liquor and/or 3.2 percent malt liquor.
- (5) *Identification Requirements.*
 - (a) *Identification Required.* Any person shall, upon demand of the licensee, employee or agent, produce and permit to be examined one of the forms of identification provided under Minnesota Statutes, Section 340.503, subdivision 6.
 - (b) *Prima Facie Evidence.* In every prosecution for a violation of the provisions of this section relating to the sale or furnishing of intoxicating liquor and/or 3.2 percent malt liquor beverages to underage persons and in every proceeding before the City Council with respect thereto, the fact that the underage person involved has obtained and presented to the licensee, his employee or agent, a driver's license, passport or identification card from which it appears that said person was not an underage person and was regularly issued such identification card, shall be prima facie evidence that the licensee, his 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.
- (F) Employment of Person Under Eighteen Years of Age. No person under eighteen (18) years of age may serve or sell intoxicating liquor and/or 3.2 percent malt liquor in a retail liquor establishment, or work in any portion of the establishment where liquor is sold.
- (G) Prohibited Conditions.
 - (1) *Prostitution.* No licensee shall knowingly permit the licensed premises or any room in those premises or any adjoining building directly under the licensee's control to be used by prostitutes.
 - (2) *Controlled Substances.* No licensee shall knowingly permit the sale, possession or consumption of controlled substances on the licensed premises in violation with state law.

- (3) *Gambling.* Gambling and gambling devices are permitted on licensed premises as allowed by state law and city law.
- (H) Ownership of Equipment. No equipment or fixture in any licensed place shall be owned in whole or in part by any manufacturer or distiller, except such as shall be expressly permitted by state law.
- (I) Display of Liquor. No on-sale liquor establishment shall display liquor to the public during the hours when the sale of liquor is prohibited.

120.18 Violations and Penalties.

- (A) Any person, firm or corporation who violates any provisions of this chapter for which another penalty is not specifically provided by Minnesota Statutes shall, upon conviction, be guilty of a misdemeanor.

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