

CHAPTER 5. BEER AND LIQUOR LICENSING AND REGULATION

Section 500 - GENERAL REGULATIONS CONCERNING BEER & LIQUOR LICENSING

Section 500 GENERAL PROVISIONS

500.01 Provisions of State Law Adopted. The provisions of Minnesota Statutes Chapter 340A, as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, financial responsibility of licensees, hours and days of sale, and all other matters pertaining to the retail sale, production, distribution, and consumption of alcoholic beverages are adopted and made part of this chapter as if set out in full. 500.02 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 nontransparent 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, brewer taproom, small brewer, or 3.2% malt liquor license or the imposition of a civil penalty of up to the amount permitted under Minnesota Statutes Section 412.231.

Section 510 SALE AND CONSUMPTION OF INTOXICATING LIQUOR

510.01 License Required.

- (A) 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 alcoholic beverage without a license to do so as provided in this subchapter.
- (B) The Council may authorize the issuance of the following types of licenses: brewer taproom, small brewer, on-sale intoxicating liquor, on-sale wine, on-sale 3.2% malt liquor, off-sale intoxicating liquor, off-sale 3.2% malt liquor, Sunday intoxicating liquor, club licenses and temporary malt liquor licenses.
- (C) On-sale licenses permit the sale of alcoholic beverages for consumption on the licensed premises only. On-sale license shall be issued only to, restaurants whose gross food and beverage receipts of the restaurant are at least fifty-one percent (51%) attributable to the sale of food. For the purpose of this section, "sale of food" shall include gross receipts attributable to the sale of food items, soft drinks and nonalcoholic beverages. It shall not include any portion of gross receipts attributable to the nonalcoholic components of plain or mixed alcoholic beverages, such as ice, soft drink mixes or other mixes. The licensee shall submit to the city a copy of the verified state of Minnesota, department of revenue sales and use tax return on an annual basis or as requested. The city may obtain its own audit or review of such documents or information, and all licensees shall cooperate with such a review, including prompt production of requested records.
- (D) On-sale wine licenses may be issued to restaurants having facilities for seating at least 25 guests at one time and to licensed bed and breakfast facilities under the conditions specified in Minnesota Statutes 340A.404, Subdivision 5, as it may be amended from time to time. A wine license permits the sale of wine of up to 14% alcohol by volume for consumption with the sale of food. The holder of a wine license who is also holder of an on-sale 3.2% malt liquor license and whose gross receipts are at least 51% attributable to the sale of food may sell intoxicating malt liquor at on-sale without an additional license.
- (E) Off-sale licenses permit the sale of alcoholic beverages in original packages for consumption off the licensed premises only. Off-sale licenses may be issued only to drug stores and exclusive liquor stores.
- (F) A club license may be issued only to clubs or congressionally chartered veterans' organizations which have been in existence for at least three years.
- (G) (1) A special license authorizing sales of intoxicating liquor on Sunday in conjunction with the serving of food may be issued to any hotel, restaurant, bowling center or club which has facilities for seating at least 30 guests at one time, and which has an on-sale license.

(2) A restaurant, or club, with a seating capacity for at least 30 persons 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 10:00 a.m. and 11:00 p.m. on Sundays.

(3) To the extent permitted by the Zoning Ordinance, a restaurant, as defined in Minnesota Statutes Chapter 340A, with seating capacity for at least 30 persons that operates at the place of malt liquor manufacturing may be issued an on-sale intoxicating liquor or 3.2% malt liquor license for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. and 11:00 p.m. on Sundays and 1:00 a.m. on Mondays.

(H) A temporary on-sale license to sell malt liquor may be issued to a club or charitable, religious or nonprofit organization.

(I) A brewer taproom license may be issued to any brewer for on-sale consumption of the malt liquor manufactured at the adjoining brewery pursuant to the requirements of Minnesota Statutes Chapter 340A, and specifically Minnesota Statutes 304A.301, Subdivision 6(b) and Subdivision 7(b), but only to the extent permitted by the city code and Zoning Ordinance, and only during the hours permitted for on-sale intoxicating liquor consumption.

(J) A small brewer license may be issued to any brewer for off-sale retail purchases of the malt liquor manufactured at the adjoining brewery pursuant to the requirements of Minnesota Statutes Chapter 340A, and specifically Minnesota Statutes 304A.301, Subdivision 6(d), but only to the extent permitted by the city code and Zoning Ordinance. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the city.

(K) No license shall be issued until the applicant can provide sufficient evidence to the satisfaction of the city that the applicant has complied with the requirements of state law, city code, and the Zoning Ordinance.

510.02 Issuance of License.

(A) Each application shall be in the form prescribed by the Commissioner of Public Safety. The application shall state, in addition to any other information required by the Council, the name of the applicant, the age of the applicant, representations as to the character of the applicant with any references as the Council may require, the citizenship of the applicant, the type of license applied for, the business in connection with which the proposed license would be issued and its location, whether the applicant is owner and operator of the business, and how long the applicant has been in that business at that location. Every application for issuance or renewal of a license shall also include a copy of each summons received by the applicant under Minnesota Statutes § 340A.802, as it may be amended from time to time, during the previous year.

(B) On the initial application for an on-sale intoxicating liquor license or an application for a transfer of an existing on-sale intoxicating liquor license, the city shall conduct a preliminary background and financial investigation of the applicant. If the Council, or the Commissioner on the Commissioner's own initiative, determines that a comprehensive background investigation of the applicant is necessary, the Council may conduct the investigation itself or contract with the Commissioner for the investigation. In addition, an investigation may be required prior to renewal of an existing on-sale-license, when the Council deems it in the public interest. An investigation fee, as set forth in the fee schedule, shall be charged an applicant by the city if the investigation is conducted within the state, or the actual cost, not to exceed \$10,000, if investigation is required outside the state. No license shall be issued, transferred or renewed if the results of the investigation show, to the satisfaction of the Council, that issuance, transfer or renewal would not be in the public interest.

(C) Prior to approving an application for issuance of a license, the Council shall provide an opportunity for interested persons to speak for or against issuance of the license. After full consideration of all relevant factors, including results of the investigation conducted pursuant to division (B) above and the comments of interested persons, the Council shall decide whether or not to approve the application and issue the license.

(D) No on-sale wine license or off-sale intoxicating liquor license shall become effective until approved by the Commissioner of Public Safety.

(E) Each license shall be issued only to the applicant and only for the premises described in the application. A license may not be transferred without the prior approval of the Council. Where a license is held by a corporation, a change in the ownership of 10% or more of the stock of the corporation must be reported in writing to the Council within ten days after the transfer.

510.03 Financial Responsibility. No license under this subchapter may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility as required by Minnesota Statutes 340A.409, as it may be amended from time to time. Proof of financial responsibility shall be filed with the Commissioner of Public Safety. Unless otherwise specified by the Council or Commissioner of Public Safety, the minimum requirements for proof of financial responsibility specified in Minnesota Statutes 340A.409, Subdivision 1, as it may be amended from time to time, shall be sufficient. Operation of a licensed business without having on file with the city at all times effective security as required in this section is cause for revocation or suspension of the license.

510.04 License Fees.

(A) The annual fee for each type of license granted under this subchapter shall be fixed from time to time by resolution of the City Council.

(B) Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee and the fixed investigation fee required under Section

510.02, if any. All fees shall be paid into the General Fund. If an application for a license is rejected, the Treasurer shall refund the amount paid as the license fee but shall not be required to refund the investigation fee.

(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 rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on the last day of March.

(D) No refund of any fee shall be made except as authorized by statute.

510.05 Ineligibility.

(A) No license may be issued to a person who, by state or federal law, is made ineligible to receive a license. No more than one off-sale intoxicating liquor license may be directly or indirectly issued to any one person or for any one place in the city.

(B) No license may be issued for any place which, under state or federal law, is made ineligible for the 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.

510.06 Conditions of License.

(A) Every license is subject to the conditions of this section, all other provisions of this subchapter, and of any other applicable ordinances, state laws or regulations.

(B) Continuing compliance with the financial responsibility requirements of state law and of this subchapter is a condition of any license granted pursuant to this subchapter.

(C) Every licensee is responsible for the conduct in the licensed establishment, and any sale of alcoholic beverages by any employee authorized to sell the beverages in the establishment is the act of the licensee.

(D) Every licensee shall allow any peace officer, health officer, or properly designated office or employee of the city to enter, inspect, and search the premises of the licensee during business hours without a warrant.

(E) No on-sale establishment shall display liquor to the public during hours when the sale of intoxicating liquor is prohibited.

(F) It shall be unlawful for any licensee to permit or allow any person or persons from being on the licensed premises when the person does not have his or her buttocks, anus, breasts and genitals covered with a non-transparent material.

(G) No gambling or gambling device shall be permitted on any licensed premises, except such as are licensed under the City Code 600.19.

(H) Non-temporary On-sale licenses shall be granted only to bona fide restaurants and clubs.

(I) The licensee shall erect and maintain such sound barriers as is necessary to preserve the quietude of the surrounding neighborhood, and be in compliance with the regulations of Minnesota administrative rules chapter 7030.

(J) The licensee shall have adequate parking to serve the premises, and shall erect and maintain an appropriate screening barrier to reduce the view and to preserve the quietude of neighboring parcels.

(K) The licensee shall be responsible for enforcing areas on the premises reserved for smoking, which must be in compliance with state law, and shall be further responsible for patrons using public areas for smoking as to noise and conduct.

510.061 Patios and Outdoor Entertainment. "Patio" means any outdoor area located on the premises used for serving food or alcohol. "Outdoor entertainment" shall mean entertainment outside an enclosed building including shows, plays, skits, musical revues, children's theater, dance productions, musical concerts, opera and the production or provision of sights or sounds or visual or auditory sensations which are designed to or may entertain.

(A) The issuance of a non-temporary on-sale license under this Chapter will be limited to the sale and consumption of alcoholic beverages inside of a structure on the licensed premises. Patios and Outdoor entertainment are prohibited on premises that have an "on-sale liquor", "special club intoxicating liquor", "on-sale wine", or "on-sale 3.2 percent malt liquor" license unless the Council authorizes a temporary permit for a Patio or Outdoor entertainment. No licensee shall receive more than two cumulative temporary Patio or Outdoor entertainment permits per calendar year. If the council allows Outdoor entertainment on a licensed premises, it may impose conditions to ensure the quietude, safety, and welfare of the premises' surrounding neighborhood and community.

(B) Any Patio seeking temporary permit under this section requires compliance with the following regulations:

(1) A Patio shall not be enclosed in such a manner that the space becomes an indoor area as defined by Minnesota state statute.

(2) The Patio shall be attached to the licensed premises and share at least one common wall with the licensed premises building in accordance with Minnesota state statute. The Patio shall not be part of a public street, sidewalk or other public grounds.

(3) Access to the Patio shall be directly from the licensed premises with no direct access other than emergency exits.

(4) The Patio shall be clearly delineated by an approved fence at least sixty inches (60") in height or some other approved structure or barrier that is compact and contiguous to prevent the ingress or egress of persons to and from the Patio.

(5) Panic and fire exit hardware shall be installed on the emergency exit gates that are equipped with latches and shall comply with the Minnesota building code.

(6) Patio screening may be required if the premises is adjacent to a residential district, consistent with the fencing/screening/landscaping provisions of this code.

(7) Noise from the Patio or Outdoor entertainment shall be in compliance with the regulations of Minnesota administrative rules chapter 7030, and shall not be allowed after 10:00 p.m.

(8) An employee of the licensed premises shall be present on the Patio during use or any Outdoor entertainment.

(9) Smoking shall not be allowed within 25 feet of any entrance or on a Patio at any time.

510.065 Hours and Days of Non-Intoxicating Malt Liquor Sales and Liquor Sales. No sale of nonintoxicating malt liquor nor intoxicating liquor shall be made except:

Between the hours of 10:00 a.m. & 10:45 p.m.	Sunday through Thursday
Between the hours of 10:00 a.m. & 12:15 a.m. the following day.	Fridays & Saturdays

Additionally, no sale of non-intoxicating malt liquor or intoxicating liquor shall be made between 8:00 o'clock p.m. on December 24 and 10:00 o'clock a.m. on December 25. In addition to the prohibitions set out in this section, there shall be no off-sale of nonintoxicating malt liquor or intoxicating liquor on Thanksgiving Day and December 25.

510.07 Consumption and Possession of Alcoholic Beverages on Streets, Public Property, and Private Parking Lots to Which the Public has Access. It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any (1) city park playground area, (2) street or highway, (3) sidewalk or (4) private parking lot to which the public has access, except on such premises or location when and where permission has been specifically granted or licensed by the Council. This section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of such vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk.

(A) For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

(B) For the purpose of this section, a Playground Area is the area within a city park designated for outdoor play or recreation, especially by children, and containing recreational equipment such as slides and swings.

510.08 Restrictions on Occupancy in Licensed Establishments.

(A) Neither the liquor licensee, the management, nor employees thereof shall permit any person to remain in any on-sale intoxicating liquor, brewer taproom, or 3.2% malt liquor establishment for more than 30 minutes after the closing hour of the establishment.

(B) The liquor licensee, management, and employees thereof are hereby excluded from the provisions of this section provided there are no customers in the establishment.

510.09 Suspension And Revocation.

(A) (1) The city shall either suspend for up to 60 days or revoke any license, or impose a civil fine of up to \$2,000, or impose any combination of these sanctions for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility, no suspension or revocation shall be imposed by either the City Council or the City Administrator until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, the same being Minnesota Statutes 14.57 through 14.70, as they may be amended from time to time. The penalties shall be imposed and administrated by the City Administrator. The civil penalty and/or suspension and revocation imposed pursuant to this section shall be based on the licensee's total number of violations at the specific location at which the violation occurred, within the preceding 36-month period as follows:

- (a) First violation: \$500;
- (b) Second violation: \$1,000, plus 2-day suspension of license;
- (c) Third violation: \$2,000, plus 10-day suspension of license;
- (d) Fourth violation: The license will be revoked.

(2) These penalties are presumed to be appropriate for every case; however, the city may deviate in an individual case where the city finds that there exists substantial reason making it more appropriate to deviate. When deviating from these standards, the city must provide written finding that supports the penalty.

(B) Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall affect an immediate suspension of any license issued pursuant to the subchapter without further action of the City Council. Notice of cancellation, lapse of a current liquor liability policy or bond, or withdrawal of the deposited cash or securities 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 withdrawal

of a required deposit, or of suspension or revocation of a license may request a hearing thereon, and if the request is made in writing to the City Administrator, a hearing shall be granted within ten days or a longer period as may be requested. Any suspension under this division shall continue until the City Council determines that the financial responsibility requirements of this subchapter have again been met.

(C) Payment of the civil penalty shall be made within 30 days of issuance of the citation. All multiple-day license suspensions shall run consecutively starting on the first Friday following the day of the expiration of the time to request a hearing or following a decision of a hearing, and will begin at 8:00 a.m. on the first day of the suspension period and ending at 8:00 a.m. following the last day of the suspension period.

(D) The City may, at its sole option, elect to invoke any criminal penalty, including a person violating any provision of this Chapter shall be guilty of a misdemeanor, punishable by a fine of up to 90 days in jail, payment of a fine of up to the maximum amount permitted in Minnesota Statutes Section 412.231.

(E) Any person whose license to sell alcoholic beverages is revoked under this subdivision may not apply for a new license for at least 90 days after the effective date of the revocation.

(F) Administrative Remedies. The City may, at its sole discretion, further invoke any administrative remedy available to it under the Code in the event a person violates any provision of this Chapter. For the purposes of this Section a person is defined as an individual, a partnership, a corporation, or any other entity.

(G) Non-Exclusivity of Remedies. Violations of this Chapter of the Heidelberg City Code may be remedied by the City, at its sole discretion, administratively or through criminal prosecution. These remedy options are not mutually exclusive and the City may pursue both remedy options simultaneously.

(H) Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.