

SHAHER CITY CODE
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CHAPTER 6. LIQUOR LICENSING

601.01

PROVISIONS OF STATE LAW ADOPTED

The provisions of Minn. Stat. Chapter 340A, relating to the definition of terms, licensing, consumption, sales, financial responsibility of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and beer are adopted and made a part of this ordinance as if set out in full.

601.02

LICENSE REQUIRED

Subd. 1. General Requirement. No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the city any intoxicating liquor, wine, beer or liquid for the purpose of mixing with intoxicating liquors without a license to do so as provided in this ordinance. Alcohol licenses shall be of seven kinds: on-sale liquor, on-sale wine, combination on-sale wine and 3.2 malt beverage, off-sale licenses, Sunday and set-ups.

Subd. 2. On-Sale Licenses. On-sale licenses shall be issued only to hotels, clubs, restaurants, and exclusive liquor stores, and shall permit on-sale of liquor only.

Subd. 3. On-Sale Wine Licenses. On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minn. Stat. 340A.404, Subd. 5, and shall permit only the sale of wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food.

Subd. 4. Temporary On-Sale Licenses. Subject to the approval of the commissioner of public safety, temporary on-sale licenses shall be issued only to clubs or charitable, religious, or other non-profit organizations in existence for at least three years. A temporary license authorizes the on-sale of intoxicating liquor in connection with a social event within the city sponsored by the licensee and subject to restrictions imposed by the state liquor act.

Subd. 5. Off-Sale Licenses. Two off-sale licenses shall be available for issuance by the city. Effective January 1, 2006, a total of four (4) off-sale licenses shall be available for issuance by the City. (12-2005)

Subd. 6. Special License for Sunday Sales. A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to any restaurant, club, bowling center or hotel with a seating capacity for at least 30 persons and

which holds an on-sale intoxicating liquor license. Such a licensee may sell intoxicating liquor for consumption on the premises between the hours of 8:00am on Sundays and 2:00 a.m. on Mondays. (08-2015)

Subd. 7. Set-Up License. A "set-up license" may be issued to a restaurant, hotel or other business establishment or club as set forth in Section 340A.414 Subd. 2 of the Minnesota Code for the purpose of being able to provide liquids for the purpose of mixing with intoxicating liquors provided by customers of business establishments or members of clubs. The license issued pursuant to this subdivision authorizes the establishment or club to permit the consumption or display of intoxicating liquor on the premises but does not authorize the sale of intoxicating liquor.

Subd. 8. Combined on-sale Wine and 3.2 Malt Beverage License. A combined on-sale wine and 3.2 malt beverage license shall be issued only to restaurants meeting the qualifications of Minnesota Statute 3400A.404, Subd. 5, and shall permit only the sale of wine exceeding 14 percent alcohol by volume and 3.2 malt beverage for consumption on the licensed premises only in conjunction with the sale of food consumed on the premises. The city is authorized to allow a holder of a license under this Subdivision to sell strong beer, provided that the establishment must have at least sixty (60%) percent of its sales from food consumed on the premises. No license is authorized under this Chapter solely for 3.2 malt beverages, nor solely for strong beer.

A special Sunday license is not needed for sales by wine licensees.

601.03

APPLICATION FOR LICENSE

Subd. 1. Form. Every application for a license to sell liquor shall state the name of the applicant, the applicant's age, representations as to the applicant's character (with such references as the council may require), citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and such other information as the council may require from time to time. Every application shall also include a copy of each summons received by the applicant under Minn. Stat. 340A.802 during the preceding year. In addition to containing such information, the application shall be in the form prescribed by the bureau of criminal apprehension and shall be verified and filed with the city clerk. No person shall make a false statement in an application.

Subd. 2. Financial Responsibility. No liquor license may be issued, maintained, or renewed unless the applicant demonstrates proof of financial responsibility as

defined in Minn. Stat. 340A.409 with regard to liability under the statutes, Section 340A.801. Such proof shall be filed with the commissioner of public safety. (Applicants for liquor licenses to whom the requirement for proof of financial responsibility applies include applicants for wine licenses with sales of less than \$10,000 of wine per year.) Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minn. Stat. 340A.409.

Subd. 3. Approval of Security. The security offered under Subd. 2 shall be approved by the city council and in the case of applicants for on-sale wine licenses and off-sale licenses, by the state commissioner of public safety. Operation of a licensed business without having on file with the city at all times effective security as required in Subds. 2 and 3 is a cause for revocation of the license.

601.04

LICENSE FEES

Subd. 1. Fees. The annual fee for liquor licenses within the city shall be as set forth in the current fee schedule.

Subd. 2. Payment. 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 5, Subd. 1, 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.

Subd. 3. Term; Pro Rata Fee. 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 December.

Subd. 4. Refunds. No refund of any fee shall be made except as authorized by statute.

601.05

GRANTING OF LICENSES

Subd. 1. Preliminary Investigation. On an initial application for an on-sale license and on application for transfer of an existing on-sale license, the applicant shall pay with the application an investigation fee as set forth in the current fee schedule and the city shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the state bureau of criminal apprehension and with such additional information as the council may require. If the council deems it in the public interest to have an

investigation made on a particular application for renewal of an on-sale license, it shall so determine. In any case, if the council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the bureau of criminal investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the council that issuance would not be in the public interest. If an investigation outside the state is required, the applicant shall be charged the cost, not to exceed \$10,000, which shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted.

Subd. 2. Hearing and issuance. The city council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to Subd. 1. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the council shall, in its discretion, grant or refuse the application. No on-sale wine license or off-sale license shall become effective until it, together with the security furnished by the applicant, has been approved by the commissioner of public safety.

Subd. 3. Person and Premises Licensed; Transfer. Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without city council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license, and a transfer of stock without prior council approval is a ground for revocation of the license.

601.06

PERSONS INELIGIBLE FOR LICENSE (09-2015)

No license shall be granted to any person made ineligible for such a license by state law. No more than one intoxicating liquor license shall be directly or indirectly issued within the city to any one person.

601.07

PLACES INELIGIBLE FOR LICENSE

Subd. 1. General Prohibition. No license shall be issued for any place or any business ineligible for such a license under state law.

Subd. 2. Delinquent taxes and charges. 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.

CONDITIONS OF LICENSE

Subd. 1. In General. Every license is subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance, state law, or regulation.

Subd. 2. Insurance. Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license granted pursuant to this ordinance. If not otherwise required by State Law, the requirements for liability insurance as set forth in Section 601.03 herein above for liquor licenses shall apply as a continuing condition for all wine licenses and combined wine and 3.2 malt beverage licenses under this Chapter.

Subd. 3. Licensee's Responsibility. Every licensee is responsible for the conduct in the licensed establishment, and any sale of alcoholic beverages by any employee authorized to sell such beverages in the establishment is the act of the licensee.

Subd. 4. Inspections. Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the city to enter, inspect, and search the premises of the licensee during business hours without a warrant.

Subd. 5. Display During Prohibited Hours. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

Subd. 6. Nudity and Sexual Conduct. The city council finds that the sale and/or presence of alcoholic beverages by the drink and adult entertainment occurring on the same premises can increase disorderly conduct and can result in incidents of prostitution, public masturbation, indecent exposure, and/or sexual assault. In order to protect the health, safety and welfare of city residents, and pursuant to the city council's authority to regulate alcoholic beverages under Minnesota Statutes, Chapter 340A and the Twenty-first Amendment to the United States Constitution, no on-sale licensee under this code shall permit the following kinds of conduct on the licensed premises or in areas adjoining the licensed premises where the following kinds of conduct can be seen by patrons of the licensed premises:

- (a) The performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation or flagellation; or
- (b) The actual or simulated touching, caressing, or fondling on the breast, buttocks, anus, or genitals; or

(c) The actual or simulated displaying of the pubic hair, anus, vulva, of genitals; or

(d) The displaying of films, videos, still pictures, electronic reproduction, or any other visual reproduction or image depicting the acts described in (a) through (c) above; or

(e) The presentation of any female in such a manner or attire as to expose to view any portion of the breast below the top of the areola, or any simulation thereof.

(f) No licensee or their agent shall allow or permit to remain in or about the licensed premises any person who performs acts as set forth in (a) through (e) above.

(g) The violation of any of the provisions of this ordinance by the licensee or their employees or agents shall constitute grounds for the suspension or revocation of any and all intoxicating liquor, non-intoxicating liquor, or wine licenses issued to said premises or to said licensee.

601.09

RESTRICTIONS ON PURCHASE AND CONSUMPTION

Subd. 1. Liquor in Unlicensed Places. No person shall mix or prepare liquor for consumption by others in any public place or place of business unless it has a license to sell liquor on-sale or a permit from the commissioner of public safety under Minn. Stat. 340A.414 and no person shall consume liquor in any such place.

Subd. 2. Consumption in Public Places. No person shall consume liquor on a public highway, public park, or other public place.

601.10

GENERAL FINES, SUSPENSIONS AND REVOCATION PROVISIONS

Subd. 1. General Fines, Suspensions and Revocation Provisions. The council shall either suspend for up to 60 days or revoke any liquor license, or impose a civil fine not to exceed \$2,000, 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 take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minn. Stat. 14.57 to 14.70 of the administrative procedure act.

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 this ordinance without further action of the city council. Notice of cancellation, lapse of a current liquor liability policy or bond, or withdrawal of 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 bond, or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon and if such a request is made in writing to the clerk a hearing shall be granted within 10 days or such longer period as may be requested. Any suspension under this paragraph shall continue until the city council determines that the financial responsibility requirements of this ordinance have again been met.

Subd. 2. Presumptive Penalties. (07-2011)

- (a) Purpose. The purpose of this Subdivision is to establish a standard by which the Council determines the length of license suspensions and the propriety of revocations and shall apply to all on-sale and off-sale licensed premises for both non-intoxicating and intoxicating liquor under this Section. These penalties are presumed to be appropriate for every case. However, the Council may deviate from these penalties in an individual case where the Council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the Council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) Presumptive Penalties for Violations. Adverse penalties for violations shall be presumed as follows. Numbers below indicate consecutive days' suspension or the multiplier of a \$300.00 fine. For example a licensee appearing before the council who has not committed any offenses within three years and is determined to be guilty of selling alcoholic beverages to an under aged person is subject to a presumptive 2 day suspension, or a fine of \$600.00. It is not necessary for the prior offense to be the same offense as the current charge. The presumptive sentence depends on the total number of prior offenses within 3 years.

Total Number of Prior Offenses in 3 years	0	1	2
OFFENSE			
(a) Commission of a felony related to the licensed activity		IMMEDIATE REVOCATION	

(b) Sale of alcoholic beverages while license is suspended	IMMEDIATE REVOCATION		
(c) Sale of alcoholic beverages to under-age person	2	10	Revocation
(d) Sale of alcoholic beverages to intoxicated person	2	10	Revocation
(e) After-hours sale of alcoholic beverages	2	10	Revocation
(f) After-hours display or consumption of alcoholic beverages	2	10	Revocation
(g) Refusal to allow city inspectors or police admission to inspect premises	IMMEDIATE REVOCATION		
(h) Illegal gambling	3	13	Revocation
(i) Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage	2	10	Revocation
(j) Failure to make application for license renewal prior to license expiration date	3	13	Revocation
(k) Sale of intoxicating liquor where only license is for wine or 3.2	1	2	Revocation
(l) Failure to comply with statutory And ordinance requirements for Liability insurance	IMMEDIATE REVOCATION		
(m) No person under of years of age allowed in liquor establishment unless employed by establishment and working at the time, or with parent or legal guardian	2	10	Revocation

(c) Multiple Violations. At a licensee's first appearance before the Council, the Council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee up to and including the formal notice of hearing. The occurrence of multiple violations shall be

grounds for an upward departure from such penalties in the Council's discretion. Violations occurring after the date of notice of hearing that are brought to the attention of the city prior to the hearing date may be added to the notices by stipulation if the licensee admits to the facts and shall, in that case, be treated as though part of the "1st Appearance". In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the Council.

- (d) Other Penalties. Nothing in this Section shall restrict or limit the authority of the Council to suspend up to sixty (60) days, revoke the license or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to prosecute an offender in criminal court, or to impose conditions or take any other adverse action in accordance with law, provided , that the license holder has been afforded an opportunity for a hearing in the manner provided by law.

601.11 SELF REPORTING REQUIREMENT (07-2011)

It shall be a condition of any license pursuant to this Chapter that the license holder advise the city of any violation for which it is cited. Failure to do so shall result in doubling the presumptive penalties set forth in this Chapter if the city does not learn of the cited violation by the license holder.