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ORDINANCE NO. 08-12

**SUMMARY OF AN ORDINANCE AMENDING CITY OF MANHATTAN BEACH
LIQUOR ORDINANCE RELATING TO ALCOHOLIC BEVERAGE LICENSING AND
REGULATION.**

The City of Manhattan Beach does ordain:

That the City of Manhattan Beach Ordinance No, 03-01, regulating alcoholic beverage licensing, is hereby amended by deletion of such ordinance in its entirety, and the replacement of said Ordinance with Ordinance No. 08-12. Ordinance No. 08-21 regulates all activities relating to the sale and distribution of alcoholic beverages within the City of Manhattan Beach. This publication is a summary of Ordinance No. 08-12 approved by the City Council on December 2, 2008. A complete copy of Ordinance Number 08-12 is available to review by written request sent to City of Manhattan Beach, 39148 County Road 66, Manhattan Beach, MN 56442, or by telephone request at 218-821-3422. Effective date: This Ordinance becomes effective upon its passage and publication according to law. Attested Paul Allen, Mayor and Barb Hanson, Clerk-Treasurer.

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AN ORDINANCE AMENDING CITY OF MANHATTAN BEACH LIQUOR ORDINANCE RELATING TO ALCOHOLIC BEVERAGES LICENSING AND REGULATION

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY ORDAIN:

SECTION 1.01 AMENDMENT TO EXISTING ORDINANCE. Manhattan Beach Ordinance No. 03-1, regulating alcoholic beverages licensing, is hereby amended by deletion of such Ordinance in its entirety.

SECTION 1.02. PROVISIONS OF STATE LAW ADOPTED. The provisions of Minnesota Statutes, 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, are adopted and made a part of this Ordinance as if set out in full, but subject to the terms of this Ordinance.

SECTION 1.03. DEFINITIONS. As used in this Ordinance, unless otherwise stated in specific sections, the following words and terms shall have the meanings stated:

3. "Alcoholic Beverage" means any beverage containing more than one-half of one percent alcohol by volume, including, but not limited to, beer, wine and liquor as defined in this Section.
2. "Applicant" means any person making an application for a license under this Ordinance.
3. "Application" means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to consideration of the issuance of a license for a business.
4. "Beer" means malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight. This definition includes so-called "malt coolers" with the alcoholic content limits stated herein.
5. "Beer Store" means an establishment engaged in the following types of business: Restaurants, hotels, motels, or bona fide clubs (on-sale only)

and, as an incident thereto, may also sell cigars, cigarettes, ice, all forms of tobacco, soft drinks at retail, and also selling beer, on-sale or off-sale.

6. **"Brewer"** means a person who manufactures beer for sale.
7. **"City"** means the City of Manhattan Beach.
8. **"Church"** means a building, which is principally used as a place where persons of the same faith regularly assemble for the public worship of God.
9. **"Club"** means an incorporated organization organized under the laws of the State for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which (1) has more than fifty members; (2) has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; (3) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. Such club or congressionally chartered veterans' organization must have been in existence for at least three years.
10. **"Commissioner"** means the Minnesota Commissioner of Public Safety.
11. **"Exclusive Liquor Store"** means an establishment used exclusively for the sale of liquor, except for the incidental sale of ice, tobacco, beer, beverages for mixing with liquor, soft drinks, cork extraction devices, and books and videos on the use of alcoholic beverages in the preparation of food. The establishment may offer recorded or live entertainment. "Exclusive liquor store" also includes an on-sale or combination on-sale and off-sale liquor establishment which sells food for on-premise consumption when authorized by the City.
12. **"General Manager"** means a person having general direction and control of a business' affairs, and who may do everything that the business could do in transaction of its business.

13. **"Hotel"** means an establishment where food and lodging are regularly furnished to transients and which has (1) a dining room serving the general public at tables and having facilities for seating at least thirty guests at one time; and, (2) at least ten guest rooms.
14. **"License"** means a document, issued by the City, to an applicant permitting him/her to carry on and transact the business stated therein. The City does not issue "combination licenses" as defined by **Chapter 340A, Minnesota Statutes**.
15. **"Licensee"** means an applicant who, pursuant to his/her approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the City for carrying on the business stated therein.
16. **"License Fee"** means money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.
17. **"Licensed Premises"** means the space or structure described in the issued license. In the case of a restaurant or a club licensed for on-sales of alcoholic beverages and located on a golf course, "licensed premises" means the entire golf course, except for areas where motor vehicles are regularly parked or operated.
18. **"Liquor"** means ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. This definition includes so-called "wine coolers" and "malt coolers" with the alcoholic content limits stated herein.
19. **"Malt Liquor"** means any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.
20. **"Manufacturer"** means every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces alcoholic beverages for sale.

21. **"Minor"** means any natural person who has not attained the age of 21 years.
22. **"Off-Sale"** means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.
23. **"On-Sale"** means the sale of alcoholic beverages for consumption on the licensed premises only.
24. **"Package" and "Original Package"** mean any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.
25. **"Restaurant"** means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public, and having seating capacity for at least twenty-five guests.
26. **"Sale", "Sell" and "Sold"** mean all barters and all manners or means of furnishing alcoholic beverages to persons, including such furnishing in violation or evasion of law.
27. **"Wholesaler"** means any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.
28. **"Wine"** means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake. This definition includes "wine coolers" with the alcoholic content limits stated herein. For purposes of on-sale wine licenses, "wine" may contain up to 14 percent alcohol by volume for consumption with the sale of food. For all other purposes, "wine" is a product containing not less than one-half of one percent nor more than 24 percent alcohol by volume for non industrial use.

SECTION 1.04. APPLICATIONS AND LICENSES UNDER THIS CHAPTER - PROCEDURE AND ADMINISTRATION.

Subd. 1. Application. All applications shall be made at the office of the City Clerk-Treasurer upon forms prescribed by the City, or if by the Commissioner, then together with such additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant. Every application for the issuance or renewal of an alcoholic beverage license must include a copy of each summons received by the applicant during the preceding year relative to Minnesota Statutes, Section 340A.802. Pursuant to Minn. Stat., '340A.412, the City must conduct a preliminary background and financial investigation of all applicants and transfer applicants, and a preliminary background check for the proposed general manager or a change in the position of the general manager of the applicant/licensee, for on-sale or off-sale intoxicating liquor licenses. The City also may conduct a preliminary background check upon a request for renewal of a liquor license. The application must be in the form prescribed by the Commissioner. In addition, the City shall also require, as part of its financial investigation, all necessary tax return information. Said financial information shall be administered pursuant to the Data Practices Act. On an annual basis, upon a request for renewal of the licensee, the City shall conduct a preliminary background investigation. After a liquor license has been issued to the Applicant, every three years thereafter, in conjunction with an application for renewal, the Applicant shall submit all necessary tax return information, pursuant to Minn. Stat., '340A.412, which information shall be administered pursuant to the Data Practices Act.

Subd. 2. False Statements. It is unlawful for any applicant intentionally to make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, cause a presumptive refusal of license to occur, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this Ordinance, or any part thereof.

Subd. 3. Application and Investigation Fees. At the time the initial application is made, an applicant for a license under this Ordinance shall accompany such application with payment of a fee, to be considered an application and background investigation fee, of \$500.00, not refundable to the applicant, to cover the cost of the City in processing the application and the investigation of the applicant. No such fee shall be required of an applicant for a temporary beer license.

Subd. 4. Action.

- A. Granting.** The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this Ordinance. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before consideration by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.
- B. Issuing.** If an application is approved, then the City Clerk-Treasurer shall forthwith issue a license pursuant thereto in the form prescribed by the City or the Commissioner, as the case may be. Except as otherwise specifically provided, all licenses shall be on a fiscal year basis, July 1 to June 30. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described.
- C. Transfer.** No license shall be transferable between persons or to a different location without prior consent of the Council. Any change in individual ownership, incorporation, or substitution of partners is a transfer. It is unlawful to make any transfer in violation of this Subparagraph.
- D. Refusal and Termination.** The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall terminate only by expiration or revocation.
- E. Public Interest.** No license under this Ordinance may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest.
- F. Revocation or Suspension.** Suspension or revocation of a license, including civil penalties, shall be governed by Minn. Stat., '340A.415. In addition to the violation in Minn. Stat. 340A.415, any license issued by the

City may be suspended or revoked by the Council if the licensee has conducted the licensed activity in such manner as to constitute a breach of the peace or a menace to the health, safety or welfare of the public, or disturbance of the peace or comfort of residents of the City. Notwithstanding the presumptive penalties set forth in this Ordinance, nothing in this Ordinance shall restrict or limit the authority of the City to suspend, for up to 60 days, revoke the license, assess a civil fine, not to exceed \$2,000.00, to impose conditions or to take any adverse action in accordance with law, provided that the licensee has been afforded an opportunity for hearing. 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 conducted by the City pursuant to Minn. Stat., '14.57 to 14.70.

Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall effect an immediate suspension of any license issued pursuant to this Ordinance without further action of the City Council. Notice of cancellation, lapse or 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 a license. The holder of a license who has received notice of lapse or 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 by the licensee. Any suspension under this paragraph shall continue until the City Council determines that the financial responsibility requirements of this Ordinance have been met.

A. Penalties for Violations.

- A. **Criminal Penalties.** Any person violating any provision of this Ordinance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000.00 or imprisonment in the county jail for not more than 90 days, or both, plus the costs of prosecution.
- B. **Civil Penalties.** The following civil penalties, including presumptive civil penalties, are applicable to all on and off sale liquor licenses issued by the City, including, but not

limited to, intoxicating liquor, wine, strong beer, and 3.2 percent beer. The minimum penalties for convictions or violations are (unless specified, numbers below indicate consecutive days suspension).

The following violations require revocation of the license on the first violation:

- a. Commission of a felony related to the licensed activity;
- b. Sale of alcoholic beverages while license is under suspension.

Any violation not listed in the previous sections shall be heard by the Council, which shall review all information and circumstances and apply the following presumptive penalties. Licensees have the right to request a hearing before the City Council if not in agreement with the presumptive penalty. Such requests for hearing must be made within 20 days of service of the violation notice. If the licensee does not request a hearing, then such failure shall constitute a waiver and the penalty shall become effective upon expiration of the 20 day notice period. If an Applicant does not contest the violation, then an Applicant may enter into a Stipulation of Facts and accept the penalty described therein as set forth by the Council.

Presumptive penalties are as follows:

Type of License Held	1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
On-sale intoxicating liquor	\$500 and mandatory training	\$1,000 and mandatory training	\$1,500 and 10-day suspension	\$2,000 and Revocation
Off-sale intoxicating liquor	\$500 and mandatory training	\$1,000 and mandatory training	\$1,500 and 10-day suspension	\$2,000 and Revocation
On-sale beer and wine	\$500 and mandatory training	\$1,000 and mandatory training	\$1,500 and 10-day suspension	\$2,000 and Revocation
Off-sale 3.2 percent malt	\$500 and mandatory training	\$1,000 and mandatory training	\$1,500 and 10-day suspension	\$2,000 and Revocation

Multiple violations shall be considered within a three year period, commencing with the first violation. The three-year period shall be a "rolling period". Each violation shall commence a new three-year rolling period. If the City revokes a license, then the licensee may not apply for any liquor license within 2 years of the revocation. Suspension of license shall commence and payment of the civil fine shall be due on the Monday following final disposition. In the case of an uncontested violation, where the licensee has not requested a hearing, the suspension shall commence and payment of the civil fine shall be due immediately after expiration of the 20 day notice period. "Training" shall mean participation by the licensee and an employee(s) in training concerning liquor and beer sales regulations and restrictions, the adequacy of which shall be determined by the Sheriff of Crow Wing County, Minnesota.

- G. Corporate Applicants and Licensees.** A corporate applicant, at the time of application, shall furnish the City with a list of all persons who have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the City

Clerk-Treasurer in writing of any change in legal ownership, beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the shares entitled to be voted upon at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty (30) days after any such change in ownership or beneficial interest of shares, unless the Council has been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the City designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

Subd. 5. Duplicate Licenses. Duplicates of all original licenses under this Ordinance may be issued by the City Clerk-Treasurer without action by the Council, upon a licensee's affidavit that the original has been lost, and upon payment of the fee adopted by resolution of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE".

Subd. 6. Posting. All licensees shall conspicuously post issued licenses in the licensed place of business.

Subd. 7. Resident Manager or Agent. Before a license is issued to an individual who is a non-resident of the City, to more than one individual, whether or not resident of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the County of Crow Wing as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and (2) serve as agent for service of notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation and other attributes, could qualify individually as a licensee. If such manager or agent ceases to be a resident of the County of Crow Wing, or ceases to act in such capacity for the licensee without appointment of a successor, then the license issued pursuant to such appointment shall be subject to revocation or suspension.

A. Change in Management. Any change in management of the license holder, including the general manager of the licensee (including full name, address, Social Security number and date of birth of the new general manager), shall be

provided to the City in writing 30 days in advance of the anticipated change. The City shall review the proposed general manager change and shall conduct a preliminary background investigation. The City shall have 30 days within which to approve the change in general manager unless additional time is required. Pursuant to and consistent with Minn. Stat., '340A.412, Subd.2(b), approval of the change in general manager will not be given if the results of the investigation show, to the satisfaction of the governing body, that approval would not be in the public interest.

Subd. 8. Persons Disqualified

- A. No license under this Ordinance may be issued, or renewed, to (1) a person who, within five years of the license application, has been convicted of any 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 alcoholic beverages; (2) a person who has had an alcoholic beverage 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 corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested; (3) a person under the age of twenty-one years; or, (4) a person not of good moral character and repute.
- B. No person holding a license from the Commissioner as a manufacturer, brewer or wholesaler may have a direct or indirect interest, in whole or in part, in a business holding an alcoholic beverage license from the City.

SECTION 1.05. RENEWAL LICENSE APPLICATIONS. Applications for renewal of all licenses under this Ordinance shall be made at least sixty (60) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause. The City may require background investigations for a renewal application.

SECTION 1.06. DELINQUENT TAXES AND CHARGES AND CITY CODE VIOLATIONS. No license under this Ordinance shall be granted or renewed for operation on any premises upon which taxes, assessments, or installments thereof, or other financial claims of the City, are owed and are delinquent and unpaid in addition to any outstanding zoning violations or other City Ordinance violations which remain outstanding at the time of the request for renewal of license.

SECTION 1.07. CONDITIONAL LICENSES. Notwithstanding any provision of law to the

contrary, the Council may, upon a finding of the necessity therefore, place such special conditions and restrictions, in addition to those stated in this Ordinance, upon any license as it, in its discretion, may deem reasonable and justified.

SECTION 1.08. PREMISES LICENSED. Unless expressly stated therein, a license issued under the provisions of this Ordinance shall be valid only for the compact and contiguous space 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 licensed premises or structure.

SECTION 1.09. UNLAWFUL ACTS.

Subd. 1. Consumption. It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on licensed premises more than twenty (30) minutes after the hour when a sale thereof can legally be made.

Subd. 2. Removal of Containers. It is unlawful for any on-sale licensee to permit any glass, bottle or other container, containing alcoholic beverages in any quantity, to remain upon any table, bar, stool or other place where customers are served, more than twenty (30) minutes after the hour when a sale thereof can legally be made.

Subd. 3. Closing. It is unlawful for any person, other than an on-sale licensee or his/her bona fide employee actually engaged in the performance of his/her duties, to be on premises licensed under this Ordinance more than thirty (30) minutes after the legal time for making licensed sales.

SECTION 1.10. CONDUCT ON LICENSED PREMISES. Except as herein provided, every licensee under this Ordinance shall be responsible for the conduct of his/her place of business and shall maintain conditions of sobriety and order therein.

SECTION 1.11. SALE BY EMPLOYEE. Any sale of an alcoholic beverage in or from any premises licensed under this Ordinance by any employee authorized to make such sale in or from such place is the act of the employer, as well as of the person actually making the sale; and every such employer is liable to all of the penalties, except criminal penalties, provided by law for such sale, equally with the person actually making the sale.

SECTION 1.12. LICENSE CONDITION AND UNLAWFUL ACT.

Subd. 1. All premises licensed under this Ordinance shall at all times be open to inspection by any police officer to determine whether or not this Ordinance and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and without a warrant for searches or seizures.

Subd. 2. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making such inspection.

SECTION 1.13. MINORS AS DEFINED IN SECTION 4.01 - UNLAWFUL ACTS.

Subd. 1. Consumption. It is unlawful for any:

- A. Licensee to permit any minor to consume alcoholic beverages on licensed premises.
- B. Minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of such parent or guardian.

Subd. 2. Purchasing. It is unlawful for any:

- A. Person to sell, barter, furnish, or give alcoholic beverages to a minor unless such person is the parent or guardian of the minor, and then only for consumption in the household of such parent or guardian.
- B. Minor to purchase or attempt to purchase any alcoholic beverage.
- C. Person to induce a minor to purchase or procure any alcoholic beverage.

Subd. 3. Possession. It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his parent or guardian.

Subd. 4. Entering Licensed Premises. It is unlawful for any minor, as defined in this Ordinance, to 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 years to enter licensed premises for the following purposes: (1) To perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute; (2) to consume meals; and, (3) to attend social functions that are held in a portion of the establishment where liquor is not sold.

It is unlawful for a licensee to permit a person under the age of eighteen years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or in the company of a parent or guardian.

Subd. 5. Misrepresentation of Age. It is unlawful for a minor to misrepresent his age for the purpose of purchasing an alcoholic beverage.

Subd. 6. Proof of Age. Proof of age for purchasing or consuming alcoholic beverages

may be established only by 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; or by a valid military identification card issued by the United States Department of Defense; or, in the case of a foreign national, from a nation other than Canada, by a valid passport.

SECTION 1.14. INSURANCE CERTIFICATE REQUIREMENTS. Whenever an insurance certificate is required by this Ordinance the applicant shall file with the City Clerk-Treasurer a certificate of insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective and paid in full for at least the license term approved, and (3) that such insurance will not be canceled or terminated without thirty days' written notice served upon the City Clerk-Treasurer. Cancellation or termination of such coverage shall be grounds for license revocation.

SECTION 1.15. FINANCIAL RESPONSIBILITY OF LICENSEES.

Subd. 1. Proof. No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility, imposed by Statute, by filing with the City a certificate that there is in effect an insurance policy or pool providing minimum coverages of (1) \$50,000.00 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of \$100,000.00 because of bodily injury to two or more persons in any one occurrence, and in the amount of \$10,000.00 because of injury to or destruction of property of others in any one occurrence, (2) \$50,000.00 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, \$100,000.00 for loss of means of support of two or more persons in any one occurrence; and (3) annual aggregate of \$300,000.00 per policy year.

Subd. 2. Insurance Not Required. Subdivision 1 does not apply to licensees who by affidavit establish that:

- A. They are on-sale 3.2 percent malt liquor licensees with sales of less than \$25,000 of 3.2 percent malt liquor for the preceding year.
- B. They are off-sale 3.2 percent malt liquor licensees with sales of less than \$50,000 of 3.2 percent malt liquor for the preceding year.
- C. They are holders of on-sale wine licenses with sales of less than \$25,000 for wine for the preceding year; or
- D. They are holders of temporary wine licenses issued under law.

Subd. 3. Documents Submitted to Commissioner. All proofs of financial responsibility and exemption affidavits filed with the City under this Section shall be submitted by the City to the Commissioner.

SECTION 1.16. GAMBLING PROHIBITED. It is unlawful for any licensee to keep,

possess, or operate, or permit the keeping, possession, or operation on licensed premises of dice or any other gambling device, or permit raffles to be conducted, except such as are authorized by Statute or City Ordinance.

SECTION 1.17. CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY, AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS.

Subd. 1. It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any (1) City park, (2) street, (3) public property, or (4) private parking lot to which the public has access, except on such premises when and where permission has been specifically granted or licensed by the Council, or as otherwise provided for in this section. Provided, that 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. 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. Provided, further, that this Section shall not apply to a bus operated under a charter, or to a limousine, both as defined by statute.

SECTION 1.18. ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS. It is unlawful for any person to introduce upon, or have in his possession upon, or in, any public elementary or secondary school ground, or any public elementary or secondary school building, any alcoholic beverage, except for experiments in laboratories and except for those organizations who have been issued temporary licenses to sell alcoholic beverages, and for any person to possess alcoholic beverages as a result of a purchase from those organizations holding temporary licenses.

SECTION 1.19. ALCOHOLIC BEVERAGES - CERTAIN UNLAWFUL ACTS. It is unlawful for any:

Subd. 1. Person to knowingly induce another to make an illegal sale or purchase of an alcoholic beverage.

Subd. 2. Licensee to sell or serve an alcoholic beverage to any person who is obviously intoxicated.

Subd. 3. Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises.

Subd. 4. Licensee to sell an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

Subd. 5. Licensee to allow consumption of an alcoholic beverage on licensed premises on any day, or during any hour, when such consumption is not permitted by law.

Subd. 6. Person to purchase an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

SECTION 1.20. WORKER'S COMPENSATION. No license to operate a business shall be issued by the City until the applicant presents his/her employer's tax identification number and acceptable evidence of compliance with the worker's compensation insurance coverage requirement of Minnesota Statutes by providing the name of the insurance company, the policy number, and dates of coverage, or the permit to self-insure.

SECTION 1.21. LIQUEUR-FILLED CANDY. It is unlawful for any person to sell liqueur-filled candy to any person under the age of 21 years. For purposes of this Section, "liqueur-filled candy" means any confectionery containing more than one-half of one percent alcohol by volume in liquid form that is intended for or capable of beverage use, and may be sold only by an eligible licensee under this Ordinance.

SECTION 1.22. LICENSE FEES AND REFUNDS.

Subd. 1. Fixing Fees. Except as otherwise specifically provided, all fees for licenses provided for in this Ordinance, including, but not limited to, license fees, investigation and administration fees, shall be fixed and determined by the Council,

adopted by resolution, and uniformly enforced. Such fees may, from time-to-time, be amended by resolution of the Council.

Subd. 2. Fee Increases. Notwithstanding other provisions of this Ordinance, no license fee shall be increased except after notice and hearing on the proposed increase. Notice of the proposed increase shall be mailed to all affected licensees at least thirty (30) days before the date set for hearing.

Subd. 3. Refunds. A pro-rata share of an annual license fee paid pursuant to this Ordinance shall be refunded to the licensee, or to his estate, if (1) the business ceases to operate because of destruction or damage; (2) the licensee dies; or (3) the business becomes unlawful for a reason other than a license revocation or suspension.

(Sections 1.23 through 1.29, inclusive, reserved for future expansion)

SECTION 1.30. BEER LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of beer, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding beer licenses from the City. Annual on-sale beer licenses may be issued only to drug stores, restaurants, hotels, bowling centers, clubs, beer stores, and establishments used exclusively for the sale of beer with the incidental sale of tobacco and soft drinks. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may

sell beer on-sale without an additional license. Any person licensed to sell liquor off-sale shall not be required to obtain an off-sale beer license, and may sell beer off-sale without an additional license.

SECTION 1.31. TEMPORARY BEER LICENSE.

Subd. 1. Applicant. A club or charitable, religious, or non-profit organization shall qualify for a temporary on-sale beer license.

Subd. 2. Conditions.

- A. An application for a temporary license shall state the exact dates and place of proposed temporary sale.
- B. No applicant shall qualify for a temporary license for more than a total of seven (7) days in any calendar year.
- C. The Council may, but at no time shall it be under any obligation whatsoever to grant a temporary beer license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. The applicant shall file with the City, prior to issuance of the license, a certificate of insurance coverage in at least the sum of \$100,000.00 for injury to any one person in any one occurrence, and subject to the limit for one person, in the amount of \$300,000.00 because of bodily injury to two or more persons in any one occurrence, and in the amount of \$25,000.00 because of injury to or destruction of property to others in any one occurrence, naming the City as an additional insured during the license period. Such license shall be issued only on the condition that the applicant will not sell in excess of \$10,000.00 (retail value) worth of beer in any fiscal year, and thereupon shall be exempt from proof of financial responsibility as provided for herein.

SECTION 1.32. HOURS AND DAYS OF BEER SALES. No sale of beer shall be made between the hours of 2:00 o'clock A.M. and 8:00 o'clock A.M. on the days of Monday through Saturday, nor between the hours of 2:00 o'clock A.M. and 12:00 o'clock noon on Sunday.

SECTION 1.33. BEER LICENSE RESTRICTIONS AND REGULATIONS.

Subd. 1. No initial license shall be granted for any building within 300 feet of any church structure.

Subd. 2. Every license shall be granted subject to the provisions of this Chapter and all other applicable provisions of City Ordinance and other laws relating to the operation of licensee's business.

SECTION 1.34. BEER LICENSE FEES. Beer license fees shall be set by Council resolution.

(Sections 1.35 through 1.39, inclusive, reserved for future expansion)

SECTION 1.40. LIQUOR LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply (1) to such potable liquors as are intended for therapeutic purposes and not as a beverage, (2) to industrial alcohol and its compounds not prepared or used for beverage purposes, (3) to wine in the possession of a person duly licensed under this Chapter as an on-sale wine licensee, (4) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, or (5) to sales by wholesalers to persons holding liquor licenses from the City. The City may issue annual on-sale liquor licenses to hotels, restaurants, bowling centers, clubs or congressionally chartered veterans' organizations (with the permission of the Commissioner), provided that liquor sales will be made only to members and bona fide guests, and exclusive liquor stores. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license. Any person licensed to sell liquor off-sale shall not be required to obtain an off-sale beer license, and may sell beer off-sale without an additional license.

SECTION 1.41. SUNDAY SALES.

Subd. 1. License Required. The electorate of the City having heretofore authorized the same at a general or special election, a Sunday on-sale liquor license may be issued to hotels, restaurants, clubs, or bowling centers, in conjunction with the sale of food, which have on-sale liquor licenses and which also have seating capacity for not less than 25 guests at one time. Prior to issuance of such license, the applicant shall provide the City with proof of financial responsibility for Sunday sales.

Subd. 2. Hours of Sale. The hours of Sunday on-sale liquor sales shall be from 12:00 o'clock noon on Sundays to 2:00 o'clock A.M. on Mondays, provided that the licensee is in conformance with the Minnesota Clean Air Act.

Subd. 3. Unlawful Acts. It is unlawful to sell liquor on Sunday unless such sales are (1) licensed in accordance with this Section, (2) in conjunction with the sale of food, and, (3) during hours of permitted sales.

SECTION 1.42. SPORTS, CONVENTION OR CULTURAL FACILITIES LICENSE. The Council may authorize any holder of an on-sale liquor license issued by the City, or by an adjacent municipality, to sell liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention or cultural facility owned by the City, or instrumentality thereof having independent policy-making and appropriating authority and located within the City. The licensee must be engaged to sell liquor at such an event by the person or organization permitted to use the premises, and may sell liquor only to persons attending the event. The licensee shall not sell liquor to any person attending or participating in any amateur athletic event. Such sales may be limited to designated areas of the facility. All such sales shall be subject to all laws relating thereto.

SECTION 1.43. TEMPORARY LIQUOR LICENSE.

Subd. 1. License Authorized. Notwithstanding any provision of City Ordinance to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. Such license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the City, for liquor catering services.

Subd. 2. Applicant. The applicant for a license under this Section must be a club or charitable, religious, or other non-profit organization in existence for at least three years.

Subd. 3. Terms and Conditions of License.

- A. No license is valid until approved by the Commissioner.
- B. No license shall be issued for more than three consecutive days.
- C. No temporary license shall issue until the City is furnished with written proof that the licensee has dram shop coverage in the amount provided for in this Ordinance, and that such coverage is in force on the premises where liquor is to be served.
- D. All licenses and licensees are subject to all provisions of statutes and City Ordinance relating to liquor sale and licensing. The licensee shall provide proof of financial responsibility coverage and, in the case of catering by a full-year on-sale licensee; such caterer shall provide proof of the extension of such coverage to the licensed premises.
- E. Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.

Subd. 4. Insurance Required. The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of minimum liability as required by State law.

SECTION 1.44. LIQUOR LICENSE FEES.

Subd. 1. Liquor license fees shall be set by Council resolution.

Subd. 2. On-sale club liquor license fees shall be as set by Minnesota Statutes.

SECTION 1.45. HOURS AND DAYS OF LIQUOR SALES. No sale of liquor shall be made between the hours of 2:00 o'clock A.M. and 8:00 o'clock A.M. on the days of Monday through Saturday, nor after 2:00 o'clock A.M. on Sunday. No off-sale shall be made on Sundays, nor before 8:00 o'clock A.M. or after 10:00 o'clock P.M. on Monday through Saturday, nor after 8:00 o'clock P.M. on Christmas Eve, December 24, nor on Thanksgiving Day or Christmas Day, December 25. This Section does not prohibit sales during hours when on-sale is permitted on Sunday, pursuant to Section 1.41 of this Ordinance.

(Sections 1.46 through 1.49, inclusive, reserved for future expansion)

SECTION 1.50. ON-SALE WINE LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply (1) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (2) to sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the City, (3) to sales by wholesalers to persons holding on-sale wine licenses from the City, or (4) to sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted.

SECTION 1.51. ON-SALE WINE LICENSE FEE. The annual on-sale wine license fee to be set by Council resolution.

SECTION 1.52. HOURS AND DAYS OF SALES BY ON-SALE WINE LICENSEES. No on-sale of wine shall be made between the hours of 2:00 o'clock A.M. and 12:00 o'clock noon on Sunday, nor between the hours of 2:00 o'clock A.M. and 8:00 o'clock A.M. on the days of Monday through Saturday, nor between the hours of 8:00 o'clock P.M. on December 24 and 8:00 o'clock A.M. on December 25.

(Sections 1.53 through 1.59, inclusive, reserved for future expansion)

SECTION 1.60. LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

Subd. 1. Limitations on Issuance of Licenses to One Person or Place. No more than one off-sale liquor license may be issued to any one person or for more than one place.

Subd. 2. Licenses in Connection With Premises of Another. A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this Ordinance. This Subdivision does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a

violation of this Ordinance.

Subd. 3. Employment of Minors. No person under eighteen (18) years of age may sell or serve liquor or wine on licensed premises.

Subd. 4. Premises Eligible. On-sale wine licenses shall be granted only to restaurants as defined in this Ordinance. Provided, however, for purposes of this Subdivision, such restaurant shall have appropriate facilities for seating not less than 25 guests at one time.

Subd. 5. Removal of Wine From Restaurant. An establishment licensed to sell liquor or wine at on-sale under this Ordinance may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises, provided that the bottle has been opened and the contents partially consumed. A removal of a bottle under the conditions described in this provision is not an Aoff-sale@ of liquor and may be permitted without additional license.

Subd. 6. Samples. It is lawful for an off-sale licensee to provide samples of wine, liqueurs and cordials which the licensee currently has in stock and is offering for sale to the general public without obtaining an additional license, provided the wine, liqueur, and cordial samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 50 milliliters of wine per variety per customer and 25 milliliters of liqueur or cordial per variety per customer.

Subd. 7. Display of Liquor or Wine. No licensee shall display liquor or wine to the public on days or during hours when the sale of wine is prohibited.

Subd. 8. Church Restriction. No license shall be granted for any building within 300 feet of any church structure.

Subd. 9. Number of Licenses. The Council may issue seven (7) on-sale and five (5) off-sale licenses. There shall be no combination licenses issued by the City.

- A. **Off-Sale Licenses.** If an off-sale license is turned in or forfeited to the City the City shall make the license available to the public through a lottery system. Said lottery system shall include the following procedure.
1. Upon determination by the City that an off-sale license is turned in or forfeited to the City, the City shall provide 30 days published notice of the availability of the license.
 2. The published notice shall state the availability of the license and that a completed license application on a form prescribed by the City must be accompanied by a \$500.00 application fee and must be received by the City Clerk by the deadline indicated

therein.

- 2) Upon expiration of the application deadline, all applications shall be placed in sealed envelopes with envelopes drawn by a designated City official for each available license, along with four alternates in the order selected.
 4. Upon selection of an applicant through the above-stated process, the City shall notify the applicant that the applicant has 60 days to complete and file with the City all necessary license application forms and related information.
- B. **On-Sale Licenses.** If an On-sale license is forfeited or turned in to the City, subsequent issuance of the license shall be based upon the merit of application(s) received by the City, pursuant to this ordinance and **Chapter 340A of Minnesota Statutes.**

Subd. 10. Intoxicating Malt Liquor Sale Without License. The holder of an on-sale wine license issued pursuant to this Ordinance who is also licensed to sell beer at on-sale, and whose gross receipts are at least 60% attributable to the sale of food, is authorized to sell intoxicating malt liquor at on-sale without an additional license.

Subd. 11. On-Sale Food Sale Requirements. "On-Sale" Licenses shall be issued only to individuals, entities and other organizations whose primary intent and objective is to establish a full service restaurant having facilities approved and/or licensed by the State of Minnesota Department of Health and where, in consideration for payment therefore, meals are regularly served at tables to the general public, and which employs an adequate staff to provide the usual and customary and suitable service to guests. The serving of intoxicating alcoholic beverages is recognized as a secondary consideration as a service provided to the restaurant's clientele. Entertainment areas having tables where intoxicating alcoholic beverages are primarily served may be permitted with the facility. In general, applicants for an On-sale@ liquor license shall be judged on the merit of the proposed facility and application, as it will affect the basic character of the City.

Subd. 12. Additional On-Sale and Off-Sale License Restrictions. All On-Sale and Off-Sale licensees must be actively engaged in business for at least 48 weeks of the calendar year. Actively engaged in business@ shall mean open for business, including active use of the license while open for business. If the City determines that a licensee is not in compliance with this provision of City Ordinance, then said license shall be forfeited to the City after the appropriate notice and opportunity for a hearing before the City Council. Upon request of the City, the licensee shall provide to the City copies of sales tax receipts evidencing compliance with this section.

In case of a fire, or natural disaster, the licensee must present to the City a written plan to rebuild and reopen the business within six (6) months of the loss. The licensee

would have the balance of the licensee year after the loss in addition to one renewal term within which to reopen the business. In any given case the City Council, upon written request of the licensee, would have the discretion to extend the above-referenced deadline for good cause shown by the licensee. If the licensee fails to meet these requirements, then the license shall be forfeited to the City after the appropriate notice and hearing. If the license is forfeited to the City, then the license shall be made available to the public based upon applications received by the City.

Subd. 13. Effective upon adoption of this Ordinance, all new off-sale licensees, including transferees, shall maintain a separate entrance and segregate the designated off-sale area from any on-sale area contained or located within the same building. The separate entrance may be located within the same building. These restrictions shall not apply to licensees that have been issued both on-sale and off-sale licenses for the same licensed premises or building upon the effective date of this Ordinance.

SECTION 1.61. CLUB LICENSE RESTRICTIONS AND REGULATIONS, AND UNLAWFUL ACTS.

Subd. 1. Definitions. The following terms, as used in this Section, shall have the meanings stated:

- A. **"Member"** means any person in good standing according to rules and regulations of the licensed club, wherever located, having evidence of current membership upon his person.
- B. **"Guest"** means a person not a member of the club, but present on the club licensed premises in the company of a host member.
- C. **"Host member"** means a member who is entertaining a guest who is in the member's company at all times such guest is on the licensed premises.

Subd. 2. Daily Register. In addition to all other general provisions, restrictions and regulations set forth in this Ordinance, relating to beer or liquor licensees, as the case may be, all club licensees shall keep a daily register showing the names of guests present and the name of the host member. Such register shall be open to inspection by police officers at all times.

Subd. 3. Unlawful Acts. The following are in addition to all other unlawful acts set forth in this Ordinance relating to sales and purchases of beer or liquor, as the case may be:

- A. It is unlawful for a club licensee to sell liquor or beer to any person not a member, or a bona fide guest of a member, of the licensed club.
- B. It is unlawful for any club licensee to serve beer or liquor to any non-member of the licensed club unless such non-member is a guest.

- C. It is unlawful for any person who is not a member, or a bona fide guest of a member, of the licensed club to purchase liquor or beer from the club.
- D. It is unlawful for any club licensee to hinder or prevent a police officer from determining compliance with this Ordinance, and all other laws.
- E. It is unlawful for any person to refuse, upon request of a licensee or police officer, to provide information as to whether he or she is a member, guest or host member, or to give false, fraudulent or misleading information in response to such request.

(Sections 1.62 through 1.79, inclusive, reserved for future expansion)

SECTION 1.80. CONSUMPTION AND DISPLAY.

Subd. 1. Consumption and Display License Required. It is unlawful for any business establishment or club, not holding an on-sale liquor license to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale, or otherwise dispose of any liquid for the purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to such members, without a license therefore from the City.

Subd. 2. Consumption and Display License Fee. The annual consumption and display license fee is to be set by Council resolution.

Subd. 3. Consumption and Display Restrictions and Regulations.

- A. **Eligible Licensees.** If the applicant is otherwise eligible, then licenses may be issued only to (1) persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this Ordinance or other law relating to the sale or furnishing of alcoholic beverages; (2) a restaurant; (3) a hotel; (4) a beer licensee; (5) a resort as defined by statute; or, (6) a club or an unincorporated club otherwise meeting the definition of a club, provided, that no license may be issued to a club holding an on-sale liquor license.
- B. **Unlawful Act.** It is unlawful to sell liquor on licensed premises.
- C. **License Expiration.** In order to coordinate the expiration of consumption and display license with a State permit, all licenses

shall expire on March 31 of each year.

- D. **State Permit Required.** Licenses shall be issued only to holders of a consumption and display permit from the Commissioner.
- E. **Lockers.** A club to which a license is issued under this Section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.
- F. **Hours and Days.** No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 2:00 o'clock A.M. and 12:00 o'clock noon on Sundays, and between 2:00 o'clock A.M. and 8:00 o'clock A.M. on Monday through Saturday.

SECTION 1.81. CONSUMPTION AND DISPLAY - ONE-DAY LICENSE.

Subd. 1. License Required. Any non-profit organization desiring to serve liquids for the purpose of mixing with liquor and permitting the consumption and display of liquor in conjunction with a social activity sponsored by it, shall first obtain a license therefore from the City. It is unlawful for any such organization to fail to obtain such license.

Subd. 2. Term. The term of such license shall be one day only.

Subd. 3. Limitation on Number. The City shall issue no more than ten licenses in any calendar year.

Subd. 4. License Fee. The fee for a temporary license to be set by Council resolution.

Subd. 5. Approval. In addition to Council approval, such license must be approved by the Commissioner of Public Safety.

(Sections 1.82 through 1.89, inclusive, reserved for future expansion)

SECTION 1.90. NUDITY OR OBSCENITY PROHIBITED.

Subd. 1. Definitions. As used in this Section, the following words and terms shall have the meanings stated:

- A. **"Nudity"** means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point

immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

- B. **"Obscene performance"** means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.
- C. **"Obscenities"** means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.
- D. **"Sadomasochistic abuse"** means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- E. **"Sexual conduct"** means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
- F. **"Sexual excitement"** means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Subd. 2. Unlawful Act. It is unlawful for any person issued a license provided for in this Ordinance to permit upon licensed premises any nudity, obscene performance, or continued use of obscenities by any agent, employee, patron or other person except as in compliance with Ordinance Number 00-1, an ordinance concerning the location and regulation of sexually oriented businesses in the City of Manhattan Beach.

(Sections 1.91 through 1.98, inclusive, reserved for future expansion)

SECTION 1.99. VIOLATION A MISDEMEANOR. Every person violates a section, subdivision, paragraph or provision of this Ordinance when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

SECTION 2.00: Effective Date. This Ordinance shall become effective upon its passage and publication as provided by law.

SECTION 3.00: Repeal: This Ordinance shall repeal all ordinances inconsistent herewith.

Passed by the City Council this 2 day of DECEMBER 2008, by a MAJORITY vote of said City Council.

CITY OF MANHATTAN BEACH



Paul L. Allen
Mayor



Attested by:
Barbara Hanson
Clerk/Treasurer

*Orig.
Stamped
by C.W. County*