

City of Lowry
Ordinance No. 105
Possession, Sale & Consumption of Intoxicating & 3.2 Malt Liquor

An Ordinance regulating the possession, sale and consumption of intoxicating and 3.2 percent malt liquor within the City of Lowry, Minnesota, and repealing Ordinance numbers. 23, 69, 70, and 88.

The City Council of the City of Lowry, Minnesota does ordain:

1. Adoption Of State Law By Reference

The provisions of M. S. Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the City Council that all future amendments to M. S. Chapter 340A are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance is adopted.

2. City May Be More Restrictive Than State Law

The Council is authorized by the provisions of Minnesota state statute to impose, and has imposed in this ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in Minnesota state statute.

3. 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 ordinance. 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 ordinance, 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 non-transparent 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 or 3.2 percent malt liquor license or the imposition of a civil penalty under the provisions this ordinance.

4. Consumption in Public Places

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this ordinance, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is not lawfully permitted.

5. Number of Licenses Which May be Issued

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this ordinance is limited to the number of license which were issued as of the effective date of this ordinance, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by Minnesota Statutes. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of Minnesota state statutes, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

6. Term and Expiration of Licenses

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

7. Kinds of Liquor Licenses

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in this ordinance.

- A. 3.2 percent malt liquor on-sale licenses, which may be issued only to restaurants, hotels clubs, bowling centers and establishments used exclusively for the sale of 3.2 percent malt liquor with the

incidental sale of tobacco and soft drinks.

- B. 3.2 percent malt liquor off-sale license.
- C. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious or nonprofit organization.
- D. Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores. The fee for an off sale intoxicating liquor license established by the Council under Section 8 shall not exceed \$100 or a greater amount which may be permitted by Minnesota state statute.
- E. On-sale intoxicating liquor licenses, which may be issued to the following establishments defined by Minnesota state statute and this ordinance: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 8 of this ordinance shall not exceed the amounts provided for in Minnesota state statute. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of Minnesota state statute.
- F. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by Minnesota state statute. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license which shall be established by the Council under the provisions of Section 8 of this ordinance, shall not exceed \$200, or the maximum amount provided by Minnesota state statute.
- G. Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.
- H. Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.
- I. On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of Minnesota state statute and which meet the definition of restaurant; and to licensed bed and breakfast facilities which meet the criteria in Minnesota state statute. The fee for an on-sale wine license established by the Council under the provisions of this ordinance shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.
- J. One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.
- K. Approval of the issuance of a consumption and display by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of this ordinance shall not exceed \$300, or the maximum amount permitted by Minnesota state statute. Consumption and display permits shall expire on March 31 of each year.

8. License Fees; Pro Rata

- A. No license or other fee established by the city shall exceed any limit established by Minnesota state statute, for a liquor license.
- B. The Council may establish from time to time by ordinance or resolution the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this ordinance. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.
- C. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.
- D. All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.
- E. A refund of a pro rata share of an annual license fee may occur only if authorized by Minnesota state statute.

9. Council Discretion to Grant or Deny a License

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this ordinance.

10. Application for License

- A. Every application for a license issued under this ordinance shall be on a form provided by the Minnesota Commissioner of Public Safety, Alcohol and Gambling Enforcement, and shall be verified and filed with the city. Application will contain information on the owner, the business connected to the license and the type(s) of licenses applied for and the premises where liquor will

be dispensed and consumed and shall not include any parking lot or sidewalk. No person shall make a false statement in an application.

- B. Prior to the issuance of any license under this ordinance, the applicant shall demonstrate proof of financial responsibility with regard to liability, as defined in Minnesota state statute. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to Minnesota state statute. Operation of a business which is required to be licensed by this ordinance without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

11. Applications for Renewal

The State of Minnesota will send out the renewal applications to the City. The City will get this renewal to the owner of the affected business and that owner will return the completed application along with the appropriate renewal fees to the City prior to the December City Council Meeting for their approval. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

12. Transfer of License

No license issued under this ordinance may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

13. Investigation

- A. If on an initial application for a license, a renewal of that license, or on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, the city shall conduct a preliminary background and financial investigation of the applicant. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.
- B. If the results of a preliminary investigation warrant, the Council may authorize a comprehensive background and financial investigation conducted either by the Council or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on sale intoxicating liquor license or an on sale wine license.

14. Hearing and Issuance

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. 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 sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

15. Restrictions on Issuance

- A. Each license shall be issued only to the applicant for the premises described in the application.
- B. Not more than one license shall be directly or indirectly issued within the city to any one person.
- C. No license shall be granted or renewed for operation on any premises on which taxes, utility charges, assessments, service charges or other financial claims of the city are delinquent and unpaid.
- D. No license shall be issued for any place or any business ineligible for a license under state law.
- E. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this paragraph shall not apply to any existing license existing on the effective date of this chapter or to the renewal of an existing license.
- F. No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

16. Conditions Of License

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

- A. Within 90 days after employment, every person selling or serving liquor in an establishment which has an "on-sale" license shall receive training regarding the selling or serving of liquor to customers. Proof of training shall be provided by the licensee.

- B. Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.
- C. Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
- D. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- E. Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license.

17. Hours And Days Of Sale

- A. The hours of operation and days of sale shall be those set by Minnesota state statute .
- B. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- C. No on-sale licensee shall permit any glass, bottle or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
- D. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- E. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

18.Minors On Premises

- A. No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restaurant, hotel, motel or other multipurpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.
- B. No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

19. Restrictions On Purchase And Consumption

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of Minnesota state statute, which has been approved by the Council, and no person shall consume liquor in any such place.

20. Suspension And Revocation

- A. The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation or provision of this ordinance relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.
- B. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this ordinance or Minnesota state statute. Revocations shall occur within 60 days following a violation for which the revocation is imposed.
 - 1. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, the license shall be revoked.
 - 2. The license shall be suspended by the Council after a finding under (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:
 - a. For the first violation within any three year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
 - b. For a second violation within any three year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
 - c. For the third violation within any three year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
 - d. For a fourth violation within any three year period, the license shall be revoked. The council shall select the day or days during which the license will be suspended.
- C. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this ordinance or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy 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 of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this paragraph shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.

- D. The provisions of Section 21 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

21. Penalties

- A. Any person violating the provisions of this ordinance or Minnesota state statute is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- B. The Council shall impose a civil penalty of up to \$2,000 for each violation of M. S. Chapter 340A and of this ordinance as provided by the minimum schedule of presumptive civil penalties. These civil penalties shall be in addition to any criminal penalties imposed under 21-A or any suspension or revocation imposed under Section 20. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties in addition to any suspensions which must be imposed unless the license is revoked:
1. For the first violation within any three year period, \$500.
 2. For the second violation within any three year period, \$1,000.
 3. For the third and subsequent violations within any three year period, \$2,000 for each violation.

All ordinance of this City or any provisions in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after its passage and publication summary of its contents according to the law.

Adopted by the City Council this 3rd day of July, 2012.

Daniel Sutton, Mayor

ATTEST: Lucy Olson, City Clerk