

ORDINANCE NO. 4-50

**AN ORDINANCE CREATING SECTION 470 OF THE DEEPHAVEN CITY CODE TO
REGULATE THE SALE, CONSUMPTION AND DISPLAY OF INTOXICATING LIQUOR, BEER
AND WINE**

The City Council of the City of Deephaven, Minnesota, does hereby ordain:

Section 1. Section 470 is hereby amended as follows:

**SECTION 470 SALE, CONSUMPTION AND DISPLAY OF
INTOXICATING LIQUOR, BEER AND WINE**

470.01 Definitions. The definitions in Minnesota Statutes, Chapter 340A apply to this chapter. In addition, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Subd. 1. Alcoholic beverage. Any beverage containing more than .5% alcohol by volume.

Subd. 2. Applicant. Means any natural person, corporation, partnership or limited liability company.

Subd. 3. Application. Means a form with blanks or spaces on the form, to be filled in and completed by the applicant as his request for a license, furnished by the city and uniformly required.

Subd. 4. Display. Means the keeping, storing, or permitting to be kept or stored of an alcoholic beverage which has been poured, dispensed or has had its package seal broken on, in or at any table, booth, bar or other area of a licensed premises accessible to the general public, except when the alcoholic beverage is stored in a normal storage area during non-sale hours.

Subd. 5. Intoxicating Liquor. Means ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent alcohol by weight.

Subd. 6. License. Means a document, issued by the city, permitting an applicant to carry on and transact the business stated in the license.

Subd. 7. License Fee. Means the money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on the business stated in the license.

Subd. 8. Licensee. Means an applicant, who, pursuant to his approved application, holds a valid, current, unexpired license, which has neither been revoked nor suspended, by the city for carrying on the business stated in the license.

Subd. 9. Malt Liquor. Means any beer, ale or other beverage made from malt by fermentation and containing not less than .5% alcohol by volume.

Subd. 10. Off-sale. Means the sale of intoxicating liquor in original packages for consumption off the licensed premises only.

Subd. 11. On-sale. Means the sale of intoxicating liquor for consumption on the licensed premises only.

Subd. 12. Package. Means a sealed or corked container of alcoholic beverages.

Subd. 13. Restaurant. Means any establishment 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 which has seating facilities for seating not less than 10 guests at a time.

Subd. 14. State established legal drinking age. Means 21 years of age.

Subd. 15. 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, sherry and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. Wine does not include distilled spirits as defined in Minn. Stat. 340A.101.

470.02 Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 340A, with reference to definition of terms, applications for licenses, granting of licenses, conditions of licenses, restrictions on consumption, provisions on sales, conditions of bonds of licenses, hours of sale and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor and non-intoxicating malt liquor are hereby adopted and made a part of this Chapter as if fully set out herein.

470.03 License Required. 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 without a license to do so as provided in this ordinance. Intoxicating liquor licenses shall be of five kinds: on-sale intoxicating liquor license, off-sale intoxicating liquor, on-sale wine license, Sunday on-sale intoxicating liquor, and one day license.

Subd. 1. On-sale Intoxicating Liquor Licenses

(a) On-sale intoxicating liquor licenses shall be issued only to restaurants and shall permit on-site sale of intoxicating liquor only.

(b) On-sale intoxicating liquor licenses will only be issued for properties located within the C-2 commercial zoning district.

(c) No more than three "on-sale" liquor licenses shall be granted at one time.

Subd. 2. Off-sale Intoxicating Liquor Licenses

(a) Off-sale intoxicating liquor licenses shall be issued only to exclusive liquor stores. Such licenses shall permit off-sales of alcoholic beverages, including intoxicating liquor.

(b) Off-sale intoxicating liquor licenses will only be issued for properties located within the C-1 and C-2 commercial zoning districts.

(c) No more than three “off-sale” liquor licenses shall be granted at one time.

Subd. 3. On-sale Wine Licenses

(a) On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes Section 340A.404, Subdivision 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. Said restaurants shall be authorized to sell intoxicating malt liquors at on-sale without an additional license.

(b) On-sale wine licenses shall be issued only to restaurants and shall permit on-site sale of wine and intoxicating malt liquor only.

(c) On-sale wine licenses will only be issued for properties located within the C-1 and C-2 commercial zoning districts.

(d) The number of On-sale wine licenses shall count against the overall number of On-Sale licenses permitted in Section 470.03(1)(c).

Subd. 4. Sunday On-Sale Intoxicating Liquor

A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to restaurants which have an “on-sale” license.

Subd 5. One Day Permits

Any club or charitable, religious or other non-profit corporation that has existed for at least three years or a political committee registered under state law or a state university desiring to serve intoxicating malt liquor or wine in conjunction with a social activity sponsored by it shall first obtain a permit from the city. It is unlawful for any such organization to fail to obtain such a permit. The term of such permit shall be one day only. No more than twelve permits shall be issued in a calendar year.

470.04 Application for License.

Subd. 1. Form. Every application for a license to sell intoxicating liquor shall state the name of the applicant, his/her age, representations as to his/her character (with such references as the Council may require), his/her 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 he/her has been in that business at that place, and such other information as the Council shall require from time to time, including the following:

(a) True name, place and date of birth, and street address (residence) of applicant.

(b) Whether applicant is married or single. If married, true name, place and date of birth, and street address (residence) of applicant’s spouse.

(c) Whether applicant and spouse are qualified voters of the State of Minnesota.

(d) Street addresses at which applicant has lived during the preceding 10 years.

(e) Kind, name and location of every business or occupation applicant has been engaged in during the preceding 10 years.

(f) Names and addresses of applicant’s employers for the preceding 10 years.

(g) Whether or not applicant has ever been convicted of any felony, crime or ordinance violation. If so, when, where, and for what such convictions were had.

(h) Whether applicant has ever been engaged as an employee in operation of a saloon, café, restaurant or other business of similar nature which required the issuance of an intoxicating liquor license. If so, when, where and for how long.

- (i) Whether applicant is a natural person, corporation, partnership or limited liability company.
- (j) If applicant is other than a natural person, the name of the manager or proprietor of the premises to be licensed, giving all the information about said manager or proprietor as is required about the applicant by (a) through (h) above.
- (k) If applicant is other than a natural person, the names of all the members or owners thereof, giving all the information about said members or owners as is required about the applicant by (a) through (h) above.
- (l) Names and addresses of the owner and any lessees of the land upon which is located in the building which houses the premises to be licensed.
- (m) Names and addresses of all owners, lessees, mortgagors or vendors of fixtures or furniture used or to be used in the premises to be licensed.
- (n) Name and address of every person who shall have charge, management or control of the place licensed.
- (o) If applicant is a corporation, partnership, limited liability company or club, the name and general purpose of such corporation, partnership, limited liability company, or club, and the names and street addresses of all officers. In addition, corporations shall file with the application one certified copy of the by-laws, articles of incorporation and minutes of the meeting setting forth the officers of the corporation. If applicant is a corporation, the state of incorporation and a complete list of all stockholders with number of shares owned by each.
- (p) Exact legal description of the premises to be licensed.
- (q) Such other information as the Council may require.

Every application shall also include a copy of each notice received by the applicant under Minnesota Statutes Section 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 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 Minnesota Statutes Section 340A.409 with regard to liabilities imposed by Section 340A.801. Such proof shall be filed with the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes Section 340A.409.

Subd. 3. Approval of Security. The security offered under Subdivision 2 shall be approved by the Council and, in the case of applicants for "on-sale" wine licenses, by the State Commissioner of Public Safety. Liability insurance policies required by this ordinance but not by state law shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the city at all times effective security as required in Subdivision 2 is a cause for revocation of the license.

470.05 Investigation of Applications.

Subd. 1. Initial Applications. All initial applications for a license shall be referred to the city police department for verification and investigation of the facts set forth in the application. The police department shall cause to be made such investigation of the information requested in section 470.06(1) as shall be necessary and shall make a written recommendation and report to the Council. Such report shall include, but shall

not be limited to, a list of all violations of federal, state, or city law committed by the applicant, officers, and directors, if the applicant is a corporation, and managers as disclosed in the application. Upon an initial application the police department shall also conduct a preliminary background and financial investigation of the applicant.

Subd. 2. Renewal Applications. All renewal applications shall be referred to the city police department for verification and investigation of the matters set forth in the renewal application and determined by the city administrator to require further investigation.

Subd. 3. Investigation Renewal. Without limiting the discretion of the Council to deny a license application for other reasons, no license shall be issued or renewed if the results of the investigation show, to the satisfaction of the Council, that issuance or renewal would not be in the public interest.

470.06 Investigation Fees.

Subd. 1. Initial Investigation Fee. At the time of each original application for a license, the applicant shall also pay in full an investigation fee. Such fee shall be set from time to time by the Council, and a schedule of such fees is on file and available in the city offices, and, if such investigation is conducted outside the state, all costs and expenses shall be charged to and paid by the applicant. No investigation fee shall be refunded.

Subd. 2. Investigation of Change in Status on Renewal Application. At any time that an additional investigation is required because of a change in the ownership or control of the licensee or change of the manager of the premises, the licensee shall pay an additional investigation fee per person in the amount set from time to time by the Council, and a schedule of such fees is on file and available in the city offices. At the time that an additional investigation is required because of an enlargement, alteration, or extension of premises previously licensed, the licensee shall pay an additional investigation fee in the amount set from time to time by the Council, and a schedule of such fees is on file and available in the city offices.

470.07 License Fees.

Subd. 1. Fees. The annual fees for licenses shall be established from time to time by the Council and are set out in Section 405 of this code.

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 470.05, Subdivision 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 each year.

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

470.08 Granting of Licenses.

Subd. 1. Initial Investigation. On an initial application for a liquor license, the applicant shall pay with his application an investigation fee of the statutory maximum at the time of application 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 Apprehension for the investigation. No license shall be issued 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 Council shall investigate all facts set out in the application and not investigated in the initial background and financial investigation conducted pursuant to Subdivision 1. The provisions of Section 400 of this Code shall apply to all licenses required by Section 470.03 and to the holders of such licenses, provided that all licenses shall be granted or denied by the Council and the Commissioner of Public Safety, if required by State law. The Council shall conduct a public hearing on the application for a new on-sale intoxicating liquor license and off-sale intoxicating liquor license within a reasonable period following receipt of a complete application and completion of the investigation required by Section 470.05. A notice of the date, time, place and purpose of the hearing shall be published once in the official newspaper and mailed to all properties within three hundred and fifty feet of the subject property not less than ten days before the date of the hearing. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting. No hearing shall be required for the renewal of an on-sale intoxicating liquor license or off-sale intoxicating liquor license.

Subd. 3. Restriction of Transfers of Licenses. No license shall be transferred to any person or premises by the person or from the premises to whom and for which the license was granted, by any means whatsoever, including, without limitation, devise or descent or involuntarily by the operation of law, without the person and premises to whom and to which the license is to be transferred having first submitted an application containing all of the information required in an original application, and complying with all requirements for an original license, and receiving the approval of the Council, and where required, the Commissioner of Public Safety. Any change in the persons named in the original application or any change in the information in such original application shall be deemed a transfer for the purposes of this Section. Provided, however, the following changes shall not be deemed a transfer:

- A. A change in the ownership of a partnership or limited liability company comprising 10% or less cumulatively of the ownership interests in the partnership or limited liability company during the then license period;

B. A change in ownership of a corporation comprising 10% or less cumulatively of the stock owners during the then license period; or

C. A change in one of the corporation's officers during the term of the license. Provided, however, the corporation shall give notice of a change in officer to the Clerk and the new officer shall comply with all requirements of this Section.

470.09 Persons Ineligible for License.

Subd. 1. No license shall be granted to any person made ineligible for such a license by state law or who is not the applicant or owner of the establishment for which the license is issued. No more than one liquor license shall be directly or indirectly issued within the City to any one person.

Subd. 2. No license shall be issued to a person of the United States not of good moral character and repute, nor to any person who within five years prior to the application for such license has been convicted of any willful violation of any law of the United States, of the state, or of any local ordinance with regard to the manufacture, sale, distribution, or possession, sale or distribution of intoxicating liquor, or sale or possession of controlled substances, nor to any person whose license under the intoxicating liquor act of the state has been revoked for any willful violation of such laws or ordinances.

Subd. 3. No license shall be issued to any person in connection with the violation of Intoxicating Liquor Act; provided, however, that this subsection shall not prevent the granting of a license to a proper lessee by reason of the fact that he shall lease premises to a minor, noncitizen, or a person who has been convicted of a crime other than a violation of the Intoxicating Liquor Act.

470.10 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 or the city's zoning ordinance.

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.

Subd. 3. Parking. No license shall be granted for operation at any premises which the licensee shall not have provided adequate off-street parking per the city's zoning ordinance.

470.11 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.

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. Hours of Sale. Sale of intoxicating liquor shall be permitted between the hours of 8:00 a.m. and 9:30 p.m., unless modified by the City Council as part of a special use request. Not only must the sale of intoxicating liquor cease at the closing hour appointed each day by city code but also all persons, other than employees of the licensee, shall vacate the licensed premises within 15 minutes of the closing hour. No person shall consume any alcoholic beverage on any such premises before opening hours or 15 minutes after closing hour.

Subd. 5. Inspections. Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City to enter and inspect the premises of the licensee during business hours.

Subd. 6. Display During Prohibited Hours. No "on-sale" establishment shall display alcoholic beverages to the public during hours when the sale of intoxicating liquor is prohibited.

Subd. 7. No Gambling. No gambling or any gambling device prohibited by law shall be permitted in any licensed premises.

Subd. 8. Receipts. No license may be issued or renewed unless the applicant makes a bona fide estimation that at least 60% of the gross receipts of the establishment during its first year of business will be attributable to the sale of food. Thereafter license holders shall annually in conjunction with their request to renew their license hereunder submit a verified statement of the percent of the gross receipts of the licensed establishment during the previous 12 months of operation attributable to the sale of food. Failure to demonstrate to the satisfaction of the city that the sale of food was at least 60% of gross receipts of the establishment in the preceding 12 months shall subject the license holder and license to fines, license suspension, and revocation as provided under section 470.13.

470.12 Restrictions on Purchase and Consumption.

Subd. 1. Consumption. It is unlawful for any business issued a liquor license under this ordinance to permit the consumption of alcohol by patrons outside the structure in which the permit was issued unless permission has been specifically granted or licensed by the Council.

Subd. 2. Consumption in Public Places. It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any street or other public/property except city parks and other public property when and where permission has been specifically granted or licensed by the Council.

Subd. 3. Sale to Obviously Intoxicated Persons. No person may sell, give, furnish, or in any way procure for another, alcoholic beverages for the use by an obviously intoxicated person.

470.13 Suspension and Revocation. The Council upon a finding that a licensee has failed to comply with any applicable statute, regulation, or ordinance relating to sale of alcohol may either suspend for up to 60 days or revoke any liquor license, or impose a civil fine not to exceed \$2,000 or impose any combination of these sanctions for each violation. The Council may upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to \$2,000 for each violation or impose any combination of these sanctions. 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 Minnesota Statutes Sections 14.57 to 14.69 of the Administrative Procedure Act. The Council may appoint a hearing officer or may conduct a hearing itself. The hearing notice shall be given at least 10 days prior to the hearing, include notice of the time and place of the hearing, and state the nature of the charges against the licensee. 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 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 Council determines that the financial responsibility requirements of this ordinance have again been met.

470.14 Separability. Every section, provision or part of this ordinance is declared separable from every other section, provision or part; and if any section, provision or part of any ordinance shall be held invalid, it shall not affect any other section, provision or part thereof.

Section 2. This ordinance shall be effective as of its date of publication.

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

Paul A. Skrede, Mayor

Attest: _____

Dana H. Young, City Administrator

