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 - Legislative Code of the City of Duluth, Minnesota 1959 (through Ord. No. 9717, 2-14-2005)
 - PART II. THE CODE.
 - CHAPTER 8. BEVERAGES.
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Article I. Alcoholic Beverages.

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Division I. Alcohol, gambling and tobacco commission.

Sec. 8-1. Created.

There is hereby created a nonsalaried board, to be known as the alcohol, gambling and tobacco commission of the city. (Ord. No. 7056, § 1; Ord. No. 9438, 2-14-2000, § 2.)

Sec. 8-2. Membership; appointment; term of office.

The alcohol, gambling and tobacco commission shall consist of seven members, who shall be appointed by the mayor, subject to the approval of the council. Each member shall be a citizen of the United States and a resident of the city for at least one year immediately preceding his appointment. Of the persons first appointed for membership on the commission, three shall be appointed for one year, three for two years and one for three years. Thereafter, all appointments shall be for the term of three years, except such appointments as may be made for the remainder of unexpired terms. Members of the commission shall be eligible for reappointment. (Ord. No. 7056, 8-27-1956, § 2; Ord. No. 8689, 2-6-1984, § 1; Ord. No. 9438, 2-14-2000, § 3.)

Sec. 8-3. Vacancies.

Vacancies on the alcohol, gambling and tobacco commission caused by death, resignation or otherwise shall be filled by the mayor only for the unexpired terms, subject to approval of the city council, in the same manner as for initial appointments. Such vacancies shall be filled by the mayor within 30 days after the occurrence of such vacancies. The term of any member of the commission shall be deemed vacant upon such failure to attend three consecutive meetings, unless such nonattendance resulted

meeting. The city attorney or an assistant city attorney designated by the city attorney shall attend all meetings of the commission. Any applicant or licensee who shall request that a special meeting of the commission be held to consider said applicant's or licensee's business shall pay to the clerk an additional fee, which shall be set in accordance with Section 31-6(a) of this Code, if such special meeting is held to cover costs of the meeting. (Ord. No. 7056, § 4; Ord. No. 7067; Ord. No. 8923, 1-17-1989, § 18; Ord. No. 9438, 2-14-2000, § 7; Ord. No. 9611, 7-28-2003, § 9.)

Sec. 8-7. Advisory power as to issuance of alcoholic beverage licenses and lawful gambling permits and licenses.

(a) The alcohol, gambling and tobacco commission shall investigate every application for a license to sell alcoholic beverages within the city and, after such investigation, shall report its findings and make recommendation to the city council as to whether an application for a license should be granted or refused by the city council. The power to grant alcoholic beverage licenses is not delegated to the commission by this Section. The recommendations of the commission with respect to the granting or refusal of any alcoholic beverage license shall be merely advisory;

(b) No application for an alcoholic beverage license shall be considered by the alcohol, gambling and tobacco commission unless such application has first been filed with the city clerk and reports made thereon by the proper city officers, as required by sections 8-12 to 8-68. Within 60 days after an application for an alcoholic beverage license has been submitted to the commission for its consideration, the commission shall, in writing, make and file its report and recommendation thereon. Thereupon, the city clerk shall refer such report and recommendation to the city council for its determination;

(c) The alcohol, gambling and tobacco commission shall, with the assistance of the police department, investigate all applicants for state lawful gambling licenses and premises permits for operations within the city and all applicants for gambling manager licenses and jar operator licenses authorized by Chapter 10A of this Code. After

making such investigation, the commission shall recommend to the city council whether to disapprove of any state lawful gambling premises permit or license pursuant to the provisions of Minnesota Statutes, Section 349.213, Subdivision 2, and shall grant or deny all gambling manager licenses and jar operator licenses. Commission recommendations on state lawful gambling licenses and premises permits are advisory only and shall not be binding upon the city council;

(d) The city council shall not waive any statutory time period for objecting to lawful gambling operations until after the alcohol, gambling and tobacco commission has investigated the prospective applicant and made a recommendation to the city council. (Ord. No. 7056, §§ 5, 6; Ord. No. 9438, 2-14-2000, § 8.)

Sec. 8-8. Complaints and questions as to licenses, laws, etc.

Whenever there shall be filed with the city clerk or with the city council any complaint or question relating to the issuance or granting of alcoholic beverage licenses, lawful gambling licenses or permits, or tobacco licenses or any problem relating to control or enforcement of this Chapter or chapters 10A or 11 or any other regulations of the city relating to alcoholic beverages, lawful gambling or tobacco, such complaints or questions shall be referred immediately to the alcohol, gambling and tobacco commission and the commission shall, at its next regular meeting or as soon thereafter as may be, investigate such complaints or give consideration to such questions and report its findings in writing to the city council. Such report and findings shall be filed with the city clerk as a public document. (Ord. No. 7056, § 7; Ord. No. 9438, 2-14-2000, § 9.)

Sec. 8-9. Suspension and revocation of licenses; civil penalty; presumptive penalties.

(a) When it comes to the attention of the alcohol, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the

operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcohol, gambling and tobacco commission may call for a hearing to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee. Any hearing called pursuant to the provisions of this Section shall be held before the alcohol, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated thereunder. At such hearing, the commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council. At the completion of the hearing and deliberations, the commission shall direct the city clerk to prepare a report to the city council which shall consist of the commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The council shall also receive a copy of the transcript of the commission's hearing and any exhibits introduced as evidence. The city council shall not render a decision on the matter until at least ten days after it has received the report of the alcohol, gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the alcohol, gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter. The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a

liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board or the police in any investigation and the refusal to admit police officers into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

(9) The filing of a license application containing information or statements known by the applicant to be false;

(c) The city council may, for the causes enumerated above, revoke a license, suspend a license for up to 60 days, or impose a civil penalty of not to exceed \$2,000 for each violation, or any combination of these sanctions. Absent significant aggravating or mitigating circumstances, the presumptive penalties for violations shall be as follows:

First offense - \$500 civil penalty;

Second offense within one year - \$750 civil penalty and one day license suspension;

Third offense within two years - \$1,000 civil penalty and five day license suspension;

Fourth offense within two years - \$1,500 civil penalty

and 30 day license suspension;

(d) The city council may request that the alcohol, gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The commission shall conduct any hearings so requested. (Ord. No. 7056, § 8; Ord. No. 8645, 10-4-1982, § 2; Ord. No. 8981, 4-23-1990; § 1; Ord. No. 9438, 2-14-2000, § 10; Ord. No. 9495, 6-11-2001, § 1.)

Sec. 8-10. Conflicts of interest.

No member of the commission, directly or indirectly, individually or as a member of a charitable organization or of a partnership or association or as a stockholder in a corporation, shall have any interest whatsoever in any lawful gambling operation or in the manufacture or distribution of any lawful gambling supplies or equipment, or in the manufacturing, transporting, or storing, or sale of alcoholic beverages or tobacco products. A violation of this Subsection by any member of the commission shall disqualify such person from membership on the commission. (Ord. No. 7056, § 9; Ord. No. 9438, 2-14-2000, § 11.)

Sec. 8-11. Duties of administrative assistant and city attorney.

Subject to the provisions of the City Charter, the alcohol, gambling and tobacco commission may require the administrative assistant to furnish such information and assistance to the commission as the commission shall deem necessary in carrying out the provisions of this Division. The city attorney shall be the legal advisor of the commission. (Ord. No. 7056, § 10; Ord. No. 9438, 2-14-2000, § 12.)

Division 2. Alcoholic Beverage Code.

Subdivision I. Generally.

Sec. 8-12. Short title.

This Division may be cited and known as the "Alcoholic Beverage Code of the city." (Ord. No. 6830, § 57.)

Sec. 8-13. Definitions.

For the purposes of this Division, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Alcoholic beverages. Distilled, fermented, spirituous, vinous, and malt beverages containing .5 percent or more of ethyl alcohol by weight which are potable for consumption by human beings.

At retail. Such term means for use or consumption by the purchaser and not for resale.

Bed and breakfast establishment. Any bed and breakfast inn authorized by Section 50-35 of this Code or other residential, owner occupied, historically or architecturally unique, overnight lodging facility that serves meals to its guests and which is authorized or allowed by local law and is found by the alcoholic beverage board to be the functional equivalent of a bed and breakfast inn.

Club. Any corporation duly organized under the laws of the state for civic, fraternal, social or business purposes, or for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization which shall have more than 50 members and which shall, for more than a year, have owned, hired or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, whose affairs and management are conducted by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents or employees is paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted

each year by the directors or other governing body.

Exclusive liquor store. An establishment used exclusively for the sale of intoxicating liquor for consumption off or away from the licensed premises where sold, and the sale of ice, soft drinks, and cigarettes.

Hotel. Any establishment having a resident proprietor or manager, where, in consideration of payment therefor, food and lodging are regularly furnished to transients, which maintains not less than 50 guest rooms with bedding and other suitable and necessary furnishings in each room, which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and the usual service and which maintains, under the same management and control as the rest of the establishment and has as an integral part thereof, a dining room with appropriate facilities for seating not less than 30 guests at one time and where the general public is, in consideration of payment therefor, served with meals at tables.

Intoxicating liquor. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight.

Manufacturer. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces intoxicating liquors for sale.

Nonintoxicating malt liquor or nonintoxicating liquor. Any liquid, potable as a beverage, containing not more than 3.2 percent of alcohol by weight nor less than 1/2 of one percent of alcohol by volume.

Off sale. The sale of alcoholic beverages in original packages in retail stores for consumption off or away from the premises where sold.

On sale. The sale of alcoholic beverages by the glass for consumption on the premises only.

Package or original package. Any container or receptacle holding alcoholic beverages, which container or

Sec. 8-15. Inspection of premises.

All premises licensed under the provisions of this Chapter shall be open to inspection by any police, fire, or health officer or any properly designated officer or employee of the city at any time during which the place so licensed shall be open to the public for business. In addition, police officers shall be admitted to any licensed premises at any time people are present on the premises, regardless of the hour. (Ord. No. 6830, 3-6-1950, § 22; Ord. No. 8645, 10-4-1982, § 5.)

Sec. 8-16. Operating standards.

(a) All sales of alcoholic beverages shall be made in full view of the public;

(b) Every room or other place where alcoholic beverages are sold at retail shall, during business hours, be illuminated at an intensity of not less than one foot candle at floor level, except that food or drink preparation areas shall comply with health department illumination standards;

(c) All on sale establishments shall comply with all sanitary regulations of the department of health;

(d) The proprietor of each on sale establishment shall post in a conspicuous place in the establishment the occupancy limit for the establishment as set forth in the State Fire Code. Under no circumstances shall a number of people in the establishment exceed the posted number. (Ord. No. 6830, 3-6-1950, § 23; Ord. No. 7079, 2-11-1957, § 1; Ord. No. 7507, 1-17-1966, § 1; Ord. No. 8645, 10-4-1982, § 6.)

Sec. 8-17. Hours of sale

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--intoxicating liquor.

No sale of intoxicating liquor shall be made after 1:00 a.

m. on Sunday, except as permitted by special license issued pursuant to the provisions of Section 8-46, or by on sale wine license, nor shall such sales be made after 8:00 p.m. on December 24.

No on sale shall be made until 8:00 a.m. on Monday nor between the hours of 1:00 a.m. and 8:00 a.m. on any other weekday.

No off sale shall be made before 8:00 a.m. nor after 10:00 p.m. of any day. No off sales shall be made on Thanksgiving Day or Christmas Day (December 25).

Sales can be made at other times that are authorized by Minnesota Laws 2003, Chapter 126 (M.S.A. Sec. 340A.504) or its amendments or successor,

³ provided that the seller has first obtained each required state permit and has paid required fees, and has applied for and obtained a late hours permit from the office of the city clerk and paid any fee due, which system of late hours permit and fee for any type of on sale business is hereby authorized.

No person holding an off sale license for an exclusive liquor store shall, either directly or indirectly, suffer or permit such place to remain open for the transaction of any business at any other time than that prescribed in this Section for the sale of intoxicating liquor. (Ord. No. 6830, 3-6-1950, § 26; Ord. No. 6846, 11-29-1950, § 1; Ord. No. 7673, 10-28-1968, § 1; Ord. No. 7988, 4-16-1973, § 1; Ord. No. 8128, 1-2-1975, § 1; Ord. No. 8264, 9-20-1976, § 2; Ord. No. 8413, 7-24-1978, § 1; Ord. No. 8645, 10-4-1982, § 7; Ord. No. 8681, 12-5-1983, § 1; Ord. No. 8948, 7-17-1989, § 1; Ord. No. 9337, 7-14-1997, § 1; Ord. No. 9619, 9-8-2003, § 1.)

Sec. 8-18. Same--Nonintoxicating malt liquor.

No sale of nonintoxicating malt liquor shall be made on any Sunday between the hours of 1:00 a.m. and 12:00 Noon. No sale shall be made between the hours of 1:00 a. m. and 8:00 a.m. on any weekday, Monday through Saturday inclusive.

Sales can be made at other times that are authorized by Minnesota Laws 2003, Chapter 126 (M.S.A. Sec. 340A.504) or its amendments or successor, provided that the seller has first obtained each required state permit and has paid required fees, and has applied for and obtained a "late hours" permit from the office of the city clerk and paid any fee due.

No owner or proprietor of any premises for which an on sale intoxicating liquor license has been granted shall directly or indirectly permit upon such premises the sale, dispensing or furnishing of nonintoxicating malt liquor at any time during Sunday unless he has a valid special Sunday license as provided for in Section 8-46 of the Duluth City Code, 1959, as amended. (Ord. No. 6830, § 27; Ord. No. 7046, 5-14-1956, § 1; Ord. No. 8001, 7-30-1973, § 1; Ord. No. 8645, 10-4-1982, § 8; Ord. No. 8681, 12-5-1983, § 2; Ord. No. 9619, 9-8-2003; § 2.)

Sec. 8-19. Hours for consumption, service, etc., of alcoholic beverages on on sale licensed premises.

(a) On any licensed on sale premises, which does not hold a state permit and a "late hours" permit issued by the city which allows sales until 2:00 a.m., no person shall consume or furnish to another person any alcoholic beverage in that period from one hour after sales of alcoholic beverages on such premises are required by law to cease until the time at which sales of alcoholic beverages on such premises are next allowed by law to begin, except that in the case of premises holding a late hour entertainment license, no person shall consume or furnish to another person any alcoholic beverage from 30 minutes after sales of alcoholic beverages on such premises are required by law to cease until the time at which sales of alcoholic beverages on such premises are next allowed by law to begin; and except that in the case of premises holding a state permit and a "late hours" permit issued by the city which allows sales until 2:00 a.m., no person shall consume or furnish to another person any alcoholic beverage in that period from 30 minutes after sales of alcoholic beverages on such premises are required by law to cease until the time at which sale of alcoholic beverages on such premises are next allowed by law to

begin;

(b) No person in charge of such licensed on sale premises shall allow another person to consume any alcoholic beverages on such premises in that period from one hour after sales of alcoholic beverages on such premises are required by law to cease until the time at which sales of alcoholic beverages on such premises are next allowed by law to begin;

(c) The person in charge of such on sale premises shall not allow alcoholic beverages in glasses, cups or containers used for drinking, or in opened and uncorked cans or bottles on such licensed premises during such times when consumption of alcoholic beverages on such premises is prohibited by this Section. For the purposes of this Section 8-19, open bottles of intoxicating liquor stored behind the bar with pouring spout stoppers shall be considered corked bottles;

(d) Notwithstanding any other provision of this Section 8-19, on any licensed on sale premises that is not covered by a valid late hour entertainment license, no person shall consume or furnish to another person any alcoholic beverage, nor shall the person in charge of the premises allow, nor shall any person possess, any alcoholic beverage in a glass, cup, or container used for drinking, or in open and uncorked cans or bottles after the time of 2:00 a.m., except as provided in subdivision (a) of this Section 8-19. (Ord. No. 8212, 3-22-1976, § 1; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 9528, 3-25-2002, § 1; Ord. No. 9619, 9-8-2003, § 3; Ord. No. 9634, 11-24-2003, § 1.)

Sec. 8-20. Destruction of illegal devices; sale of unlicensed alcoholic beverages.

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If the defendant in any criminal action shall be found guilty of manufacturing or selling alcoholic beverages without a proper license, all directions, formula and recipes designed, intended or used for the manufacture of alcoholic beverages in violation of law shall be destroyed by the chief of police or under his direction. Any alcoholic beverages seized and other articles seized shall be forfeited to the city

and sold to the highest bidder by the chief of police.

Before the sale of any still, shall take place, the same shall first be dismantled by the chief of police or under his direction. No sale of any alcoholic beverages so seized shall be made to persons other than those holding a license under the terms of this Chapter.

Proceeds of such sales shall be paid into the police pension fund organized pursuant to the laws of Minnesota, 1953, Chapter 91. (Ord. No. 6830, 3-6-1950, § 33; Ord. No. 8645, 10-4-1982, § 9.)

Sec. 8-21. Unlicensed sale, manufacture, etc., prohibited; exceptions.

No person, directly or indirectly, upon any pretense or by any device, shall manufacture, import, sell, exchange, barter, dispose of or keep for sale any alcoholic beverages without first having obtained a license therefor as prescribed in this Chapter; provided, that this Section shall not apply to manufacturers and wholesalers licensed by the liquor control commissioner of the state. Nothing in this Section shall prohibit the natural fermentation of fruit juices in the home for family use or the fermentation of malt beverages in the home if not prohibited or taxed by state or federal law. (Ord. No. 6830, 3-6-1950, § 35; Ord. No. 8645, 10-4-1982, § 10.)

Sec. 8-22. Alcoholic beverages prohibited in public places; exceptions.

(a) No owner, manager or person having control of any public place shall serve, permit to be served or permit any person to drink alcoholic beverages in such place unless such place has been duly issued an on sale or temporary on sale license;

(b) No person shall mix, prepare, serve or consume alcoholic beverages in any public place except a hotel, club, restaurant or other place licensed to sell on the premises; provided, however, that the city council may, by resolution, permit the serving and consumption of alcoholic beverages in public places in connection with special

events and convention functions subject to whatever conditions it deems desirable to impose;

(c) No person shall consume or have alcoholic beverages in his possession in any public place holding an on sale license unless such alcoholic beverages have been served to him by the licensee or an employee of such licensee;

(d) Except as provided in paragraph (f) of this Section, no licensee, manager or employee of any place for which any on sale license has been issued shall allow any patron to leave the licensed premises with any drink or open container of alcoholic beverages;

(e) Except as provided in paragraph (f) of this Section, no person shall leave any on sale licensed premises with any drink or open container of alcoholic beverages;

(f) Managers and employees of a restaurant licensed to sell intoxicating liquor or wine at on-sale under this Chapter 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 ;

(g) No person shall, within or on any public street, sidewalk, avenue, alley, trail or skywalk:

(1) Possess an opened container which contains and alcoholic beverage or an alcoholic beverage container with the seal broken unless:

(A) An alcohol consumption permit has been issued for the area pursuant to Section 35-9(a)(4) or its successor; or

(B) An on sale license has been issued for the area pursuant to Chapter 8 of this Code; or

(C) The alcoholic beverage container is contained in a second container, which second container is not made from any paper or cardboard product, has an inside volume of one cubic foot or more, is securely closed and is carried on the back, or in some other manner so that the carrier's hands cannot reach the alcoholic beverage container inside

it;

(2) Notwithstanding the foregoing, any person may possess an opened container of wine as authorized by Section 8-22(f), above, or its successor. (Ord. No. 6830, 3-6-1950, § 36; Ord. No. 7576, 6-12-1967, § 1; Ord. No. 8249, 7-19-1976, § 2; Ord. No. 8345, 8-1-1977, § 2; Ord. No. 8599, 11-9-1981, § 1; Ord. No. 8645, 10-4-1982, § 11; Ord. No. 8923, 1-17-1989, § 19; Ord. No. 9389, 10-13-1998, § 1; Ord. No. 9693, 10-12-2004, § 1.)

Sec. 8-23. Tampering, etc., with original packages prohibited.

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No person holding any license issued under this Division, directly or through any agent, employee or other person, shall dilute, fill, refill or in any manner tamper with the contents of any original package or bottle so as to change its composition or alcoholic content while in such original package or bottle. Possession on the licensed premises by any licensee of any alcoholic beverage in the original package or bottle differing in composition or alcoholic content from such alcoholic beverage when received from the manufacturer or wholesaler from whom it was purchased shall be prima facie evidence that the contents of such original package or bottle has been diluted, changed or tampered with. (Ord. No. 6830, 3-6-1950, § 38; renumbered by Ord. No. 8645, 10-4-1982.)

Sec. 8-24. Gambling devices, prostitution, etc., prohibited.

(a) Except as provided below, no licensee shall keep, possess, operate or permit the keeping, possession or operation of any roulette wheel, football boards or other sports score betting boards, slot machine, dice or other gambling device or apparatus designed to facilitate betting on the premises or in any room adjoining the licensed premises controlled by him, permit any gambling therein, or permit the licensed premises or any room in the same or in any adjoining building, directly or indirectly under his control, to be used as a resort for prostitutes or other

disorderly persons;

(b) A charitable organization licensed by the state of Minnesota pursuant to Minnesota Statutes, Chapter 349, to conduct lawful gambling may conduct such gambling on premises for which an intoxicating or nonintoxicating liquor license has been issued. The operation of lawful gambling in establishments licensed to sell alcoholic beverages shall be subject to the regulations set forth herein and no licensee or other person shall violate any of said regulations. In addition to criminal penalties, the city council shall, pursuant to Minnesota Statutes, Section 349.213, disapprove of the issuance of any lawful gambling license or premises permit by the Minnesota gambling control board if the issuance of such license or permit would violate these regulations. The regulations are as follows:

(1) No organization, including its auxiliaries and subdivisions, shall operate lawful gambling in more than six establishments in the city which are licensed to sell alcoholic beverages, and only three of the establishments may have pull-tabs sold by jar operators or pull-tab dispensing devices, with the remaining establishments served by pull-tab dispensing devices only;

(2) Only one organization may operate lawful gambling on each premises licensed to sell alcoholic beverages;

(3) No organization shall pay lease payments in excess of \$1,000 per month to any establishment in the city licensed to sell alcoholic beverages for leases entered into prior to May 31, 2003. For booth operation leases negotiated after May 31, 2003, no organization shall pay lease payments in excess of ten percent of gross profits or a maximum of \$1,750 per month. For booth operation leases negotiated after May 31, 2003, the maximum lease payment allowed for sites with less than \$4,000 gross profit per month shall be \$400 per month. For bar operation leases in an establishment that has no booth operation, which are negotiated after May 31, 2003, if the organization only operates pull-tab dispensing devices at an establishment where redemption is made by an employee of the lessor, the organization shall not pay lease payments in excess of 20 percent of gross profits or a maximum of \$2,000 per month, with a maximum of \$200 per month on

Sec. 8-25. Music, dancing and entertainment restrictions.

During the hours alcoholic beverages are sold or served, on sale establishments may permit music, theatrics, floor shows or entertainment of any kind upon the licensed premises, except dancing participated in by the public. (Ord. No. 6830, 3-6-1950, § 42; Ord. No. 7054, 8-27-1956; Ord. No. 7079, 2-11-1957; Ord. No. 7563, 2-13-1967, § 4; Ord. No. 8353, 9-6-1977, § 6; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8923, 1-17-1989, § 1.)

Sec. 8-26. Sales to intoxicated persons prohibited.

No person shall sell, give, barter, furnish or dispose of in any manner, directly or indirectly, any alcoholic beverages, in any quantity, for any purpose whatsoever, to any obviously intoxicated person. The city council may revoke the license of any licensee convicted under this Section of selling any alcoholic beverages to an obviously intoxicated person.

No obviously intoxicated person shall be permitted to remain on any premises licensed under this Division. (Ord. No. 6830, 3-6-1950, § 43; Ord. No. 7563, 2-13-1967, § 5; renumbered by Ord. No. 8645, 10-4-1982.)

Sec. 8-27. Consumption by minors prohibited.

No person under 21 years of age shall:

- (a) Consume any alcoholic beverage; or
- (b) Have in his possession any alcoholic beverage for the purpose of consumption by him or by any other person under 21 years of age; or
- (c) Have any alcoholic beverage present in his body as evidence by observable symptoms or chemical tests.

It shall be an affirmative defense to a charge of violating

this Section if only nonintoxicating malt liquor was consumed or possessed for the purpose of consumption and such consumption or possession was in the presence of the parent, parents or legal guardian of the person so charged. (Ord. No. 6830, 3-6-1950, § 45; Ord. No. 6846, 11-29-1950; Ord. No. 6942, 2-2-1953; Ord. No. 7843, 5-10-1971, § 1; Ord. No. 7994, 6-11-1973, § 2; Ord. No. 8264, 9-20-1976, § 3; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8802, 8-14-1986, § 2.)

Sec. 8-28. Sales to minors prohibited.

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No person shall sell, give, barter, furnish or dispose of in any manner, either directly or indirectly, any alcoholic beverages, in any quantity, for any purpose whatsoever, to any person under 21 years of age. The city council may revoke the license of any licensee convicted under this Section of selling any alcoholic beverages to any person under 21 years of age. (Ord. No. 6830, 3-6-1950, § 45; Ord. No. 6846, 11-29-1950; Ord. No. 6942, 2-2-1953; Ord. No. 7563, 2-13-1967, § 7; Ord. No. 7994, 6-11-1973, § 3; Ord. No. 8264, 9-20-1976, § 4; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8802, 8-14-1986, § 3.)

Sec. 8-29. Minors prohibited on licensed premises for purpose of purchasing, etc., alcoholic beverages.

No person under 21 years of age shall enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him any alcoholic beverage.

No person under 21 years of age shall consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages or purchase, attempt to purchase or have another purchase for him any alcoholic beverage. (Ord. No. 6830, 3-6-1950, § 45; Ord. No. 6846, 11-29-1950; Ord. No. 6942, 2-2-1953; Ord. No. 7994, 6-11-1973, § 4; Ord. No. 8264, 9-20-1976, § 5; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8802, 8-14-1986, § 4.)

Sec. 8-29.5. Certain persons not considered minors.

Notwithstanding any provision of this Chapter to the contrary, a person who was born on or before September 1, 1967, may continue to purchase and consume alcoholic beverages and shall be treated for purposes of this Chapter and Minnesota Statutes, Chapter 340A, as a person who is 21 years old. (Ord. No. 8802, 8-14-1986, § 10.)

Sec. 8-30. Misrepresentation of age.

No person shall misrepresent or misstate his age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverage to any person under 21 years of age, or for the purpose of inducing any licensee or any employee of any licensee to allow, suffer or permit any person under 21 years of age to be, remain or loiter in or upon premises for which an on sale license has been issued. (Ord. No. 6830, 3-6-1950, § 45; Ord. No. 6846, 11-29-1950; Ord. No. 6942, 2-2-1953; Ord. No. 7563, 2-13-1967, § 8; Ord. No. 7994, 6-11-1973, § 5; Ord. No. 8264, 9-20-1976, § 6; renumbered by Ord. No. 8645, 10-4-1982; Ord. 8802, 8-14-1986, § 5.)

Sec. 8-31. Employment of minors prohibited; exception.

8

No establishment having an on sale license shall employ any person under 18 years of age in any of the rooms constituting the place in which alcoholic beverages are sold, except that persons under 18 years of age may be employed as musicians or to perform the duties of a bus boy or dishwashing services in hotels and restaurants serving food in room where alcoholic beverages are sold, provided that no such person under 18 years of age shall be permitted to perform any services behind a bar. (Ord. No. 6830, 3-6-1950, § 47; Ord. No. 7803, 8-10-1970; Ord. No. 7877, 10-4-1971; Ord. No. 7994, 6-11-1973, § 7; Ord. No. 8575, 6-8-1981, § 1; renumbered by Ord. No. 8645, 10-

4-1982; Ord. 8802, 8-14-1986, § 6.)

Sec. 8-32. Spiking prohibited.

Except in establishments holding bottle club licenses, no person who is in charge of, or who has the control or management of any restaurant, hotel or club licensed to sell nonintoxicating malt liquor shall permit any patron, guest or person, while in or upon such premises, to increase the alcoholic content of any otherwise nonintoxicating malt liquor sold on such premises. The drinking or possession of any intoxicating liquor or beer containing an alcoholic content in excess of 3.2 percent by weight on such premises shall be grounds for the revocation of such restaurant, hotel or club on sale licenses. (Ord. No. 6830, 3-6-1950, § 50; Ord. No. 8645, 10-4-1982, § 13.)

Sec. 8-33. Change to be made in cash.

In any retail cash transaction for the purchase of alcoholic beverages, only cash shall be returned to the patron in change. (Ord. No. 6830, 3-6-1950, § 51; Ord. No. 8645, 10-4-1982, § 14.)

Sec. 8-34. Licensee to maintain order on premises.

Every licensee shall be responsible for the conduct of his place of business and the conditions of sobriety and order therein. Any violation of this Chapter committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee. The licensee shall be deemed to have knowledge of any gambling or prostitution occurring on the licensed premises. (Ord. No. 6830, 3-6-1950, § 53; Ord. No. 8645, 10-4-1982, § 15.)

Sec. 8-35. Licensee personally liable for unauthorized sales.

Any sale of alcoholic beverages in or from any place licensed under this Article by any clerk, barkeeper or other employee in such place shall be deemed the act of the employer as well as that of the person actually making the sale. Such employer shall be liable to all the penalties provided by this Code for such sale equally with the person actually making the sale. (Ord. No. 6830, 3-6-1950, § 54; renumbered by Ord. No. 8645, 10-4-1982, § 33.)

Secs. 8-36 thru 8-39. Reserved by Ordinance No. 8645, 10-4-1982.

Subdivision II. Licenses.

Sec. 8-40. Dancing and late hours entertainment licenses for liquor establishments.

(a) No person licensed to sell alcoholic beverages on sale shall allow any dancing participated in by the public on said premises unless such person has first received a license pursuant to this Section;

(b) A dancing license shall entitle the license holder to have dancing participated in by the public on the licensed premises. The annual fee for a dancing license shall be set in accordance with Section 31-6(a) of this Code. The fee shall be prorated in the same manner as liquor licenses;

(c) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have dancing participated in by members and guests, without securing a dancing license;

(d) Notwithstanding any provision of this Section or Chapter to the contrary, seasonal dancing licenses covering the months of May through August may be issued to any on sale licensee for a fee set in accordance with Section 31-6(a) of this Code;

(e) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale alcoholic

beverage licenses if they meet the criteria set forth in this paragraph. Such license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when sales of alcoholic beverages are required to cease. The fee for such license shall be set in accordance with Section 31-6(a) of this Code. Every application for such license shall be investigated by the police department and alcohol, gambling, and tobacco commission. No license shall be issued in an area or under circumstances where the late hours entertainment would disturb adjoining properties or the surrounding neighborhood. In their investigation and recommendations, the police and alcohol, gambling and tobacco commission shall consider, without limitation:

- (1) The proximity of the establishment to residences and residentially zoned property;
- (2) The character of the neighborhood surrounding the establishment;
- (3) Parking facilities at the establishment;
- (4) The acoustic properties of the building housing the establishment;
- (5) The past record of the establishment; and
- (6) Any past complaints from adjoining property owners.

The license may contain conditions and limitations concerning types of entertainment and hours of entertainment. No entertainment shall be allowed after 3:00 a.m. All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section. (Ord. No. 8923, 1-17-1989, § 2; Ord. No. 9184, 3-21-1994, § 4; Ord. No. 9335, 6-9-1997, § 1; Ord. No. 9528, 3-25-2002, § 2; Ord. No. 9611, 7-28-2003, § 10.)

Sec. 8-41. Types generally.

9

With respect to intoxicating liquor, there shall be six types of licenses: on sale, on sale club, on sale wine, temporary on sale, off sale and a brewery malt liquor off

Sec. 8-42. Issuance or transfer of an on sale license; application procedure; limitation on issuance of inactive licenses.

(a) Whenever there shall be filed with the city clerk an application for the issuance of an on sale alcoholic beverage license or for a transfer thereof, the fire marshal and the St. Louis County health department shall proceed to inspect and examine such premises and make a report to the alcohol, gambling and tobacco commission as to whether such premises show substantial compliance with the requirements of this Chapter and other applicable laws. The police department shall investigate the applicant and report whether the applicant is a proper person to receive such license. In the event such reports and any supplementary assurances indicate the building will comply with the requirements of laws relating to on sale alcoholic beverage licenses, including building, fire and health codes, a license may be granted, which shall be held by the city clerk until completion of the proposed premises. Thereafter, a final inspection and report shall be made by each of such officers and if their reports indicate that the premises meet the requirements of all applicable laws and are otherwise suitable for the operation of the business permitted by such license, then the clerk shall physically deliver the license to the applicant. In the event that construction of the proposed premises is not prosecuted by the applicant with reasonable diligence, or in the event the building, when completed, does not comply with the requirements above set forth, the council may revoke such license as provided for in this Chapter;

(b) Except as provided herein, no alcoholic beverage license shall be reissued to any licensee who has held a license for a period of two years or more without using said license by engaging in the business of selling alcoholic beverages on the licensed premises pursuant to said license for a continuous period of 30 days or more. The city council may reissue a liquor license that has been inactive for more than two years for an additional year, but only if it has been shown at a hearing before the alcohol, gambling and tobacco commission that the licensee is subject to special circumstances that make it difficult for the licensee to use the license and make it inequitable to divest the

licensee of the license. Any licensee wishing a hearing hereunder shall request the hearing at least 45 days before the renewal date of the license. The request shall be in writing and shall outline the special circumstances affecting the licensee. At the hearing, the alcohol, gambling and tobacco commission shall examine the licensee's circumstances and shall make a recommendation for or against reissuance to the city council. The recommendation, together with a transcript of the hearing, shall be sent to the city council. After reviewing the recommendation, the city council shall grant or deny the license. More than one reissuance may be granted, but each reissuance shall require a hearing. (Ord. No. 7333, 11-26-1962, § 1; Ord. No. 8645, 10-4-1982, § 16; Ord. No. 8785, 5-19-1986, § 1; Ord. No. 8985, 5-29-1990, § 1; Ord. No. 9438, 2-14-2000, § 13.)

Sec. 8-43. Bottle clubs.

(a) Definitions;

(1) Bottle clubs. For the purposes of this Section, a bottle club is a club, as defined in Section 8-13, or an unincorporated society which, except for its lack of incorporation, otherwise meets the requirement of a club, as defined in such Section, and which is not licensed for the sale of intoxicating liquors, either on sale or off sale, or both;

(2) Sale. For the purposes of this Section, sale shall include any form of dispensing;

(b) No administrative officer of the city shall grant approval for issuance of any bottle club permit by the liquor control commissioner of the state of Minnesota unless the city council has authorized such approval by resolution after investigation and recommendation regarding such permit application has been made by the alcohol, gambling and tobacco commission pursuant to the procedures set forth in Section 8-7 of this Chapter, except that such recommendation shall be made by the commission to the council within 30 days after submission of the permit application to the commission;

(c) All bottle clubs licensed by the state to do business

in the city of Duluth shall pay a fee, which shall be set in accordance with Section 31-6(a) of this Code, annually to the city in addition to any fee paid to the state. The fee payable to the city shall be paid prior to the beginning of operation of a bottle club, and prior to April 1 of the following and each succeeding year;

(d) The provisions and regulations of Sections 8-15, 8-16, 8-17, 8-18, 8-19, 8-24, 8-26, 8-28, 8-34 and 8-35 shall fully and equally apply and regulate establishments holding bottle club licenses from the Minnesota state liquor control commissioner. (Ord. No. 7878, 10-4-1971, § 1; Ord. No. 7933, 6-19-1972, § 1; Ord. No. 8645, 10-4-1982, § 17; Ord. No. 9438, 2-14-2000, § 14; Ord. No. 9611, 7-28-2003, § 11; Ord. No. 9619, 9-8-2003, § 4.)

Sec. 8-44. To whom licenses issued--intoxicating liquor.

10.

On sale intoxicating liquor licenses shall be granted only to establishments which are used exclusively for the sale of intoxicating liquor, cigars, cigarettes, ice, all forms of tobacco, nonintoxicating malt liquor and soft drinks at retail and to hotels, clubs, restaurants and bowling alleys.

On sale club licenses shall be granted, subject to the approval of the commissioner of public safety, only to clubs or to congressionally chartered veterans organizations which have been in existence for three years or more. Such license shall authorize the sale of intoxicating liquors only to members of the licensed organization and their bona fide guests.

On sale wine licenses shall be granted only to restaurants or bed and breakfast establishments and shall authorize licensees on every day of the week to sell wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. A bed and breakfast establishment may furnish wine only to registered guests of the establishment. Sunday hours of sale shall be from Noon to 1:00 a.m. Monday. No on sale wine license shall be in effect until it is approved by the liquor control commissioner

of the state of Minnesota. For the purposes of this Section wine shall mean wine as defined by Title 27, the Code of Federal Regulations on May 1, 1975.

Temporary on sale liquor licenses shall be issued only to clubs, charitable organizations, religious organizations and other nonprofit organizations in existence for at least three years, a registered political committee or a state university in connection with a social event sponsored by the licensee. The license shall be issued for a limited length of time, not to exceed four consecutive days. Temporary on sale licenses to any one organization or for one location shall not exceed more than three four-day, four three-day, six two-day or 12 one-day licenses, in any combination not to exceed 12 days per year. No more than one license shall be issued to any one organization or for any one location within any 30-day period unless the licenses are issued in connection with an event officially designated a community festival by the city. The city may authorize the temporary on sale liquor license on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full-year on sale intoxicating liquor license used by the city.

Off sale intoxicating liquor licenses shall be granted only to exclusive liquor stores.

Brewery malt liquor off sale licenses shall be granted only to breweries holding on sale licenses and shall be subject to all restrictions, terms and conditions contained in Minnesota Statutes Section 340A.301, subd. 7(b). (Ord. No. 6830, 3-6-1950, § 3; Ord. No. 7563, 2-13-1967, § 13; Ord. No. 8173, 10-6-1975, § 2; Ord. No. 8264, 9-20-1976, § 8; Ord. No. 8645, 10-4-1982, § 18; Ord. No. 8822, 1-5-1987, § 1; Ord. No. 8923, 1-17-1989, § 4; Ord. No. 9184, 3-21-1994, § 2; Ord. No. 9259, 7-10-1995, § 2; Ord. No. 9608, 7-14-2003, § 2.)

Sec. 8-45. Same--same--Duluth Entertainment Convention Center.

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An on sale intoxicating liquor license may be issued for

the premises known as the Duluth Entertainment Convention Center. Such license shall be issued in accordance with the statutes and ordinances applicable to the issuance of on sale intoxicating liquor licenses in the city of Duluth and shall limit the sale of intoxicating liquor to members and guests of any person or organization leasing space in the Duluth Entertainment Convention Center for the purpose of conducting any convention, banquet, conference, meeting or social affair, and shall prohibit the sale of intoxicating liquor to the public or to any persons attending or participating in any amateur hockey game, or elementary or secondary school or college athletic event being held on the Duluth Entertainment Convention Center premises.

Such license may only be used on the premises known as the Duluth Entertainment Convention Center and may be issued to the Duluth state convention center administrative board or to any person having an agreement with the Duluth state convention center administrative board for the operation of the food and/or beverage concession therein. Notwithstanding any ordinance to the contrary, the holder of such license may subcontract with an independent contractor to operate the liquor concession in any part or all of the arena-auditorium facilities.

The annual fee for such license shall be as set forth in Section 8-56. (Ord. No. 7581, 7-24-1967, § 1; Ord. No. 8242, 5-17-1976, § 1; Ord. No. 8573, 6-1-1981, § 1; Ord. No. 8596, 11-9-1981, § 1; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8923, 1-17-1989, § 5; Ord. No. 9118, 1-11-1993, § 10.)

Sec. 8-46. Same--same--Special Sunday license.

A special license may be issued to hotels, restaurants and clubs holding on sale intoxicating liquor licenses permitting such establishments to sell intoxicating liquor on sale between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays in conjunction with the serving of food; provided, however, that no such license shall be issued to or held by a club unless such club serves meals to its members on a daily basis.

Such license shall be issued in accordance with the

statutes and ordinances applicable to the issuance of on sale intoxicating liquor licenses in the city of Duluth.

Such license shall be deemed to be a part of the regular on sale intoxicating liquor license held by the licensee for purposes of sections 8-53, 8-58 and 8-67 of this Chapter.

The annual fee for such license shall be set in accordance with Section 31-6(a) of this Code, which fee shall not be prorated in case of issuance for a period of less than one year. (Ord. No. 7673, 10-28-1968, § 2; Ord. No. 7777, 3-2-1970; § 1; Ord. No. 7975, 3-5-1973, § 1; Ord. No. 8645, 10-4-1982, § 19; Ord. No. 8762, 12-30-1985, § 1; Ord. No. 8802, 8-14-1986, § 7; Ord. No. 8923, 1-17-1989, § 6; Ord. No. 8948, 7-17-1989, § 2; Ord. No. 9118, 1-11-1993, § 11; Ord. No. 9611, 7-28-2003, § 12.)

Sec. 8-47. Same--same--Duluth International Airport.

(a) That license issued under authority of Laws 1973, Chapter 324, shall be issued for use on the premises of the Duluth International Airport and shall not be transferable from said premises, provided that the foregoing shall not limit additional bars and service bars as are provided for in this Chapter;

(b) Such license may be issued to the Duluth airport authority, or to any other person, persons or corporation, at the discretion of the Duluth City Council;

(c) If such license is issued to the Duluth airport authority, said authority shall maintain a liquor liability insurance policy with coverages as required by Minnesota Statutes, Chapter 340A, naming said authority and the city of Duluth as insured parties under such policy;

(d) The fee for such license shall be that fee established by Section 8-56 of this Chapter;

(e) Such license shall be treated as an on sale intoxicating liquor license under the provisions of this Chapter;

(f) All other provisions of this Chapter shall apply to such license and any person, persons, corporation or body holding said license except as they are inconsistent with

the provisions of this Section. (Ord. No. 8105, 10-7-1974, § 1; Ord. No. 8189, 11-24-1975, § 1; Ord. No. 8645, 10-4-1982, § 20; Ord. No. 8923, 1-17-1989, § 7; Ord. No. 9266, 7-24-1995, § 1.)

Sec. 8-48. Same--same--Spirit Mountain recreation area.

(a) That license issued under authority of Laws 1974, Chapter 345, shall be issued for use at one or more locations within the boundaries of the Spirit Mountain recreation area, provided that whenever said license is used at an area other than the chalet - swimming pool area, the premises affected be segregated with a fence, ropes or other barrier and any alcoholic beverages served shall be served by Spirit Mountain employees only;

(b) Such license shall be issued only to the Spirit Mountain recreation area authority. Notwithstanding any provision of this Code to the contrary, the Spirit Mountain recreation area authority may lease the food and beverage operations to an independent contractor, provided, however, that said authority shall be responsible for the actions of any such independent contractor as provided in Sections 8-34 and 8-35 of this Chapter;

(c) The Spirit Mountain recreation area authority, when holding said license, shall maintain a liquor liability insurance policy as required by Minnesota Statutes, Chapter 340A, which names said authority and the city of Duluth as insured parties under such policy. Such policy shall be kept on file by said authority in the office of the city clerk of the city of Duluth and shall contain a provision requiring that written notice be delivered to the city of Duluth not less than ten days prior to the termination of such policy;

(d) The fee for such license shall be that fee established by Section 8-56 of this Chapter;

(e) Said license shall be treated as an on sale intoxicating liquor license under the provision of this Chapter;

(f) All other provisions of this Chapter shall be

applicable to said license and to said authority except as they are inconsistent with the provisions of this Section. (Ord. No. 8105, 10-7-1974, § 2; Ord. No. 8189, 11-24-1975, § 2, Ord. No. 8562, 4-6-1981, § 1; Ord. No. 8643, 8-9-1982, § 1; Ord. No. 8645, 10-4-1982, § 21; Ord. No. 8923, 1-17-1989, § 8; Ord. No. 9266, 7-24-1995, § 2.)

Sec. 8-49. Same--Nonintoxicating malt liquor.

On sale nonintoxicating malt liquor licenses shall be granted only to premises which have been approved by the city council upon advice from the alcohol, gambling and tobacco commission. The total number of on sale licenses to be granted under this Section shall not exceed the ratio of one on sale license for every 800 inhabitants of the city or fraction thereof, as determined by the last federal census; provided, that in determining such ratio, clubs shall not be included or limited in such number. (Ord. No. 6830, 3-6-1950, § 5; Ord. No. 7563, 2-13-1967, § 14; Ord. No. 8645, 10-4-1982, § 22; Ord. No. 8923, 1-17-1989, § 9; Ord. No. 9188, 5-9-1994, § 1; Ord. No. 9438, 2-14-2000, § 15.)

Sec. 8-50. To whom licenses issued--temporary nonintoxicating malt liquor.

(a) For purposes of this Section, the following words and phrases shall have the following meanings:

Charitable organization. An organization which engages in solicitation of funds, on a permanent basis, for any charitable, benevolent, philanthropic, patriotic or eleemosynary purposes.

Religious organization. An organization which is affiliated with a national or regional religious denomination and which maintains an established church and congregation.

Nonprofit organization. An organization which is neither designed for nor results in any private pecuniary gain, either directly or indirectly, for any of its members;

(b) Notwithstanding any provisions of the Duluth City Code to the contrary, temporary on sale nonintoxicating malt liquor licenses may be issued to clubs, charitable organizations, religious organizations and other nonprofit

organizations permitting such club or organization to sell nonintoxicating malt beverage on sale;

(c) Such license shall be issued for a limited length of time, not to exceed 14 days, and such license shall state on its face the specific dates on which it is valid. The application for such license and the license itself shall specifically state the precise premises where such nonintoxicating malt liquor is to be sold. The license application shall be accompanied by insurance if insurance is required under the provisions of Minnesota Statutes Chapter 340A. The fee for such license shall be set in accordance with Section 31-6(a) of this Code. Said fee and cash deposit shall be paid to the city clerk at the time of application. All applications for such licenses shall be made to and filed with the city clerk on forms provided by the city clerk. Such license shall not be transferable. No license shall be issued under this Section if it appears that the issuance of such license will endanger the health, safety or morals of the public. Licensed premises outside of buildings shall be clearly indicated;

(d) The chief of police shall designate or approve one or more security personnel to police premises licensed pursuant to this Section at times when nonintoxicating malt liquor is sold on such premises. The fees and expenses for such personnel shall be paid by the licensee. (Ord. No. 8249, 7-19-1976, § 1; Ord. No. 8485, 10-15-1979, § 1; Ord. No. 8599, 11-9-1981, § 2; Ord. No. 8645, 10-4-1982, § 23; Ord. No. 8923, 1-17-1989, § 10; Ord. No. 9118, 1-11-1993, § 12; Ord. No. 9266, 7-24-1995, § 3; Ord. No. 9611, 7-28-2003, § 13.)

Sec. 8-51. Beer sales by and entertainment in certain restaurants.

(a) Pursuant to Chapter 200, Laws of Minnesota, 1979, and notwithstanding any other law in the contrary, restaurants holding both an on sale wine license and an on sale nonintoxicating malt liquor license may make on sales of beer which is brewed and bottled outside the United States and which does not exceed seven percent alcohol by weight without an additional license;

(b) Pursuant to Minnesota Statutes, Section

Sec. 8-53. Limitation on licenses to same licensee.

No more than one off sale intoxicating liquor license shall be granted to one person, partnership or corporation or to one establishment or location.

No person, partnership or corporation shall have or possess a direct or indirect interest in more than one off sale intoxicating liquor license in the city of Duluth.

The term interest as used in this Section includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor establishment but does not include: bona fide loans, bona fide retail loans, bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment.

A person, partnership or a corporation which receives monies from time to time directly or indirectly from a licensee in the absence of a bona fide consideration therefor, and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such retail license.

Upon conviction for violation of this Section the city council may revoke all licenses in which such convicted person, partnership or corporation has an interest. (Ord. No. 6830, 3-6-1950, § 6; Ord. No. 6846, 11-29-1950, § 2; Ord. No. 7563, 2-13-1967, § 15; Ord. No. 7634, 3-25-1968, §1; Ord. No. 8483, 10-9-1979, § 1; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 9422, 10-12-1999, § 1.)

Sec. 8-54. License not effective beyond space for which granted; exceptions.

No license shall be effective beyond the compact and contiguous space named therein for which the same was granted. Licensed premises shall include the entire parcel of land on which the establishment is located; provided, however, that no sales or service shall take place outside the designated serving areas approved by the city council in the licensing procedure unless such sales and/or service

is authorized on a temporary basis for a special event by city council resolution and shall be subject to any conditions and limitations the council deems appropriate. Before any temporary service area is authorized, the licensee shall make application, accompanied by the appropriate fee and including a diagram of the proposed area, the time and date of the event, and fencing and security measures to be taken, to the city clerk. Thereafter, the alcohol, gambling and tobacco commission shall review the matter and make any recommendation it deems appropriate to the city council. The fee for temporary expansions shall be set in accordance with Section 31-6(a) of this Code for the first day of the event and for each day thereafter. If the application is denied, all but a portion of the fee, set in accordance with Section 31-6(a) of this Code, shall be refunded to the applicant. No temporary expansion of service area shall be granted for a period of time greater than three consecutive days. (Ord. No. 6830, 3-6-1950, § 6; Ord. No. 6846, 11-29-1950, § 3; Ord. No. 8599, 11-9-1981, § 3; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8689, 2-6-1984, § 2; Ord. No. 8923, 1-17-1989, § 12; Ord. No. 9118, 1-11-1993, § 13; Ord. No. 9438, 2-14-2000, § 16; Ord. No. 9611, 7-28-2003, § 14.)

Sec. 8-55. Duration; expiration date; prorating of certain licenses.

Except as herein otherwise expressly provided, all alcoholic beverage licenses shall be issued for a period of one year; except, that for the purpose of coordinating the time of expiration of licenses in general, such licenses may be issued for a shorter time, and when thus issued the fees therefor shall be prorated; provided, that fees for off sale nonintoxicating malt liquor licenses shall not be prorated. All licenses for intoxicating liquor shall expire on the 31st day of August each year next succeeding the issuance of such license; and all licenses for nonintoxicating malt liquor shall expire on the 30th day of April each year next succeeding the issuance of such license. This Section shall not apply to temporary on sale nonintoxicating malt liquor licenses. (Ord. No. 6830, 3-6-1950, § 9; Ord. No. 7221, 12-7-1959, § 1; Ord. No. 7386, 3-9-1964, § 1; Ord. No. 7563, 2-13-1967, § 17; Ord. No. 8249, 7-19-1976, § 4; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8923,

1-17-1989, § 13.)

Sec. 8-56. Fees.

The license fee for off sale and on sale nonintoxicating malt liquor licenses shall be paid to the city clerk not later than March 15 of each year. The license fee for off sale intoxicating liquor licenses shall be paid to the city clerk not later than July 15 of each year. The license fee for on sale intoxicating liquor licenses may, at the option of the licensed applicant, be paid to the city clerk either in one lump sum not later than July 15 in each year, or in four equal installments, which shall be paid not later than July 15, October 15, January 15 and April 15, respectively. In any case where any payment for any alcoholic beverage license is not made when due, a penalty fee, which shall be set in accordance with Section 31-6(a) of this Code, shall be added to the fee. Nonpayment of fees shall constitute good cause for suspension or revocation of any license.

Payment for license fees shall be made by certified check payable to the city treasurer of the city or in lawful money of the United States of America and when such fees are received by the city clerk they shall be transmitted to the city treasurer. Upon the granting of a license as provided in this Article the amount of fee for such license shall be paid into the general fund.

(a) The annual fees for on sale intoxicating liquor licenses shall be set in accordance with Section 31-6(a) of this Code.

Whenever any licensee holding an on sale intoxicating liquor license shall at any time for any purpose operate more than one permanent bar, such licensee shall pay an additional annual license fee, which shall be set in accordance with Section 31-6(a) of this Code, for each such additional permanent bar. A so-called service bar which is used solely by employees of the licensee shall not be considered a bar for purposes of this Section;

(b) The annual fee for an off sale intoxicating liquor license shall be set in accordance with Section 31-6(a) of this Code;

(c) The fee for a temporary on sale liquor license shall be set in accordance with Section 31-6(a) of this Code;

(d) The annual fee for an on sale nonintoxicating malt liquor license shall be set in accordance with Section 31-6(a) of this Code;

(e) The annual fee for an off sale nonintoxicating malt liquor license shall be set in accordance with Section 31-6(a) of this Code;

(f) The annual fee for a brewery malt liquor off sale license shall be set in accordance with Section 31-6(a) of this Code. (Ord. No. 6830, 3-6-1950, §§ 10, 11; Ord. No. 6960, 3-24-1954; Ord. No. 6993, 3-14-1955; Ord. No. 7032, 11-16-1955; Ord. No. 7084, 3-26-1957; Ord. No. 7221, 10-3-1960, § 1; Ord. No. 7386, 3-9-1964, § 2; Ord. No. 7563, 2-13-1967, § 18; Ord. No. 7590, 8-28-1967, § 1; Ord. No. 7813, 9-28-1970, § 1; Ord. No. 7933, 6-19-1972, § 2; Ord. No. 8173, 10-6-1975, § 3; Ord. No. 8551, 11-24-1980, § 10; Ord. No. 8591, 10-5-1981, § 1; Ord. No. 8645, 10-4-1982, § 25; Ord. No. 8923, 1-17-1989, § 14; Ord. No. 9118, 1-11-1993, § 14; Ord. No. 9184, 3-21-1994, § 3; Ord. No. 9259, 7-10-1995, § 3; Ord. No. 9608, 7-14-2003, § 3; Ord. No. 9611, 7-28-2003, § 15.)

Sec. 8-57. Refund of fees in certain cases.

In case, during the term of an on sale intoxicating liquor license, an off sale intoxicating liquor license or an on sale nonintoxicating malt liquor license, the place of business of any licensee shall be destroyed or so damaged by fire or otherwise that the licensee shall cease to carry on the licensed business, in case the business of the licensee shall cease by reason of his illness or death or if it shall become unlawful for the licensee to carry on the licensed business under his license, except when such license is revoked, the city council may, upon the happening of any such event, refund to the licensee or to his estate such part of the license fee paid by him as corresponds to the time such license had yet to run; provided, however, that in case of the death of any such licensee, his personal representative is hereby authorized to continue operation of such business for not more than 90 days after the death of such licensee. (Ord. No. 6830, 3-6-1950, § 12; renumbered

by Ord. No. 8645, 10-4-1982.)

Sec. 8-58. Applications for intoxicating liquor licenses.

Applications for intoxicating liquor licenses shall be made to and filed with the city clerk. On sale applications shall be made on forms prescribed by the city council. Off sale applications shall be made on forms prescribed by the liquor control commissioner. All forms shall be supplied by the city clerk. The council or alcohol, gambling and tobacco commission may require applicants to furnish information in addition to that contained in the written forms. If required under the provisions of Minnesota Statutes, Chapter 340A, a liability insurance policy shall accompany each application for a license.

The application for an off sale intoxicating liquor license is subject to approval by the state department of public safety. Before such off sale license shall become effective, the application therefor, together with the required insurance policy, shall be approved by the liquor control commissioner. (Ord. No. 6830, 3-6-1950, § 13; Ord. No. 8645, 10-4-1982, § 26; Ord. No. 8923, 1-17-1989, § 15; Ord. No. 9266, 7-24-1995, § 4; Ord. No. 9438, 2-14-2000, § 17.)

Sec. 8-59. Same--Nonintoxicating malt liquor licenses.

Every person desiring a nonintoxicating malt liquor license shall file a verified application therefor, in writing, with the city clerk, in the form to be prescribed by the city council.

Such application shall be accompanied by a liability insurance policy if one is required under the provisions of Minnesota statutes, Chapter 340A. (Ord. No. 6830, 3-5-1950, § 14; Ord. No. 8645, 10-4-1982, § 27; Ord. No. 9266, 7-24-1995, § 5.)

Sec. 8-60. Repealed by Ordinance No. 9266, 7-24-1995, § 7.

Sec. 8-61. Liability insurance.

No license applicant who is required by the provisions of Minnesota Statutes, Section 340A.409, to provide proof of financial responsibility with regard to liability imposed by Minnesota Statutes, Section 340A.801, shall be granted a license under this Chapter until he has provided proof of financial responsibility in the manner prescribed by statute. (Ord. No. 8004, 8-13-1973, § 1; Ord. No. 8645, 10-4-1982, § 29; Ord. No. 8923, 1-17-1989, § 16.)

Sec. 8-62. Issuance--generally.

The city clerk shall not issue any license under this Division unless directed to do so by resolution duly adopted by the city council. No application for a license to sell intoxicating liquor shall be received or filed by the city clerk before June 15 nor after July 15. No application for a license to sell nonintoxicating malt liquor shall be received or filed by the city clerk before February 15 nor after March 15. Where a license is made available by revocation, abandonment, surrender, cancellation or for some other cause, such available license may, upon application to the city council, be reissued by the city council as determined by a resolution adopted for such purpose. Any resolution granting a license may be conditioned on final departmental approvals, payment of taxes or any other condition the council deems appropriate. The city clerk shall not issue any license until all such conditions are met.

The alcohol, gambling and tobacco commission shall cause an investigation to be made of all of the representations set forth in the applications. Opportunity shall be given at a regular or special meeting of the alcohol, gambling and tobacco commission to any person to be heard for or against the granting of any license. After such investigation, the city council shall grant or refuse such license in its discretion; provided, that no off sale intoxicating liquor license shall become effective until, together with any required insurance policy, has the approval of the liquor control commissioner of the state.

The licensed premises shall have the license posted in a conspicuous place. (Ord. No. 6830, 3-6-1950, § 16; Ord. No. 7073, 12-17-1956; Ord. No. 7386, 3-9-1964, § 3; Ord. No. 8021, 11-12-1973, § 1; Ord. No. 8645, 10-4-1982, § 30; Ord. No. 9266, 7-24-1995, § 6; Ord. No. 9438, 2-14-2000, § 18.)

Sec. 8-63. Same--Corporations.

Alcoholic beverage licenses may be issued to any corporation authorized to do business in the state of Minnesota if an officer or a managing agent of the corporation is a resident of Minnesota residing within 50 miles of the Duluth City Hall.

No corporation shall be granted a license to sell alcoholic beverages if any of its officers, directors, shareholders, local managers or local managing agents have been convicted within five years prior to the application for such license for violation of any law relating to the manufacture, sale, distribution or possession of alcoholic beverages, or have had an interest in a license to sell alcoholic beverages which was revoked within the last five years for violation of any such law, or for cause, and unless such officers, directors, shareholders, local managers and local managing agents are of good moral character and reputation. This paragraph shall not apply to clubs, or to corporations whose stock is publicly held and listed and traded by the public on a recognized stock exchange, except with respect to those provisions dealing with local managers and local managing agents.

A corporation shall state in its application for an alcoholic beverage license the names of its shareholders, directors, officers, local managers and local managing agents. The transfer, sale, pledge, or assignment of the record or equitable ownership of any stock of a corporate license holder to new or different shareholders, or the election or appointment of any new or different directors, officers, local managers or local managing agents by a corporate license holder shall be deemed a transfer of all alcoholic beverage licenses held by such corporation and, in such case, the provisions of Section 8-67 of this Code, shall be applicable. The failure of any corporate license holder to comply with the provisions of this paragraph shall be grounds for the

revocation of all alcoholic beverage licenses held by such corporation. This paragraph shall not apply to clubs, or to corporations whose stock is publicly held and listed and traded by the public on a recognized stock exchange, except with respect to those provisions dealing with local managers and local managing agents. (Ord. No. 7563, 2-13-1967, § 19; Ord. No. 8645, 10-4-1982, § 31.)

Sec. 8-64. Same--Prohibited to certain persons.

No licenses required by this division shall be issued to any person not a citizen of the United States or not of good moral character and repute, nor to any person under 19 years of age, nor to any person who shall be convicted of any wilful violation of any law of the United States, this state or any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, nor to any person whose license under this division shall be revoked for any wilful violation of any such laws or ordinances or for cause. (Ord. No. 6830, 3-6-1950, § 17; Ord. No. 7994, 6-11-1973, § 8; Ord. No. 8264, 9-20-1976, § 9; renumbered by Ord. No. 8645, 10-4-1982.)

Sec. 8-65. Payment of taxes.

Except as provided herein, no license shall be issued or any transfer thereof made under this Division unless the applicant for such license or transfer thereof shall accompany the application therefor with written proof of payment of delinquent sales taxes and real estate taxes, as well as all delinquent special assessments for local improvements on the premises for which a license is being sought. Proof of payment shall be evidenced by tax receipt, assessment certificate or a certified copy thereof or a certified copy of so much of any proceedings showing agreement under the laws of the state for the payment of such delinquent taxes and assessments; provided, however, that for the purposes of this Section, the holder of any license, the applicant for such license or the applicant for a transfer of such license shall be permitted to make proof of payment of current real estate taxes by filing with the city clerk a duplicate tax receipt or certified copy of such tax receipt, showing payment not later than June 30

of the first 1/2 of such current real estate taxes or not later than November 30 of the second 1/2 of such current real estate taxes.

The city council may grant a license notwithstanding the existence of delinquent real estate taxes and assessments, but only after good cause for an extension to pay such taxes has been shown to exist at a public hearing held before the alcohol, gambling and tobacco commission. Any applicant owing delinquent real estate taxes or assessments may request in writing a hearing to determine if good cause exists for the granting of such license. At the hearing, the alcohol, gambling and tobacco commission shall examine the financial condition of the applicant and the reasons for its inability to promptly pay all real estate taxes and assessments. After hearing all evidence, the alcohol, gambling and tobacco commission shall make a recommendation to the city council and forward said recommendation together with a transcript of the hearing to the city council. The city council shall then grant or deny the request. Failure to file proof of payment of current sales taxes and real estate taxes shall be deemed, in addition to all other grounds of revocation, sufficient cause to revoke a license granted or to refuse the application for transfer of such license.

If the applicant for a license or for a transfer of a license is the owner, either in fee or under contract for deed of the real estate where the licensed business is proposed to be located, such applicant shall also obtain a certificate or other written proof from the county auditor, showing that there are no delinquent real estate taxes of record against such real estate.

In the event the applicant does not own the real estate where the licensed business is to be located and there are delinquent taxes of record against such real estate, the city council may nevertheless, by affirmative vote of five members of the council, authorize and direct the issuance of such license or the transfer thereof, but only in the event that the applicant shall file with the city clerk proof that the owner of said real estate and the applicant have entered into a written rental agreement or lease providing that rent paid shall be first applied to such delinquent real estate taxes. (Ord. No. 6830, 3-6-1950, § 18; Ord. No. 7484, 9-27-1965, § 1; Ord. No. 8645, 10-4-1982, § 32; Ord. No. 8802,

8-14-1986, § 8; Ord. No. 8807, 10-6-1986, § 1; Ord. No. 9438, 2-14-2000, § 19.)

Sec. 8-66. Repealed by Ordinance No. 8923, 1-17-1989, § 20.

Sec. 8-67. Transfer; modification of licensed premises or designated serving area.

(a) No license issued under the provisions of this Subdivision shall be assigned or transferred by the licensee, nor shall a change of address in the location of the licensed premises be permitted, unless a resolution authorizing such assignment, transfer or change of address shall have been first duly passed by the city council. A request for an assignment, transfer or change of address shall be treated in the same manner as an application for a new license under the provisions of this Chapter. Such applications shall be accompanied by a fee which shall be set in accordance with Section 31-6(a) of this Code in the case of an intoxicating liquor license and a fee which shall be set in accordance with Section 31-6(a) of this Code in the case of a nonintoxicating malt liquor license. The fee shall be refunded if the application is withdrawn, or the assignment, transfer or change of address is not granted by the city council. No fee for the assignment, transfer or change of address of an off sale nonintoxicating malt liquor license shall be charged when such application is accompanied by an application for assignment, transfer or change of address of an on sale nonintoxicating malt liquor license;

(b) No licensee shall permanently expand its licensed premises or designated serving area, unless such expansion is approved by the city council. A request for such expansion shall be made in writing to the city clerk accompanied by a fee set in accordance with Section 31-6(a) of this Code. Thereafter, the matter shall be reviewed by the alcohol, gambling and tobacco commission and referred to the city council together with the recommendation of the commission. (Ord. No. 6830, 3-6-1950, § 21; Ord. No. 6846, 11-29-1950; Ord. No. 7590, 8-28-1967, § 2; Ord. No. 7967, 1-8-1973, § 1; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 8802, 8-14-1986, § 9;

Ord. No. 8923, 1-17-1989, § 17; Ord. No. 9438, 2-14-2000, § 20; Ord. No. 9611, 7-28-2003, § 16.)

Sec. 8-68. Licenses not to be issued in certain areas.

12.

Except for the district from Third Avenue East to Seventh Avenue East on Fourth Street; from Sixth Avenue West to Third Avenue East on Michigan Street, Superior Street and First Street; and from 14th Avenue East to 26th Avenue East on London Road; and except for clubs and general food stores, no licenses shall be granted to authorize the sale of alcoholic beverages in any establishment, the main entrance of which is situated within 400 feet of the main entrance of any church or of the grounds of any public or private elementary or secondary school; said distance to be measured by the shortest route along or across the public way. Establishments in which the sale of alcoholic beverages was authorized on January 1, 1967, shall not be subject to the provisions of this paragraph. (Ord. No. 6830, 3-6-1950, § 30; Ord. No. 6846, 11-29-1950, § 6; Ord. No. 7563, 2-13-1967, § 20; Ord. No. 8582, 7-6-1981, § 1; renumbered by Ord. No. 8645, 10-4-1982; Ord. No. 9098, 10-5-1992, § 1.)

Sec. 8-69. Sale of alcoholic beverages at the St. Louis County Heritage and Arts Center.

13.

Notwithstanding the provisions of Section 8-54 of this Chapter, on sale intoxicating liquor license holders in the city may sell intoxicating liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of the St. Louis County Heritage and Arts Center when such licensee has been engaged by a person or organization authorized by the board of directors of the St. Louis County Heritage and Arts Center to use said premises for such event. Sales shall be made only to persons attending such event and shall be subject to all laws and ordinances governing the sale of intoxicating liquor which are not inconsistent with the Section. The form of the rental agreement used by the St. Louis County

(5) Policing unlawful gambling on video games of chance is exceedingly difficult because of the numbers of machines and locations and the personal relationship between the gamblers and the tavern or club operators;

(6) Video games of chance in taverns and clubs constitute an unacceptable burden to local law enforcement resources;

(7) The presence of video games of chance in any on sale liquor establishment in the city of Duluth constitutes a public nuisance;

(b) The city council shall not issue, transfer or renew the liquor license of any on sale intoxicating liquor establishment which has a video game of chance on its licensed premises after July 31, 1990, provided that this Section shall not apply to any liquor license issued at the Fond-du-Luth Gaming Casino;

(c) No licensee or other person shall keep, maintain, operate or possess on any on sale licensed premises or bottle club any video game of chance, provided that this Section shall not apply to the Fond-du-Luth Gaming Casino. (Ord. No. 8983, 5-14-1990, § 1.)