

CITY OF CARLTON

ORDINANCE #179

AN ORDINANCE LICENSING AND REGULATING THE SALE AND CONSUMPTION OF INTOXICATING LIQUOR,  
REPEALING INCONSISTENT ORDINANCES AND PROVIDING A PENALTY FOR VIOLATION.

The City Council of the City of Carlton does ordain as follows:

**SECTION 1. ADOPTION OF STATE LAW.**

Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 340A, relating to the definitions of terms, licensing, consumption, sales, conditions of bonds and licenses, hours of sale, and all other intoxications liquor are adopted and made a part of this Ordinance as if set out in full.

**Section 2. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW**

The Council is authorized by the provisions of M. S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M. S. Chapter 340A, as it may be amended from time to time.

**SECTION 3. DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALCOHOLIC BEVERAGE.** "Alcoholic beverage" means any beverage containing more than one-half of one percent alcohol by volume.

**CITY.** "City" means the City of Carlton, Minnesota.

**APPLICANT.** "Applicant" means the person signing the alcoholic beverage license application form and, in the case of a partnership, association, corporation, or other legal entity, includes the business organization or other entity on behalf of which the application is made.

**LICENSE.** "License" means a document issued by the City to an applicant permitting him to carry on and to transact the business stated therein.

**LICENSEE.** "Licensee" means an applicant who, pursuant to the application therefore, holds a valid, current, unexpired, and unrevoked license from the City for carrying on the business stated therein.

**LICENSE FEE.** "License fee" means the sum of money paid to the City pursuant to an application for and prior to the issuance of a license to transact and carry on the business stated therein.

**MINOR.** "Minor" means a person under the age of 21 years.

**RESTAURANT.** "Restaurant" means traditional or casual restaurant only.

**Traditional restaurant:** An eating facility where full table service is provided at the table by wait staff whereupon a customer orders food from printed menus and the main food course is served and consumed while seated at a single location. The restaurants also have dining areas with formal or semi-formal décor and appointments utilizing traditional or reusable food utensils, plates, cups, and glasses. A traditional restaurant may provide additional incidental services such as food delivery and retail over-the-counter prepared food sales. In addition, the restaurant shall not be prohibited by law, private restrictive covenant, or otherwise from obtaining a full liquor license.

**Casual restaurant:** An eating facility where some table service may be provided by wait staff, food is prepared after an order is placed by a customer, reusable dinnerware such as utensils, plates, and cups are used. Bussing of the tables is done by the restaurant staff.

**LICENSING PREMISES** "Licensed premises" means the premises described in the approved license application.

**MINNESOTA LIQUOR ACT** "Minnesota Liquor Act" or "Liquor Act" means the provisions contained in Minnesota Statutes, Chapter 340A, as amended.

**OFF-SALE** "Off-sale" means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

**ON-SALE** "On-sale" means the sale of alcoholic beverages for consumption on the licensed premises only.

**SUNDAY-SALE.** "Sunday-Sale" means the sale of liquor by glass for consumption on the premises on a Sunday in conjunction with the serving of food by the licensee, pursuant to a special license therefore issued by the City as authorized by state law

**PACKAGE** "Package" means a sealed or corked container of an alcoholic beverage.

**INTOXICATING LIQUOR.** "Intoxicating liquor" means Ethyl alcohol, distilled, and fermented, spirituous, vinous and malt beverages containing more than 3.2% of alcohol by weight.

**THREE AND TWO-TENTHS PERCENT (3.2%) MALT LIQUOR.** Malt liquor containing not less than 0.5% alcohol by volume or more than 3.2% alcohol by weight.

**WINE.** A beverage made by normal alcoholic fermentation of grapes, grape juice, other fruits or honey or a beverage made from other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, and sake, containing not less than 0.5% nor more than 24% alcohol by volume for nonindustrial use.

#### **SECTION 4. CONSUMPTION IN PUBLIC PLACES**

No person shall consume intoxicating liquor, wine or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment and/or designated area licensed under this ordinance, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted. This does not prohibit consumption in public places where the City has issued a special or temporary permit allowing sale and consumption.

#### **SECTION 5. NUMBER OF LICENSES WHICH MAY BE ISSUED**

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this ordinance is limited to the number of licenses which was issued as of the effective date of this ordinance, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by Minnesota Statutes Chapter 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M. S. § 340A.413, subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

#### **SECTION 6. TERM AND EXPIRATION OF LICENSES**

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms.

#### **SECTION 7. LICENSE FEES; PRO RATA**

(A) No liquor license fee or other fee established by the city under this ordinance shall exceed any limit established by M. S. § 340A, as it may be amended from time to time, for a liquor license.

(B) The Council may establish from time to time by ordinance or resolution the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this ordinance. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

(D) All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M. S. § 340A.408, subd. 5.

## SECTION 8. LICENSES REQUIRED.

(A) **GENERAL REQUIRMENT.** No person, except manufacturers and wholesalers to the extent authorized under State License, shall directly or indirectly deal in, sell, keep for sale or deliver any in the City any intoxicating liquor, malt liquor or wine without first having received a license to do so as provided in this Ordinance.

### (B) LICENSE TYPES

Liquor licenses shall be of three (3) kinds: "on-sale", "off-sale" and "Sunday-Sale" licenses.

(1) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an-off sale intoxicating liquor license established by the Council under Section 7 shall not exceed \$200 or a greater amount which may be permitted by M. S. § 340A.408, subd. 3, as it may be amended from time to time.

(2) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M. S. § 340A.101, as it may be amended from time to time, and this ordinance: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 9 of this ordinance shall not exceed the amounts provided for in M. S. § 340A.408, subd. 2(b), as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M. S. § 340A.404, subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of 340A.404, subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(3) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M. S. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant, as defined in Section 3 of this ordinance, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license which shall be established by the Council under the provisions of Section 9 of this ordinance, shall not exceed \$100, or the maximum amount provided by M. S. § 340A.504, subd 3(c) as it may be amended from time to time.

(4) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000 pursuant to M. S. § 340A.406.

(5) Temporary on-sale intoxicating liquor license (see M. S. § 340A.404, Subdivision 6).

(6) Temporary off-sale intoxicating liquor licenses (see M. S. § 340A.405, subdivision 4)

(C) **LICENSING PROCEDURE; RENEWALS.**

(1) **Form.** Every application for a license issued under this ordinance shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(2) **Financial responsibility.** Prior to the issuance of any license under this ordinance, the applicant shall demonstrate proof of financial responsibility as defined in M. S. § 340A.409, as it may be amended from time to time, with regard to liability under M. S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M. S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this ordinance without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

(3) **DESCRIPTION OF PREMISES**

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

(3B) A licensed 'on-sale' liquor establishment in the city may provide an area outside their premises (building) where patrons may smoke. The smoking area must be enclosed. The entire designated area must be located at least the distance prescribed by the County of Carlton. The enclosure must be securely attached to the building. The designated must not be enclosed across the top. Patrons may carry beverages purchased inside the licensed establishment directly to the smoking area and may consume them once in the designated area. No alcoholic beverages may be sold in the designated area and the licensed holder may not carry or deliver alcoholic beverages to the designated area. The license holder must secure the city's prior approval regarding the location and construction of the designated area. A sidewalk or the improved walkway must lead directly from a public door in the licensed premises to the designated area. Patrons of the licensed establishments may smoke and consumed alcoholic beverages only within the designated area. Patrons may consume alcoholic beverages only within the licensed premises or within the designated area.

(4) **Renewal applications.**

(a) *License period, expiration.* Each renewal license shall be issued for a maximum period of one year. All licenses, except temporary licenses, expire on December 31 of each year. Temporary licenses shall expire according to their terms. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee is guaranteed a license renewal. Failure by the Council to renew a license shall not be grounds for any claim or cause of action against the City.

(b) *Time of making application.* Applications for renewal of an existing license shall be made at least 30 days prior to the date of the expiration of the license, and shall state that everything in the prior applications remains true and correct except as otherwise indicated. The city will mail application forms to existing licensees approximately 60 days prior to expiration of the licenses. If, in the judgment of the Council, good and sufficient cause is shown by any applicant for failure to file for a renewal within the time period provided, the Council may, if the other provisions of this chapter are complied with, grant the application.

**SECTION 9. TRANSFER OF LICENSE.**

No license issued under this ordinance may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is grounds for revocation of the license. An

application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

#### SECTION 10. INVESTIGATION

*Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and; in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license.

#### SECTION 11. HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

#### SECTION 12. RESTRICTION ON ISSUANCE

- (1) Each license shall be issued only to the applicant for the premises described in the application.
- (2) Not more than one license shall be directly or indirectly issued within the city to any one person, or entity.
- (3) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges or other financial claims of the city are delinquent and unpaid.
- (4) No license shall be issued for any place or any business ineligible for a license under state law.
- (5) No license shall be granted for use in premises located within 500 feet of any school or church. The distance is to be measured from the closest side of the church or school to the closest side of the structure on the premises within which liquor is to be sold.

#### SECTION 13. CONDITIONS OF LICENSE

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

- (1) Within 90 days after employment, every person selling or serving liquor in an establishment which has an "on-sale" license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
- (2) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. Each licensee shall maintain order and sobriety with in the licensed premises. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.
- (3) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises, without a warrant.
- (4) Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license.

#### SECTION 14. COUNCIL DISCRETION TO GRANT OR DENY A LICENSE

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has is guaranteed a license under this ordinance. Failure by the Council to renew a license shall not be grounds for any claim or cause of action against the City.

## SECTION 15. SUSPENSION AND REVOCATION

(1) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation or provision of this ordinance relating to liquor, as provided herein. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M. S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for employment of a hearing officer.

(2) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. Revocations shall occur within 60 days following a violation for which the revocation is imposed.

(A) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 112.04, the license shall be revoked.

(B) The license shall be suspended by the Council after a finding that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:

For the first violation within any three year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.

For a second violation within any three year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

For the third violation within any three year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

For a fourth violation within any three year period, the license shall be revoked.

The council shall select the day or days during which the license will be suspended.

(3) Lapse of required proof of financial responsibility shall cause an immediate suspension of any license issued pursuant to this ordinance or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this paragraph shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.

(4) The provisions of Section 15 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

(5) **GAMBLING ENFORCEMENT**. Every liquor license holder hosting a charitable gambling operation, shall include in the rental agreement with such gambling operator a provision to the effect that, if directed by the City of Carlton, such operator's right to operate on the leased premises maybe suspended or revoked if the operator violates any applicable statute, ordinance or other applicable regulation. Any rental agreement between a liquor license holder and a charitable gambling operator shall be deemed to include such provision whether or not to actually set forth in such rental agreement. Failure by a liquor license holder to suspend or revoke the gambling operator's right to operate on the premises, when directed by the City of Carlton to do so, shall be in

violation of city ordinance by the liquor license holder which may result in suspension or revocation of the liquor license. If the City of Carlton directs the suspension or revocation of a gambling operator's right to operate, the City of Carlton shall indemnify the liquor license holder from any claim of wrongful suspension or revocation of the operator's right to operate.

#### SECTION 16. PENALTIES.

- (1) Any person violating the provisions of this chapter or M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- (2) The Council may impose a civil penalty upon any license holder under the provision M. S. § 340A.415. Any civil penalty shall follow the presumptive civil penalty schedule set forth hereafter:  
  
For the first violation within any three year period, \$500.  
  
For the second violation within any three year period, \$1,000.  
  
For the third and subsequent violations within any three year period, \$2,000 for each violation.
- (3) The term "violation" as used in this section and in Section 15 includes any and all violations of the provisions of this ordinance, or of M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three year period.

#### SECTION 17. HOURS OF SALE.

- (1) The hours of operation and days of sale shall be those set by M. S. § 340A. 504, as it may be amended from time to time.
- (2) No on-sale of intoxicating liquor shall be made between the hours of 1:00AM and 8:00AM, on any weekday, Monday through Saturday inclusive unless the licensee has been granted the optional 2:00AM liquor license by the City and the Commissioner of Public Safety. In which case there shall be no sale of non -intoxicating liquor between the hours of 2:00AM and 8:00AM, on any weekday, Monday through Saturday inclusive. Neither shall any sale of such liquor be made on any Sunday between the hours of 1:00AM and 10:00AM (2:00 AM and 10:00 AM with optional 2:00AM liquor license), nor after 8:00PM on December 24<sup>th</sup>.
- (3) No off-sale of intoxicating liquor shall be made before 8:00 AM or after 10:00 PM; Monday through Saturday inclusive and is prohibited on Sunday.
- (4) No off-sale of intoxicating liquor or non-intoxicating malt liquor shall be made on New Year's Day, January 1; Thanksgiving Day; or Christmas Day, December 25<sup>th</sup>. On the evenings proceeding such days, if the sale of intoxicating liquor or non-intoxicating malt liquor is not otherwise prohibited on such evenings, off-sale of intoxicating liquor or non-intoxicating malt liquor may be made until 10:00 PM except that no off-sale of intoxicating liquor or non intoxicating malt liquor shall be made on December 24<sup>th</sup> after 8:00 PM.
- (5) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- (6) No on-sale licensee shall permit any glass, bottle or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
- (7) No person, other than the licensee and necessary employees, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- (8) Any violation of any condition of this section may be grounds for revocation or suspension of the license.

**SECTION 18. MINORS ON PREMISES**

(1) No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restaurant, hotel, motel or other multipurpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

(2) No person under the age of 18 years may enter or be allowed to remain at a licensed establishment after 10:00PM except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold unless the minor is accompanied by a parent or legal guardian patronizing the establishment for a specific social event. At no time are minors allowed to be seated at the bar or immediate serving area.

**SECTION 19. REPEAL OF CONFLICTING ORDINANCE.** All existing ordinances of the City of Carlton relating to the licensing and regulating the sale and consumption of intoxicating and non-intoxicating malt liquor are hereby repealed insofar as they may be inconsistent with the provisions of this ordinance.

**SECTION 20. SEPARABILITY OF PROVISIONS.** It is the intention of the City Council that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable.

**SECTION 21. EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Carlton City Council this \_\_\_\_ day of \_\_\_\_\_ 2005.

CITY OF CARLTON

Dennis Randelin  
Dennis Randelin, Mayor

ATTEST:

Lynn Habegger  
Lynn Habegger, City Administrator

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