

Sec. 409.02. - Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

Catering permit shall mean that permit provided for in Minnesota Statutes, Section 340A.404, subdivision 12.

Club shall mean a corporation organized under the laws of the state for civic, fraternal, social or business purposes or for intellectual improvement or promotion of sports which has more than fifty (50) members and for more than a year 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, and 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 are 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 wage as may be fixed and voted each year by the directors or other governing body. A club shall also, in order to be licensed, meet the provisions of Minnesota Statutes, Section 340A.404, subdivision 1(4), which requires that the organization shall have been in existence for at least three (3) years, and liquor sales will be only to members and bona fide guests. The above term will include private clubs licensed under former Chapter 404 of this Code, so long as they meet the above requirements upon application for an on-sale license.

Downtown business district shall mean that portion of the City of Saint Paul lying within and bounded by the following streets: Beginning at the intersection of Shepard Road with Chestnut Street, Chestnut Street to Interstate Freeway 35E, Interstate Freeway 35E to Tenth Street, Tenth Street to Interstate Freeway 94, Interstate Freeway 94 to Lafayette Bridge, Lafayette Bridge to where the bridge crosses over Warner Road, Warner Road to Wabasha Bridge, Wabasha Bridge across the Mississippi River to the water line on the south bank of the river, thence in a westerly direction along the shore line to the point at which it intersects with "Line A," and then in a straight line across the Mississippi River to the intersection of Chestnut Street with Shepard Road. The location and legal description of "Line A" is indicated on the map attached hereto, and incorporated and adopted herein by reference.

Downtown entertainment district means that portion of the City of Saint Paul lying within and bounded by the following streets: Beginning at the intersection of Shepard Road with Eagle Parkway, Eagle Parkway to Exchange Street, Exchange Street to N Walnut Street, North Walnut Street to Smith Avenue, Smith Avenue to N Chestnut Street, N Chestnut Street to Interstate Freeway 35E, Interstate Freeway 35E to Tenth Street, Tenth Street to Interstate Freeway 94, Interstate Freeway 94 to Lafayette Bridge, Lafayette Bridge to where the bridge crosses over Warner Road, Warner Road to Wabasha Bridge, Wabasha Bridge across the Mississippi River to the water line on the south bank of the river, thence in a westerly direction along the shore line to the point at which it intersects with "Line A," and then in a straight line across the Mississippi River to the intersection of Eagle Parkway with Shepard Road.

Exclusive liquor store shall mean an establishment used only for off sale and on sale sales of intoxicating liquor, except that, upon obtaining proper state or city licenses for such sales, cigars, cigarettes, all forms of tobacco and nonintoxicating malt beverages and soft drinks may also be sold in said exclusive liquor store at retail; provided, further, that such nonintoxicating malt beverages and soft drinks, when sold pursuant to an off sale liquor license, shall be sold for consumption off the premises only.

General food store shall mean any place of business carrying a stock of food supplies and primarily engaged in selling food and grocery supplies to the public.

Hotel shall mean an establishment with resident proprietor or manager, where, for payment, food and lodging are regularly furnished to transients, and which maintains, for use of its guests, no fewer than fifty (50) guest rooms with bedding and other suitable and necessary furnishings in each room, and which has a main entrance with suitable lobby, desk and office for the registration of guests on the ground floor and which employs an adequate staff to provide suitable and usual service, and which maintains, under the same management and control as the rest of the establishment and as an integral part thereof, a dining room with appropriate facilities for seating not less than thirty (30) guests at one (1) time, where the

general public is, in consideration of payment, served with meals at tables, whose gross receipts from the sales of food and liquor are at least sixty (60) percent attributable to the sale of food during each and every calendar month, and having a full service kitchen and a menu, offering meals and full menu service on a daily basis to at least 11:00 p.m. or to the closing time of the entire establishment. A full service kitchen shall meet the definition of full service kitchen under the definition of restaurant below.

Intoxicating liquor or *liquor* shall mean and include ethyl alcohol, and any distilled, fermented, spirituous, vinous or malt liquid of any kind potable as a beverage, which contains an alcoholic content in excess of three and two-tenths (3.2) percent thereof by weight or four (4) percent by volume.

Licensee means any person holding a liquor license within an entertainment district.

Medicines shall mean and include only such potable liquids as prescribed by licensed physicians and dentists for therapeutic purposes and United States Pharmacopoeia and National Formulary preparations and preparations used for the mitigation of disease for external and internal purposes which are usually sold in drug stores and intended for therapeutic purposes and not for beverage purposes.

Off-sale shall mean the sale of liquor in original packages in retail stores for consumption off or away from the premises where sold.

Off-sale/ brew pub shall mean a brewer licensed under Minn. Stat. § 340A.301, subd. 6(d) who sells malt liquor produced and packaged on the licensed premises for consumption off or away from the premises.

Off-sale brewery shall mean a brewer who manufactures fewer than 20,000 barrels of malt liquor in a year. The barrels intended for off sale must be produced and packaged on the licensed premises for consumption away from the premises in 64-ounce containers commonly known as growlers in accordance with Minn. Stat. § 340A.301.

Off-sale microdistillery shall mean a distiller of spirits licensed under Minn. Stat. § 340A.22. The distiller may not sell more than one (1) 375-milliliter bottle of sprits per day to any one (1) customer at off-sale. Such off-sale must be of spirits manufactured on-site only.

Off-sale wine only shall mean an off-sale license issued under section 409.29 of this Code.

On-sale shall mean the sale of liquor by the glass for consumption on the premises only.

Package or *original package* shall mean and include any container or receptacle holding liquor, which container or receptacle is corked or sealed.

Person shall include individuals, corporations, partnerships and associations.

Private nonprofit college shall mean a postsecondary institution of learning, not administered by a unit of government or operated for profit, which awards undergraduate or graduate degrees.

Restaurant shall mean:

- (1) For establishments licensed to serve liquor at on-sale prior to February 1, 2016, an establishment other than a hotel, whose food and liquor services are under the control of a single proprietor or manager, having appropriate facilities for the serving of meals for no fewer than fifty (50) guests at one (1) time, having a full service kitchen and a menu, offering meals and full menu service on a daily basis to at least 11:00 p.m. or to the closing time of the entire establishment, and whose gross receipts are at least sixty (60) percent attributable to the sale of food during each and every calendar month. A full service kitchen for the purpose of this chapter shall include at the least a cooking line with mechanical ventilation, having two (2) or more ovens and ranges; food preparation areas having sinks, cutting boards, and facilities and equipment for the preparation, holding at safe temperatures, and processing of food on site; refrigerators and/or coolers for the safe storage of food; and mechanical dishwashing facilities and equipment; all of the foregoing meeting the requirements of Chapter 331 of the Legislative Code and NSF International standards.
- (2) For establishments first licensed to serve liquor at on-sale on February 1, 2016, or thereafter, an establishment other than a hotel, whose food and liquor services are under the control of a

single proprietor or manager, serving food and beverages, meeting the definition in Minn. Stats. § 157.15, subd. 12, and classified as a high- or medium-risk establishment under Minn. Stats. § 157.20, subd. 2a, that meets the following additional criteria:

- a. Derives a substantial amount of its income from the sale of foods and non-alcoholic beverages.
- b. Has a full-service kitchen, including:
 1. At least one (1) cooking line with required ventilation;
 2. One (1) or more ovens and ranges, or other cooking equipment as approved by the director;
 3. Food preparation areas having sinks;
 4. Refrigerators and/or coolers for the safe storage of food;
 5. All of the above elements meeting relevant NSF International standards.
- c. Maintains all food- and health-related licenses and permits necessary to operate as a high or medium risk establishment as defined in Minn. Stats. § 157.20, subd. 2a.
- d. Offers adequate interior seating for not less than thirty (30) guests at a time.
- e. Prepares meals on-premises, which are served to guests seated at tables or other eating surfaces.
- f. Only sells intoxicating liquors to patrons who are seated at an eating surface, unless the patron being served is on a bona fide waiting list for available seating.
- g. Ends all food and beverage service no later than 12:00 a.m., and closes no later than 12:30 a.m.
- h. Offers a menu including at least four (4) entrees, or as otherwise approved by the department.
- i. Offers full menu service during all hours of operations, with the exception of the hour prior to closing.
- j. Actively promotes food sales to all guests within the licensed premises of the restaurant during all hours of full menu service.
- k. Maintains a kitchen open for meal service, which is appropriately staffed and supplied to fulfill orders from the menu in effect during all hours of full menu service.
- l. Allows no greater than ten (10) percent of the area of the licensed premises to be used for entertainment purposes, including, but not limited to, dancing or musical performance.
- m. Makes business records, including, but not limited to, federal and state tax returns, available for inspection by the Director or the Director's designee at all reasonable times.

The failure of a restaurant holding an on-sale liquor license to abide by the above criteria shall constitute grounds for adverse action against said license. Restaurants holding an on-sale liquor license prior to February 1, 2016, may elect to operate pursuant to the definition outlined in subsection (2), above, by notifying the department in writing. Any restaurant electing to operate pursuant to the definition outlined in subsection (2) may not subsequently elect to operate under the definition outlined in subsection (1).

Sale and sell shall mean and include all barbers and all manner or means of furnishing intoxicating liquor or liquors in violation or evasion of law.

(Code 1956, § 308.01; Ord. No. 17676, § 1, 8-24-89; C.F. No. 95-795, § 5, 8-9-95; C.F. No. 95-28, § 1, 8-16-95; C.F. No. 96-391, § 1, 5-8-96; C.F. No. 97-604, § 1, 6-25-97; C.F. No. 03-693, § 1, 9-3-03; C.F. No. 06-822, § 1, 9-27-06; Ord. No. 11-55, § 1, 7-13-11; Ord. No. 12-11, § 1, 3-

28-12; Ord 12-47, § 1, 9-12-12; Ord 14-2, 1-22-14; Ord 15-29, § 1, 5-27-15; Ord 15-61, § 1, 12-2-15)

Sec. 409.26. - Intoxicating liquor; nonintoxicating malt liquor; presumptive penalties.

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the length of license suspensions and the propriety of revocations, and shall apply to all on-sale and off-sale licensed premises for both intoxicating liquor under this chapter and nonintoxicating liquor under chapter 410. These penalties are presumed to be appropriate for every case; however the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) *Presumptive penalties for violations.* Adverse penalties for convictions or violations shall be presumed as follows (unless specified, numbers below indicate consecutive days' suspension):

	Type of Violation	Appearance			
		1st	2nd	3rd	4th
(1)	Commission of a felony related to the licensed activity.	Revocation	NA	NA	NA
(2)	Sale of alcohol beverages while license is under suspension.	Revocation	NA	NA	NA
(3)	Sale of alcoholic beverages to underage person.	500.00	1,000.00	Up to 18	Revocation
(4)	Sale of alcoholic beverage to intoxicated person.	500.00	1,000.00	Up to 18	Revocation
(5)	After hours sale of alcoholic beverages.	500.00	6	18	Revocation
(6)	After hours display or consumption of alcoholic beverage.	500.00	4	12	Revocation
(7)	Refusal to allow city inspectors or police admission to inspect premises.	5	15	Revocation	NA
(8)	Illegal gambling on premises.	500.00	6	18	Revocation
(9)	Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage.	500.00	4	12	Revocation
(10)	Failure to make application for license renewal prior to license expiration date.	500.00	6	18	Revocation

(11)	Sale of intoxicating liquor where only license is for nonintoxicating liquor.	500.00	6	18	Revocation
(12)	Failure to comply with statutory, and ordinance requirements for liability insurance.	10	Revocation	NA	NA

For on-sale intoxicating liquor establishments with a seating capacity of one hundred fifty (150) or more, the monetary penalty for any violation (including violations found in chapter 310) shall be doubled.

For off-sale intoxicating liquor establishments with five thousand one (5,001) or more square feet of retail space, the monetary penalty for any violation (including violations found in chapter 310) shall be doubled.

A licensee who would be making a first appearance before the council may elect to pay the fine to the department of safety and inspections without an appearance before the council, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive penalty. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and shall be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(c) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council.

The same procedures shall apply to a second, third or fourth appearance before the council.

(d) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance.

(e) *Computation of time.*

(1) *Second appearance.* A second violation within twelve (12) months shall be treated as a second appearance for the purpose of determining the presumptive penalty.

(2) *Third appearance.* A third violation within eighteen (18) months shall be treated as a third appearance for the purpose of determining the presumptive penalty.

(3) *Fourth appearance.* A fourth violation within twenty-four (24) months shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.

- (4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. Measurement of the twelve-, eighteen- or twenty-four-month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.
- (5) For the purpose of a second, third or fourth appearance under this section, "violation" shall mean either one of those violations listed in paragraph (b) or a violation of section 310.05(m).
- (f) *Other penalties.* Nothing in this section shall restrict or limit the authority of the council to suspend up to sixty (60) days, revoke the license, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions or take any other adverse action in accordance with law, provided, that the license holder has been afforded an opportunity for a hearing in the manner provided for in section 310.05 of this Code.
- (g) *Effect of responsible business practices in determining penalty.* In determining the appropriate penalty, the council may, in its discretion, consider evidence submitted to it in the case of uncontested adverse actions or submitted to a hearing examiner in a contested hearing upon which findings of fact have been made that a licensee has followed or is likely to follow in the future responsible business practices in regard to sales to intoxicated persons and sales to minors.
 - (1) For the purposes of service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, those policies, procedures and actions that are implemented at time of service and that:
 - a. Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;
 - b. Promote availability of nonalcoholic beverages and food;
 - c. Promote safe transportation alternatives other than driving while intoxicated;
 - d. Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employees or agents;
 - e. Establish promotions and marketing efforts that publicize responsible business practices to the defendant's customers and community;
 - f. Implement comprehensive training procedures;
 - g. Maintain an adequate, trained number of employees and agents for the type and size of defendant's business;
 - h. Establish a standardized method for hiring qualified employees;
 - i. Reprimand employees who violate employer policies and procedures; and
 - j. Show that the licensee has enrolled in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.
 - (2) For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to, those listed in subsection (1) and the following:
 - a. Management policies that are implemented at the time of service and that ensure the examination of proof of identification (as established by state law) for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;
 - b. Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification; and
 - c. Enrollment by the licensee in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

(Ord. No. 17556, § 1, 4-28-86; Ord. No. 17657, § 14, 6-8-89; Ord. No. 17675, § 1, 8-22-89; Ord. No. 17694, § 2, 11-7-89; Ord. No. 17756, § 1, 8-7-90; Ord. No. 17924, §§ 2, 3, 5-7-92; C.F. No. 92-1929, § 1, 2-9-93; C.F. No. 97-1445, § 1, 12-30-97; C.F. No. 98-866, § 1, 11-4-98; C.F. No. 07-149, § 161, 3-28-07; C.F. No. 10-818, § 1, 8-25-10; Ord. No. 11-92, § 1, 9-28-11; Ord 12-41, § 1, 8-22-12)